

Jerome Delvin
District 1
Shon Small
District 2
James Beaver
District 3

Board of County Commissioners BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, July 19, 2016
Benton County Courthouse, Prosser, WA

**To view items in detail, please
click on the highlighted area.**

9:00 AM Call to Order
Approval of Minutes
❖ **July 12, 2016 Board Meeting**

Review Agenda

Consent Agenda

Commissioners

a. Closing Funds & Adding Replacement Funds to ICMA Retirement Corporate Accounts

Juvenile

b. 1st Amended Agreement w/NCourt LLC

c. Grant Application w/DSHS for Juvenile Detention Alternatives Initiative

Office of Public Defense

d. District Court Public Defense Services Agreement w/M Prince

e. District Court Public Defense Services Agreement w/A Pechtel for Overflow Cases

f. Amended Public Defense Services Interlocal Agreement w/City of W Richland for Billing of Costs w/Mental Health Court

g. Amended Public Defense Services Interlocal Agreement w/City of Prosser for Billing of Costs w/Mental Health Court

Public Safety

h. Agreement w/Kiona-Benton City School District for Crime Prevention Program

Public Works

i. Establishing New Speed Limit on Clodfelter Road

j. Contract w/ B.C.V., for Hanks Road & CR12 Pathway Asphalt Repair

k. Accepting Work Performed by B.C.V., for Fall 2015 Crack Seal Project

l. Accepting Work Performed by Fowler General Construction for Kennewick Maintenance Facility

Sheriff

m. Salary Request Statement

n. Salary Request Statement

o. Salary Request Statement

Treasurer

p. Approval of Disbursements from the Historical Preservation Fund

Scheduled Business

Bi County IT Interlocal Agreement Update ~ Judge Swisher

WSU ~ M Ophardt

- Urban Horticulture
- Viticulture & Fruit Trees

Unscheduled Visitors

Other Business

Executive Session

Potential Litigation ~ R. Lukson

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Tuesday, July 12, 2016, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Pro Tem James Beaver
Commissioner Jerome Delvin
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Absent: Chairman Shon Small - Vacation

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Sustainable Development Manager; County Engineer Matt Rasmussen; Planning Manager Mike Shuttleworth; DPA Ryan Brown; Clerk Josie Delvin; District Court Administrator Jacki Lahtinen; Treasurer Duane Davidson; OPD Manager Eric Hsu; Taylor Ranger, Auditor's Office; Human Services Manager Kyle Sullivan; Michelle Cooke, Planning.

Approval of Minutes

The Minutes of June 28, 2016 and the Bi-County Minutes of June 30, 2016 were approved.

Consent Agenda

MOTION: Commissioner Delvin moved to approve the consent agenda items "a" through "w", pulling "u" (Agreement w/Gall's LLC). Commissioner Beaver seconded and upon vote, the Board approved the following:

Auditor

- a. Canvassing Board Appointment

Board of Equalization

- b. Appointment of B Clark to the Board of Equalization

Facilities

- c. Payment to Kone, Inc. for Elevator Malfunction

Fairgrounds

- d. Contract w/CKJT Architects for Design & Engineering of Exhibit Halls 2 & 3 Renovation

Human Services

- e. Contract w/Our Lady of Lourdes Hospital for ARNP Services
- f. Agreement w/BF Community Action Connections for WA St Community Development Block Grant

Office of Public Defense

- g. Amended Contract w/E Riley to Reflect Change in Firm Name
- h. Amended Contract w/B Riley to Reflect Change in Firm Name
- i. Contract Renewal w/Lexis.Com for Legal Research Services
- j. Amended Contract w/B Pang for Superior Court Public Defense Services

Parks

- k. Line Item Transfer, Fund No. 0000-101, Dept. 126

Public Safety

- l. Line Item Transfer, Fund No. 0148-101, Dept. 120
- m. Line Item Transfer, Fund No. 0148-101, Dept. 135
- n. Agreement w/Mirror Ministries for Human Trafficking Survivor Services

Public Works

- o. Updated Road Department Organizational Chart
- p. Purchase of Kennewick Shop Building from Current Expense Capital Improvement Fund
- q. Solid Waste Purchase of Ely Street Road & Vehicle Maintenance Building from ER&R Fund
- r. Line Item Transfer, Fund No. 0101-101, Dept. 500
- s. Line Item Transfer, Fund No. 0101-101, Dept. 500
- t. Contract w/Grade Worx LLC for Prosser to Grandview Pedestrian & Bicycle Pathway Improvement Project

Sheriff

- v. Agreement w/WA St Internet Crimes Against Children Task Force

Sustainable Development

- w. Line Item Transfer, Fund No. 0135-101, Fund No. 000

Amendment to Urban Growth Area Applications

Mike Shuttleworth said several of the Cities within Benton County had requested the ability to submit amendments to their Urban Growth Areas during the County's 2017 Comprehensive Plan Update process. The Planning Commission considered the request at a public meeting on June 14, 2016 and recommended approval of the request to allow the Cities to submit UGA amendments by December 31, 2016 for review in 2017.

MOTION: Commissioner Delvin moved to approve the resolution agreeing to allow each City jurisdiction to submit an Urban Growth Area Amendment application as part of the 2017 Comprehensive Plan Update Process. Chairman Pro Tem Beaver seconded and upon vote, the motion carried.

Countywide Planning Policies

Mr. Shuttleworth gave a Powerpoint presentation outlining the proposed jointly developed countywide planning policies. He said the Planning Commission recommended the Board adopt the resolution agreeing in principle to the policies, but acknowledging that changes may need to be made based on input from each jurisdiction. The resolution would contain a statement requesting that each jurisdiction ratify the policies adopted by Benton County.

DPA Ryan Brown talked about the challenges to the Growth Hearings Board challenging the size of the UGA and asked if they would be addressing the issues with the formula for commercial and industrial. Mr. Shuttleworth said the attached worksheet would address that and it was the next step after these revisions.

MOTION: Commissioner Delvin moved to approve the attached Resolution agreeing in principle to the proposed CWPPs, but acknowledging that changes may need to be made based on input from each jurisdiction. Additionally, directing the Planning Department to send the resolution and draft policies to the Cities for their review and support of the CWPP. Chairman Pro Tem Beaver seconded and upon vote, the motion carried.

Office of Public Defense Update

OPD Manager Eric Hsu gave a Powerpoint presentation and updated the Board as follows:

- Supervision and Quality Control Plan
 - Introduction and Purpose
 - On-Boarding
 - Performance Standards Monitoring – Data Collection/Court Observation
 - Training
 - Complaint Investigation and Resolution
 - Exit Interviews
 - With the Board’s approval, he would publish it on the website
- 2016 1st Quarter Report
 - Performance Standards Monitoring – Background/Results
 - Caseloads - specifically the OPD caseload for District Court had increased, Superior Court was steady, and Juvenile was consistently down.
 - Financials – with some increases in District Court and decreases in Superior Court, he did not anticipate any problems with the budget

Commissioner Delvin said he would like to know where the increase in District Court was coming from, if the information was attainable.

Other Business

ARC Request – Accessible Communities Act

Commissioner Delvin said that ARC had requested the Board establish an advisory committee under the Accessible Communities Act. He said if the advisory committee were established there would be funding available from the state and ARC would run the program and ask for funding from the State.

The Board agreed to wait until Commissioner Small returned to make a decision.

Bi-County Meeting Discussion

Commissioner Delvin said it sounded like Lourdes was willing to take over Crisis and the date of September 1 had been discussed. However, he felt like October 1 was a better date and would give Lourdes more time to set up and allow Mr. Sullivan time to work through some issues. He said the letter was ready to go except for the date and Mr. Sullivan said that Franklin County indicated a willingness to extend the date to October 1.

Chairman Pro Tem Beaver agreed and Mr. Sullivan said he would prepare the letter and bring it back to the Board after Franklin County signed it.

The Board recessed, reconvening at 9:45 a.m.

Executive Session – 2nd Quarter Litigation

The Board went into executive session at 9:45 a.m. with DPA Ryan Brown to discuss pending litigation for up to 30 minutes. Also present were David Sparks, Loretta Smith Kelty, and Cami McKenzie. The Board came out at 10:10 a.m. Mr. Brown said the Board discussed pending litigation and no action was taken.

Vouchers

Check Date: 07/01/2016

Transfers #: 7011601-7011606
Total all funds: \$47,540.94

Warrants #: 141637-141767
Total all funds: \$4,590.24

Warrants #: 141768-141877
Total all funds: \$626,048.98

Check Date: 07/05/2016

Payroll Checks
Warrant #: 239729-239796
Direct Deposit #: 115318-115921
Total all funds: \$2,187,697.70

Payroll Deductions/Transfers
Taxes #: 10116071-101160711
Total all funds: \$1,900,884.70

Payroll Deductions/Warrants
Warrant #: 141883-141896
Total all funds: \$375,465.85

Check Date: 07/08/2016

Warrant #: 141921
Total all funds: \$8,000.00
Total amounts approved by fund can be reviewed in the Benton County Auditor's Office.

Resolutions

- 2016-537: Appointment of B Clark to the Board of Equalization
- 2016-538: Payment to Kone, Inc. for Elevator Malfunction
- 2016-539: Contract w/CKJT Architects for Design & Engineering of Exhibit Halls 2 & 3 Renovation
- 2016-540: Contract w/Our Lady of Lourdes Hospital for ARNP Services
- 2016-541: Agreement w/BF Community Action Connections for WA St Community Development Block Grant
- 2016-542: Amended Contract w/E Riley to Reflect Change in Firm Name
- 2016-543: Amended Contract w/B Riley to Reflect Change in Firm Name
- 2016-544: Contract Renewal w/Lexis.Com for Legal Research Services
- 2016-545: Amended Contract w/B Pang for Superior Court Public Defense Services
- 2016-546: Line Item Transfer, Fund No. 0000-101, Dept. 126
- 2016-547: Line Item Transfer, Fund No. 0148-101, Dept. 120
- 2016-548: Line Item Transfer, Fund No. 0148-101, Dept. 135
- 2016-549: Agreement w/Mirror Ministries for Human Trafficking Survivor Services
- 2016-550: Updated Road Department Organizational Chart
- 2016-551: Purchase of Kennewick Shop Building from Current Expense Capital Improvement Fund
- 2016-552: Solid Waste Purchase of Ely Street Road & Vehicle Maintenance Building from ER&R Fund
- 2016-553: Line Item Transfer, Fund No. 0101-101, Dept. 500
- 2016-554: Line Item Transfer, Fund No. 0101-101, Dept. 500
- 2016-555: Contract w/Grade Worx LLC for Prosser to Grandview Pedestrian & Bicycle Pathway Improvement Project
- 2016-556: Agreement w/WA St Internet Crimes Against Children Task Force
- 2016-557: Line Item Transfer, Fund No. 0135-101, Fund No. 000
- 2016-558: Amendment to the Comprehensive Plan – Urban Growth Area
- 2015-669: Amendments to the Benton Countywide Planning Policies

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

Clerk of the Board

Chairman

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF CLOSING FUNDS AND ADDING REPLACEMENT FUNDS TO ICMA RETIREMENT CORPORATION ACCOUNTS

WHEREAS, per Resolution 08-782, the Board of County Commissioners entered into an Administrative Agreement with ICMA Retirement Corporation in which ICMA acts as an investment adviser to the Employer adopted deferred compensation plan and trustee of the Vantage Trust; and

WHEREAS, in addition to serving as an investment advisor and trustee, ICMA provides a complete offering of services to public employers for the operation of employee retirement plans; and

WHEREAS, one of those services is communications concerning investment alternatives and asset management such as closing funds and/or replacing these closed funds with new funds, **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, hereby approves the attached letter outlining the below changes

<u>Closing Fund Name</u>	<u>Replacement Fund Name</u>	<u>Ticker</u>
VT Vantagepoint Ovrseas Eq Idx	Vanguard Total International Stock Index Admiral	VTIAX
VT Vantagepoint Md/Sm Co Idx	Vanguard Extended Market Index Admiral	VEXAX
VT Vantagepoint Brd Mkt Idx	Vanguard Total Stock Market Index Admiral	VTSAX
VT Vantagepoint 500 Stk Idx	Vanguard 500 Index Admiral	VFIAX
T Vantagepoint Cor Bnd Idx	Vanguard Total Bond Market Index Admiral	VBTLX; and

BE IT FURTHER RESOLVED the Board of Benton County Commissioners authorize the Chairman to sign, on behalf of the Board, the attached letter.

Dated this day of, 2016.

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

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

Jerome Delvin
District 1
Shon Small
District 2
James Beaver
District 3

Board of County Commissioners BENTON COUNTY



David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

July 19, 2016

Mr. Peter Hoerber
Regional Director, Northwest
ICMA-RC Western Regional Office
2635 N 1st Street - Suite 207
San Jose, CA 95134

Mr. Hoerber please process the following changes for the Benton County, WA 457 plan:

Fund Additions - Add the following funds to the Benton County plan lineup:

<u>Fund Name</u>	<u>Ticker</u>
Vanguard Total International Stock Index Admiral	VTIAX
Vanguard Extended Market Index Admiral	VEXAX
Vanguard Total Stock Market Index Admiral	VTSAX
Vanguard 500 Index Admiral	VFIAX
Vanguard Total Bond Market Index Admiral	VBTLX

Mapping - Please map participant assets and update allocations from the closing funds in the following manner:

<u>Closing Fund Name</u>	<u>Replacement Fund Name</u>	<u>Ticker</u>
VT Vantagepoint Ovrseas Eq Idx	Vanguard Total International Stock Index Admiral	VTIAX
VT Vantagepoint Md/Sm Co Idx	Vanguard Extended Market Index Admiral	VEXAX
VT Vantagepoint Brd Mkt Idx	Vanguard Total Stock Market Index Admiral	VTSAX
VT Vantagepoint 500 Stk Idx	Vanguard 500 Index Admiral	VFIAX

<u>Closing Fund Name</u>	<u>Replacement Fund Name</u>	<u>Ticker</u>
T Vantagepoint Cor Bnd Idx	Vanguard Total Bond Market Index Admiral	VBTLX

For any questions, please contact Loretta Smith Kelty, at 509-786-5600 ext 2600.

Chairman
Benton County Commissioners

Cc: David Sparks, County Administrator
Ryan Brown, Chief Civil Prosecuting Attorney
Loretta Smith Kelty, Deputy County Administrator
Lexi Wingfield, Human Resources and Risk Management Manager

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED Executive Amendment <u> xx </u> Pass Resolution <u> xx </u> Pass Ordinance Pass Motion Other	CONSENT AGENDA <u> xx </u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER
MEETING DATE: FC 06/29/16 BC 07/12/16		
SUBJECT: Program Agreement Amendment #1 with nCourt LLC		
Prepared By: Maria Loera		
Reviewed By: Darryl Banks		

BACKGROUND INFORMATION

Benton-Franklin Counties Juvenile Justice Center currently contracts with nCourt LLC to provide an online/web-based payment option for the collection of legal financial obligations.

SUMMARY

The purpose of Program Agreement Amendment #1 is to amend Section 2. Time Performance and add Schedule C-Addendum to the original Program Agreement.

COORDINATION

This Program Agreement Amendment # 1 was coordinated by Kathleen Miller, Chief Financial Officer; Jennifer Bowe, Administrative Services Manager for the Benton-Franklin Counties Juvenile Justice Center; and Stephen Hallstrom, Deputy Prosecuting Attorney for Benton County. The Program Agreement Amendment #1 was prepared by Maria Loera, Senior Administrative Secretary.

RECOMMENDATION

The Administrative Services Manager recommends that Program Agreement Amendment # 1 is approved as presented.

FISCAL IMPACT

There is no financial obligation to the Benton-Franklin Counties Juvenile Justice Center.

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, Program Agreement Amendment # 1 with Benton-Franklin Counties Juvenile Justice Center and nCourt LLC.

HANDLING/ROUTING

Following signature from Franklin County, route to Benton County for signature. Following signature from Benton County three originals are to be returned to Maria Loera to disperse.

I certify the above information is accurate and complete.

Maria Loera

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. 2016 262

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

RE: IN THE MATTER OF EXECUTING A PROGRAM AGREEMENT AMENDMENT #1 BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND NCOURT LLC, AMENDING BENTON COUNTY RESOLUTION # 2016 172 AND FRANKLIN COUNTY RESOLUTION # 2016 068

WHEREAS, per Benton County Resolution # 2016 172 dated March 1, 2016 and Franklin County Resolution # 2016 068 dated February 24, 2016 the Board of Benton County Commissioners and the Board of Franklin County Commissioners entered into an Agreement between Benton-Franklin Counties Juvenile Justice Center and nCourt LLC, to provide an online/web-based payment option for the collection of legal financial obligations; and

WHEREAS, the current Program Agreement with nCourt LLC is expiring on June 30, 2016. Program Agreement Amendment # 1 replaces Section 2, Time Performance and adds Schedule C- Addendum to the original Program Agreement; NOW THEREFORE

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington the Board approves the attached Program Agreement Amendment #1; and

BE IT FURTHER RESOLVED, the term of the attached Program Agreement Amendment # 1 commences on May 26, 2016 and expires on June 30, 2018; and

BE IT FURTHER RESOLVED, that the Chairman of the boards is authorized to sign Program Agreement Amendment # 1.

DATED this _____ day of _____ 2016
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this 29th day of JUNE 2016
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board



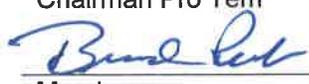
Chairman of the Board

Member



Chairman Pro Tem

Member



Member

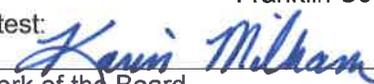
Constituting the Board of
County Commissioners,
Benton County, Washington

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board



Clerk of the Board

JUDGES

Hon. Vio L. Vander Schoor
Hon. Robert G. Swisher
Hon. Carrie Runge
Hon. Cameron Mitchell
Hon. Bruce Spanner
Hon. Alexander C. Ekstrom
Hon. Jacqueline Shea-Brown

**BENTON-FRANKLIN COUNTIES
JUVENILE JUSTICE CENTER**



DARRYL BANKS, 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) 738-2728

JOSEPH R. SCHNEIDER
JERRI G. POTTS
JACQUELINE STAM
Court Commissioners

PROGRAM AGREEMENT AMENDMENT #1

This Program Agreement Amendment #1 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 nCourt LLC, with its principal offices located at 955A Cobb Place Blvd., Kennesaw, GA 30144 (hereinafter referred to as "Contractor").

In consideration of the mutual benefits and covenants contained herein and in the parties' Agreement, numbered as Benton County Resolution No. 2016 172 and executed on March 1, 2016 and Franklin County Resolution No. 2016 068 and executed on February 24, 2016 (the "Contract"), the parties agree to amend the Contract as follows:

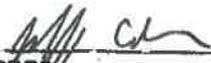
1. In accordance with Section 2 of the Agreement ("Time Performance"), the parties agree to extend the Agreement for an additional two-year period, from May 26, 2016 to June 30, 2018.
2. Schedule C ("Addendum") will be added to the original Agreement as an attachment.

Except as expressly provided in this Program Agreement Amendment #1, all other terms and conditions of the original Agreement and subsequent written Agreement Amendments thereto remain in full force and effect.

This Program Agreement Amendment #1 shall be effective May 26, 2016 and shall expire on June 30, 2018.

nCourt, LLC
955A Cobb Place, Blvd.
Kennesaw, GA 30144

Benton Franklin Counties
Juvenile Justice Center
5608 W Canal PL STE 108
Kennewick WA 99338-1388


Jeff Colonna

6/22/16
Date


Daryl Banks, Administrator

6/22/16
Date

BENTON COUNTY APPROVAL

Approved as to Form:


Stephen Hallstrom, Deputy Prosecuting Attorney Date

By: _____
Name: _____
Title: Chairman, Board of Commissioners

Date: _____

Attest: _____

Clerk of the Board: _____

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Deputy Prosecuting Attorney Date

By: 
Name: RICK MILLER
Title: Chairman, Board of Commissioners

Date: 6-29-16

Attest: _____

Clerk of the Board: 



May 26, 2016

Benton-Franklin County Juvenile Justice Center
5606 W. Canal Dr., Suite 106
Kennewick, Washington 99336
Attn: Darryl Banks, Administrator of Benton-Franklin Juvenile Justice Center

Re: Addendum to the Agreement dated 03/01/2016 between Benton-Franklin County Juvenile Justice Center and nCourt LLC (the "Agreement")

Dear Mr. Banks:

Benton-Franklin County Juvenile Justice Center (hereinafter referred to as "Agency") and nCourt LLC ("nCOURT") entered into that certain Agreement under which nCOURT provides Agency with a Program that permits Agency to collect Probation payments made via our live, bilingual call center, online via the web or mobile device and at the counter with a credit or debit card. The parties wish to amend the Agreement to allow Agency to use the Program for additional services at specified convenience fee rates. Except as modified below, the terms of the Agreement will apply to these additional services. Capitalized terms used without definition shall have the meanings given in the Agreement.

1. Upon completion of the solution, nCOURT will provide the Agency with one [1] Ingenico iPP320 or VeriFone vx805 PCI compliant, EMV ready credit card reader for taking payments at the counter. Upon receipt, this hardware becomes the sole and exclusive property of the Agency. nCOURT will facilitate processing of any warranty claims on the EMV ready credit card reader during the manufacturers' warranty period. Following the expiration of the manufacturers' warranty, nCOURT will subsidize the replacement of any defective or damaged EMV credit card reading device according to the following schedule:

<u>Replacement period</u>	<u>nCourt will pay x% of the replacement cost</u>
1 st year following warranty expiration	25%
2 nd year following warranty expiration	50%
3 rd year following warranty expiration	75%
4 th year following warranty expiration and beyond	100%

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree that the Program will be used by Agency to collect the following fees, and that the convenience fee noted will be charged in lieu of the fee noted in the Agreement:

<u>Service</u>	<u>Start Date</u>	<u>Convenience Fee</u>
Counter	May 26, 2016	3.5%
Probation IVR	May 26, 2016	5.0%

This Addendum represents the final agreement of the parties. No amendment or modification of this Addendum shall be valid or binding upon either party unless made in writing and signed by the party against whom it is to be enforced.



The parties acknowledge that they have executed this Addendum as of the date and year first above written.

Agreed and Accepted:

By: *Darrell D. Bamber*
Title: Administrator
Date: 6/22/16

nCourt LLC

By: *Myra J. Lee*
Title: Controller
Date: 6/22/16

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	
MEETING DATE: FC 06/29/16 BC 07/12/16	Executive Contract <u> xx </u>	
SUBJECT: Resolution Authorization of Contract with Department of Social & Health Services/Office of Juvenile Justice Programs for Juvenile Detention Alternatives Initiative	Pass Resolution <u> xx </u>	CONSENT AGENDA <u> xx </u>
Prepared By: Maria Loera	Pass Ordinance	PUBLIC HEARING
Reviewed By: Darryl Banks	Pass Motion	1ST DISCUSSION
	Other	2ND DISCUSSION
		OTHER

BACKGROUND INFORMATION

The Juvenile Detention Alternative Initiative (JDAI) is proposed to use data driven decision making to review which youth are being detained in detention and to determine which youth should be eligible for a lesser restrictive environment that does not compromise public safety and will ensure the youth will appear at future court hearings, improve court processes, identify and reduce racial disparities, evaluates the conditions of confinement, and identifies special detention cases for analysis of processes and practices. The end results of JDAI is the delivery of a juvenile court system that makes program decisions based on accurate and complete data; detains youth that pose a risk to the community or who have tried to take advantage of less restrictive alternatives; provide a continuum of options for holding youth accountable for criminal behavior and non-compliance; delivers a swift and fair court process and delivers programs that are culturally appropriate and evidence based; and provides for appropriate alternatives to secure confinement.

SUMMARY

The Benton-Franklin Counties Juvenile Justice Center will address the eight strategies of JDAI, which include Collaboration & Governance, Utilizing Data, Detention Admission Policies, Alternatives to Detention, Expediting Case Processing, Reduce Detention for Warrants, Reduce Detention for Probation Violations, Reduce Racial Disparities, Conditions of Confinement, and Domestic Violence Youth.

RECOMMENDATION

We recommend that the Boards of County Commissioners of Benton and Franklin Counties sign the JDAI Grant Application with the Governor's Juvenile Justice Advisory Committee, Department of Social and Health Services, Office of Juvenile Justice (OJJ) for the period from July 1, 2016 through June 30, 2017.

COORDINATION

Coordination of the Grant Application occurred as follows: Eric Lipp, Detention Manager; Jennifer Bowe, Administrative Services Manager; Darryl Banks, Administrator; Stephen Hallstrom, Benton County Deputy Prosecuting Attorney who reviewed the application as to form.

FISCAL IMPACT

This project is grant funded. The maximum payable to the Counties is not to exceed Twenty-Two Thousand Dollars (\$22,000.00).

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 the grant application with the Governor's Juvenile Justice Advisory Committee, Department of Social and Health Services, Office of Juvenile Justice (OJJ) to provide Juvenile Detention Alternatives Initiative.

HANDLING/ROUTING

Following signature from Franklin County, route to Benton County for signature. Following signature from Benton County three originals are to be returned to Maria Loera to disperse.

I certify the above information is accurate and complete.

Maria Loera

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. 2016 263

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

RE: IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) GRANT APPLICATION BETWEEN THE GOVERNOR'S JUVENILE JUSTICE ADVISORY COMMITTEE, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, OFFICE OF JUVENILE JUSTICE (OJJ) AND THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER, and

WHEREAS, Darryl Banks, Administrator of the Benton-Franklin Counties Juvenile Justice Center, believes it is in the best interest of the Juvenile Justice Center that the JDAI Grant Application between the Benton-Franklin Counties Juvenile Justice Center and the Governor's Juvenile Justice Advisory Committee, Department of Social and Health Services, Office of Juvenile Justice (OJJ), be approved as presented for a term commencing July 1, 2016 and terminating on June 30, 2017, for a maximum amount payable to the Counties by the Office of Juvenile Justice (OJJ) not to exceed Twenty-Two Thousand Dollars (\$22,000.00); **NOW, THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington, the Boards concur with the Administrators recommendation and hereby approves the Juvenile Detention Alternative Initiative (JDAI) Grant payable to the Counties in the amount not to exceed Twenty-Two Thousand Dollars (\$22,000.00); and

BE IT FURTHER RESOLVED, that the Chairman is authorized to sign the attached JDAI Grant Application; and

BE IT FURTHER RESOLVED, the term of the attached contract commences July 1, 2016 and expires on June 30, 2017.

DATED this _____ day of _____ 2016

DATED this 29th day of JUNE 2016

BENTON COUNTY BOARD OF COMMISSIONERS

FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board



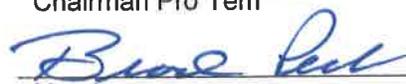
Chairman of the Board

Member



Chairman Pro Tem

Member



Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board



OFFICE OF JUVENILE JUSTICE (OJJ)
**Juvenile Detention Alternatives
 Initiative Grant Application**

Please read all instructions carefully.

For assistance, contact the Department of Social and Health Services
 (DSHS) Office of Juvenile Justice at (360) 902-7526 or FAX (360) 902-7527

CONTRACT NUMBER	FOR OJJ USE ONLY DATE STAMP
PROGRAM AREA	

1. APPLICANT: DO NOT USE PERSON'S NAME

AGENCY NAME Benton-Franklin Counties Juvenile Justice Center	TELEPHONE NUMBER 509-783-2151	FAX NUMBER 509-736-2728
STREET ADDRESS 5606 W. Canal Place, Suite 106	CITY Kennewick	STATE WA
		ZIP CODE 99336
MAILING ADDRESS 5606 W. Canal Place, Suite 106	CITY Kennewick	STATE WA
		ZIP CODE 99336

2. IMPLEMENTING AGENCY: ENTER AGENCY, DEPARTMENT OR CONTRACTOR DIRECTLY IMPLEMENTING THE PROJECT (DO NOT USE PERSON'S NAME)

NAME Benton-Franklin Counties Juvenile Justice Center	TELEPHONE NUMBER 509-783-2151
STREET ADDRESS 5606 W. Canal Place, Suite 106	FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER (MANDATORY FOR FEDERAL TAX PURPOSES) 91-6001299
CITY Kennewick	STATE WA
	ZIP CODE 99336

3. PROJECT TITLE: ENTER BRIEF, DESCRIPTIVE PROJECT TITLE (LIMITED TO THREE LINES)

Benton-Franklin Counties Juvenile Detention Alternatives Initiative

4. APPLICANT'S AGREEMENT

The applicant is applying for a grant award in the amount shown in the proposed BUDGET SUMMARY (Section 8 of this application) for the purposes identified in this application. By signing and submitting this application, the applicant agrees that this document, together with the GENERAL TERMS AND CONDITIONS AND CERTIFICATIONS (Attachment A of this application), becomes an offer to contract with Washington State Department of Social and Health Services (DSHS or the Department) which, if accepted, binds the applicant to the following:

The applicant agrees that this offer becomes a binding contract when a copy of this page is signed by the OJJ Director and returned to the applicant together with an Approved Budget and Special Conditions form provided, however:

- In the event any budget category amount differs from the amount shown in Section 8 of this application, as modified by the Approved budget and Special Conditions, that amount shall be considered to be a counteroffer. The Department shall consider the counteroffer accepted by the applicant unless rejected in writing within 30 days after the date of mailing of such counteroffer by the Office of Juvenile Justice (hereinafter referred to as OJJ) to the applicant
- Upon acceptance of this offer/counteroffer, the applicant shall be referred to as the "Contractor" and the Contractor agrees to accept and abide by the special terms and conditions.

NAME AND TITLE OF AUTHORIZED OFFICER (PERSON WITH LEGAL AUTHORITY: COUNTY COMMISSIONERS' CHAIRMAN OF THE BOARD, MAYOR, CITY/TOWN MANAGER, AGENCY DIRECTOR)
Darryl Banks, Acting Juvenile Court Administrator - See attached signature sheet - Attachment 1A

APPLICANT'S SIGNATURE	DATE
ACCEPTANCE OF OFFER COUNTEROFFER FOR DSHS <input type="checkbox"/> Acceptance <input type="checkbox"/> Non-acceptance	OJJ CONTRACTING OFFICER'S SIGNATURE
	DATE

5. PROJECT DIRECTOR: PERSON IN DIRECT CHARGE OF PROJECT (DAY-TO-DAY OPERATIONS AND PREPARATION OF REQUIRED PROGRESS REPORTS)

NAME Eric Lipp, Detention Manager	TELEPHONE NUMBER 509-783-2151
STREET ADDRESS 5606 W. Canal Place, Suite 106	FAX NUMBER 509-736-2728
CITY Kennewick	E-MAIL ADDRESS Eric.Lipp@co.benton.wa.us
STATE WA	ZIP CODE 99336

6. FINANCIAL OFFICER: PERSON IN CHARGE OF FISCAL MATTERS (ACCOUNTING, FUNDS MANAGEMENT, EXPENDITURE, VERIFICATIONS, FINANCIAL REPORTS)

NAME Jennifer Bowe, Administrative Services Manager	TELEPHONE NUMBER 509-736-2721
STREET ADDRESS 5606 W. Canal Place, Suite 106	FAX NUMBER 509-736-2728
CITY Kennewick	E-MAIL ADDRESS Jennifer.Bowe@co.benton.wa.us
STATE WA	ZIP CODE 99336

Omission of any required information or certification may be cause for denial of the application. The Department shall take a final approval/disapproval action on all applications within 90 days of receipt by the Department of a conforming application, together with all required certifications. The Department shall not consider an application conforming unless the applicant has completed all items in accordance with instructions and has submitted the necessary certifications. The applicant must submit two signed completed applications to: OFFICE OF JUVENILE JUSTICE, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, PO BOX 45828, OLYMPIA WA 98504-5828.

JDAI GRANT APPLICATION

AGENCY NAME Benton-Franklin Counties Juvenile Justice Center	DATE 05/27/2016
--	---------------------------

PROJECT TITLE
Benton-Franklin Counties Juvenile Detention Alternatives Initiative

7. PROJECT PERIOD

A project period is one year and may not exceed one year except by prior agreement with the Department.
Proposed project period is from 07/01/2016 to 06/30/2017

8. BUDGET SUMMARY

The proposed project budget is shown below. If the proposal is accepted for contracting, the budget on the Approved Budget and Special Conditions form supersedes the proposed budget shown below.

The following items are allowable costs under this contract:

- Travel (JDAI Quarterly Meetings, State and National Conferences, Model Site Visits)
- Local Coordination to implement the eight (8) JDAI strategies
- Detention Alternatives Programs
- Data Collection and Analysis
- Indirect (up to 10% of direct charges), as noted below.

BUDGET CATEGORIES			
Enter the category totals from Section 10. BUDGET DETAILS. The sum of categories A - F is entered as TOTAL DIRECT CHARGES. If indirect costs are claimed, enter the amount in G. These may not exceed ten (10) percent of the TOTAL DIRECT CHARGES. Add TOTAL DIRECT CHARGES and INDIRECT CHARGES, and enter the sum on TOTAL PROJECT COSTS line.	A. Personnel	\$19,750	
	B. Supplies	\$250	
	C. Other services and charges		
	D. Capital outlay/equipment		
	E. Travel	\$2,000	
	F. Contractual services		
	TOTAL DIRECT CHARGES		
	G. Indirect charges		
	TOTAL PROJECT COST	\$22,000	
SOURCE OF FUNDS 1. May not exceed amount approved by the Washington State Partnership Council on Juvenile Justice. 2. Must be funds specifically appropriated for project in applicant's budget Project income must be applied to project operational costs or deducted from the grant award. It is important that all anticipated project income be included in the budget.	1. Federal		%
	2. Match		%
			%
			%
			%
			%
			%
	TOTAL PROJECT FUNDS	\$22,000	

9. PROJECT SUMMARY: GIVE A BRIEF NARRATIVE SUMMARY OF THE PROJECT.

The purpose of the Juvenile Detention Alternatives Initiative (JDAI) is to use data driven decision making to review which youth are being detained in detention and to determine which youth should be eligible for a lesser restrictive environment that does not compromise public safety and will ensure the youth's appearance and scheduled court hearings. JDAI also uses data driven decision making to review and improve court processes, identify and reduce racial disparities, evaluate the conditions of confinement, and identify special detention cases for analysis of processes and practices. The result of JDAI implementation is the implementation of a juvenile justice system that: Makes program decisions based on accurate and complete data; detains youth that pose a risk to the community or who have tried to take advantage of less restrictive alternatives; provides a continuum of options for holding youth accountable for criminal and non-compliant behavior; delivers swift and fair court process; delivers culturally appropriate and evidence-based program; and provides for appropriate alternatives to secure confinement.

JDAI GRANT APPLICATION

AGENCY NAME Benton-Franklin Counties Juvenile Justice Center	DATE 05/27/2016
--	---------------------------

PROJECT TITLE
Benton-Franklin Counties Juvenile Detention Alternatives Initiative

10. BUDGET DETAILS: CATEGORY B. SUPPLIES

This category is for articles and commodities which are consumed or materially altered when used. The following are types of supplies.

OFFICE SUPPLIES: For example, office stationery, forms, small items of equipment, and maps, films, books, periodicals, and tapes.

OPERATING SUPPLIES: For example, chemicals, drugs, medicines, laboratory supplies, cleaning and sanitation supplies, fuel, household and institutional supplies, and clothing. (Federal OJP funds may not be used to purchase food and/or beverages for any meeting, conference, training, or other event. Providing food and/or beverages to youth as part of programmatic activity is not subject to this restriction because such activity does not fall within the definition of a conference, training, or meeting.)

REPAIR AND MAINTENANCE SUPPLIES: For example, building materials and supplies, paints and painting supplies, plumbing supplies, electrical supplies, motor vehicle repair materials and supplies, other repair and maintenance supplies, and small tools.

ITEMIZED LISTING (DESCRIPTION OF THE ITEM)	UNIT	UNIT COST	ITEM TOTAL
Misc. consumable supplies	1	LS	\$250
CATEGORY TOTAL			\$250

10. BUDGET DETAILS: CATEGORY C. OTHER SERVICES AND CHARGES

This category is for services other than PERSONNEL which are required in the administration of the project. Such services may be provided by some agency of the government unit or by private business organizations. The following are types of services and charges classified under this category.

COMMUNICATION: For example, telephone, telegraph, and postage.

TRANSPORTATION: For example, freight and express charges, and messenger service.

ADVERTISING

PUBLIC UTILITY SERVICE

PRINTING AND BINDING

REPAIRS AND MAINTENANCE

INSURANCE

RENTALS: For example, buildings, and equipment and machinery.

MISCELLANEOUS: For example, tuition and other training fees, dues, subscriptions and memberships, and taxes.

ITEMIZED LISTING (WORD OR WORDS DESCRIBING THE COST ITEM, I.E., POSTAGE)	UNIT	UNIT COST	ITEM TOTAL
CATEGORY TOTAL			\$0.00

JDAI GRANT APPLICATION

AGENCY NAME

Benton-Franklin Counties Juvenile Justice Center

DATE

05/27/2016

PROJECT TITLE

Benton-Franklin Counties Juvenile Detention Alternatives Initiative**11. STATEMENT OF WORK AND IMPLEMENTATION PLAN**

The contractor agrees to perform the following minimum statement of work.

1. Each Jurisdiction will have a JDAI Coordinator to participate in monthly Coordinator calls with the State Coordinator.
2. Conduct an annual JDAI System Assessment to be used in developing the Annual JDAI Implementation Plan (utilizing the assessment form/tool developed by the Statewide Coordinator).
3. Conduct a monthly call with key representatives of the jurisdiction and the State Coordinator to monitor progress in completing the JDAI Annual Implementation Plan.
4. Submit the AECF-JDAI Quarterly Report and annual Results Report, no later than 30 days after the end of each quarter to include:
 - Detention Population Report
 - Alternative Programs Report
 - Detention Referrals Screened Report
 - Detention Risk Assessment Instrument Override Report
5. Attend JDAI Quarterly Meetings, State and National JDAI Conferences (as held/applicable).
6. Conduct a minimum of four (4) JDAI Stakeholder Meetings per year.
7. Conduct a Detention Self-Inspection every two (2) years.
8. Submit quarterly progress and financial reports to the Office of Juvenile Justice on reporting forms provided by OJJ.
9. Submit a plan to address Racial and Ethnic Disparities (R.E.D.) in a coordinated effort, to be specifically designed for each site in collaboration with the Office of Juvenile Justice (OJJ) JDAI Coordinator and the R.E.D. Coordinator. The plan should be included in your application and should include:
 - Information on the previous year R.E.D. plan, steps taken and progress made.
 - Provide information regarding the desegregate data based on race and ethnicity that identifies racial and ethnic groups that are over represented and possible causes identified.
 - Identify any technical assistance needs regarding ability to address racial and ethnic disparities.

Attach the County JDAI Implementation Plan addressing the eight core strategies of JDAI, including at a minimum:

- Description of the current status of eight (8) JDAI strategies
- Objectives of the contract period (July 1, 2016—June 30, 2017)
- Activities and tasks to meet objectives

OFFICE OF JUVENILE JUSTICE (OJJ)
JUVENILE DETENTION ALTERNATIVES
INITIATIVE GRANT APPLICATION

ATTACHMENT 1A

NAMES AND TITLES OF AUTHORIZED OFFICER (PERSON WITH LEGAL AUTHORITY: COUNTY COMMISSIONERS' CHAIRMAN OF THE BOARD, MAYOR, CITY/TOWN MANAGER, AGENCY DIRECTOR)

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

 6/23/16
Darryl Banks, Juvenile Court Administrator

BENTON COUNTY APPROVAL

Approved as to Form:


Stephen Hallstrom, Deputy Prosecuting Attorney Date

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

Attest:

Clerk of the Board: _____

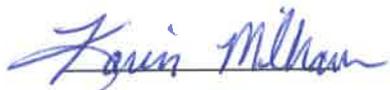
FRANKLIN COUNTY APPROVAL

Approved as to Form:

Civil Deputy Prosecuting Attorney Date


By: _____
Name: RICK MILLER
Title: Chairman, Board of Commissioners
Date: 6-29-16

Attest:

Clerk of the Board: 

WA State JDAI Annual Implementation Plan

County: Benton/Franklin

July 1, 2016 to June 30, 2017

JDAI Coordinator: Eric Lipp

JDAI Strategy	Goals for system improvement	Planned activities, new policies, practices or programs	Completion Date
JDAI Leadership Committee	Continue		
Utilizing Data	Continue	Continue to use data to support and inform system improvements. Evaluate the data on original sentence days for Hispanic youth.	Ongoing
Detention Admission Policies	Continue	The DRAI in its current form and process works well.	
Alternatives to Detention	Build capacity for the work crew and remove barriers for the kids' attendance. Increase completion rate.	<ol style="list-style-type: none"> 1. Move one staff from secure detention to the work crew (permanent assignment) 2. Take the work crew to the kids in the community 3. Create additional community service opportunities 	08/15/16
Expedite case Processing	Continue		
Reduce detention for warrants	Continue	There is little energy around this area with the stakeholders. We do have a program initiated about two years ago that has decreased the issuance of some warrants.	Current
Reduce detention for probation violations	Reduce days spent in detention on probation violations for community service hours conversion	<ol style="list-style-type: none"> 1. Add capacity to work crew to facilitate community service. 2. Move the work crew start locations to the community. Initially starting at our schools with higher Hispanic populations. 3. Increase opportunities for youth to complete community service, decreasing community service converted to secure detention 	08/15/16
Reduce Racial & Ethnic Disparities	Reduce RED with truancy youth and Probation youth serving PV days in detention. *** Please see attachments ***	<ol style="list-style-type: none"> 1. Work with Middle Schools establishing teams to work with truant youth. 2. Create better opportunities for truant youth to complete their court ordered work crew. 	<ol style="list-style-type: none"> 1. 10/30/16 2. 08/15/16 3. 08/15/16

		3. Reduce probation violation days for work crew violations and for community service conversion.	
Conditions of Confinement	1. Complete the Self-Inspection	1. Evaluate the current detention policies and procedures using the Self-Inspection process. Consider possible changes to detention practices.	1. 03/01/17
Other	Domestic Violence youth	Continue grow current programs working with DV youth moving the support for those programs out to the community.	Current

Benton-Franklin Juvenile Justice Center

JDAI Application 2016-2017

RED Plan

Racial and Ethnic Disparities (RED) - See attached evaluation

At the end of 2015, the Benton-Franklin Juvenile Justice Center (BFJJC) conducted a review of RED using the relative rate index (RRI) method. We have historical RRI information from 2006 on providing the opportunity for historical trend analysis. At the end of 2014, we were encouraged by an improvement in the RRI for Hispanic youth ordered detention time for probation violations. In fact, that group was slightly underrepresented with an RRI of 0.97. The five year average for this group covering the years 2009-2013 was 1.82. So, the 0.97 was very encouraging for us. However, we were not entirely sure why we saw this improvement. The RRI for 2015 for this same group rose to 1.33. While this number is still lower than the historical trend, we are unsatisfied with this increase. One concern that we have, is that we know from conversation with juvenile probation counselors (JPC) that they sometimes do not request work crew for probation violations because of the backlog. Sometimes, we have experienced a backlog of up to six weeks on work crew. In response, we have added one additional staff to the work crew creating much greater capacity. We hope that this alleviates this concern for JPC's resulting in greater use of work crew for probation violations. Another contributing factor affecting Hispanic youth serving detention days for PV's is the conversion of unfinished community service hours to detention days. For 2015, the rate for Hispanic youth was 52% vs. 39% for the white youth. We have instituted changes to the work crew as described below to help address this issue.

Another RED are of concern are the youth involved with our Truancy. This is an area that we identified last year to investigate as we anecdotally felt that there was RED in this group. In the most basic measure, days spent in detention for truancy, Hispanic youth were 73% of our admissions (four hours or more) compared to 24% for white youth. A review of youth with multiple contempts resulted in Hispanic youth at 57% vs. 31% for white youth. Any way that we looked at the truancy picture, RED was present. Even more significantly, the deeper in the truancy process that we looked, the greater the RED. We are planning on changes as outlined below to begin addressing this issue.

From the RRI evaluation, we also noticed an increased in RED for Hispanic youth on original sentence days ordered. For 2013 and 2014, we had an RRI of 0.72 and 0.72 respectively. For 2015, that number jumped to 1.10. We will spend time in this next year monitoring this situation to determine if this is a trend or a blip on the radar.

Domestic Violence Youth

For this coming year, we will continue our focus on domestic violence (DV) situations. Actually, we are broadening our focus to be on the general issue of working with families in a better and more effective way. The reality that we recognize is that most of the families that we are dealing with are in some state of crisis and for some, living in crisis is a constant state. We are also beginning discussion about the role of trauma in our kids' lives and in the lives of our families. We want to get ahead of these issues.

Recent legislative changes have made the DV situation even more concerning. Prior to these changes, youth 16 and 17 years of age were automatic holds on DV assault charges. For those under 16 years of age, we would make a screening decision and we were able to keep many, if not most, of those young kids out of detention. This new legislation gives law enforcement some latitude in arresting the 16 and 17 year olds as they will follow the wishes of the parents in these situations. The damaging part of the legislation is that it requires detention to book all youth brought in on DV assault charges regardless of their age or the situation. For our facility, this means that we will be detaining many more young children on these DV charges. This is unfortunate as they are very often the symptom of a family in crisis.

In this last year, we were able to initiate a Step Up program to work with DV families. We modeled our program after the program in King County. We have partnered with several community organizations to facilitate Step Up. As with so many new programs, the roll out has been slow. However, momentum seems to be increasing. The initial funding for Step Up was from some one-time money. Our goal this year is to continue growing the program and to make it self-sufficient through our community partner, the Tri-Cities Chaplaincy.

We will continue to seek out ways to better serve and support families in our community as we grow and support the programs that we have established. We are on a journey with these families and we fully intend to stay the course.

Truancy

As with most courts, we work hard with truant youth trying to make them successful. We certainly try to keep them from detention. We have made great strides. Ten years ago (2005), youth spent 737 days in detention on truancy. In 2015, that number dropped to 125 (many of these were partial days). Over those years, we have added many interventions before a youth gets to detention. While we have made great progress, there is room for improvement. Considering RED has caused us to look at this issue in a new and deeper way. For, we see RED at every point in the truancy process. For 2015, we saw a 40% failure rate on Hispanic truant youth work crew days. When these days are not completed on work crew, they are converted to detention days. This is an area in which we can make inroads. We have long recognized that moving the work crew to the youth would help in this completion rate. This is discussed more in the work crew section.

Additionally, we wish to get ahead of the truancy issue, specifically the contempts. We spent some time this past year looking at the group of multiple contempt kids. This review of truancy data from the 2014/2015 school year, identified 111 middle and high school students that had multiple contempt's and were at risk of being ordered to secure detention. Of those 111 students, 49 % of the initial truancy petitions started when the student was in middle school. A significant percentage (66%) of this population was Latino.

The United Way of Benton-Franklin Counties in collaboration with area school districts, local businesses, ESD 123 and the B-F Juvenile Justice Center have for the past three years been involved in a community campaign to address school attendance called "Attendance Matters". The program is focused on improving the attendance of students in area middle schools. While current efforts have demonstrated

a modest reduction in absences, it has not demonstrated successful results with students that are chronically absent, and typically high poverty and minority students.

While continuing current efforts the planning group for the program is now focusing efforts on the chronically absent middle school students. A pilot program is now under development. The proposal is to identify up to three area middle schools with a significant population of chronically truant students. The pilot will involve several core components including, school based mentoring, trauma/ACES awareness/intervention, substance abuse and mental health screening, juvenile court case management, remedial academic support and parent outreach/engagement.

Work Crew

In this very conservative community, we have struggled to institute detention alternatives. The fact is that most if not all of the stakeholders outside of the juvenile court are resistant to new alternatives. We have had and continue to have a work crew program that is supported by the stakeholders and the community. In fact, we never hear criticism about work crew. Quite to the contrary, we hear support and good feelings about the work crew program.

Over the years, we have struggled with a few issues around the work crew. One issue has been capacity. Very often our work crews are completely full so that we are scheduling out as many as six weeks in the future. Another barrier that we have been aware of is that the kids have to physically come to the court to attend work crew. For many, this can be a challenge as the families do not always have reliable transportation and the bus costs money and runs on a fairly limited schedule. The end result of these and other challenges is that we have a completion rate of about 60% for work crew days ordered. For offender youth, the days violated on work crew are simply changed to secure detention days. Truant youth are sent back to court for violation days and then, often, give days in secure detention.

About two months ago, we moved a staff from secure detention to work crew, essentially doubling the capacity. We also tried a little pilot in picking the kids up after school for an abbreviated work crew day. We had great success in getting truant kids ordered to detention and probation youth with community service hours to attend these crews. As a result, we are looking at different ways to move the work crews out to the community removing the travel barrier that many of our kids have experienced. We are committed to building this one detention alternative program into an even more viable alternative program.

A side note, we began a community garden in the fenced area of detention three years ago. This has been a project for the work crew as well as a project for youth in secure detention. We have partnered with the Master Gardeners for this project. I mention this as it has potential for great growth. We are looking at expanding the garden into other areas of the community creating opportunities for kids to do community service alongside volunteers. We are excited about this!

Benton-Franklin Counties Juvenile Justice Center RED Evaluation – 2015

Benton and Franklin Counties - 2015										
	Total	American Indian	Asian	African American	Hispanic	White	Other	All Minorities	African American	Hispanic
Population (age 10 to 17) ** 2014 Population **	34,239	249	896	781	14,288	18,025	0	16,214	2.28%	41.73%
Juvenile Arrests/Referred to Juvenile Court	1,474	17	17	66	677	682	15	777	4.48%	45.93%
Cases Petitioned (Charges Filed)	650	10	5	34	313	286	2	362	5.23%	48.15%
Cases Diverted	676	6	9	25	310	318	8	350	3.70%	45.86%
Days Ordered to Detention (Disposition Order)	3,104	61	18	140	1,576	1,309	0	1,795	4.51%	50.77%
Days Ordered to Detention (Probation Violation)	3,252	220	3	94	1,742	1,193	0	2,059	2.89%	53.57%

Benton and Franklin Counties - 2015					
	American Indian	Asian	Black or African American	Hispanic or Latino	All Minorities
Juvenile Arrests/Referred to Juvenile Court	1.8044	0.5015	2.2335	1.2523	1.2665
Cases Petitioned (Charges Filed)	1.4027	0.7014	1.2284	1.1025	1.1110
Cases Diverted	0.7569	1.1354	0.8124	0.9820	0.9661
Days Ordered to Detention (Disposition Order)	1.3328	0.7866	0.8997	1.1001	1.0834
Days Ordered to Detention (Probation Violation)	5.2741	0.1438	0.6628	1.3342	1.3636

Hispanic or Latino - Benton and Franklin Counties										
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Arrests	1.14	1.16	1.16	1.20	1.46	1.59	1.63	1.43	1.35	1.25
Filed	1.21	1.44	1.83	1.52	1.26	1.36	1.23	1.21	1.15	1.10
Original Days	1.63	1.36	1.86	2.34	1.36	0.82	1.58	0.75	0.72	1.10
PV Days	1.97	1.67	2.08	2.57	1.35	1.64	2.23	1.33	0.97	1.33
Cases Diverted	0	0	0	0	0.81	0.76	0.73	0.93	0.89	0.98

BENTON COUNTY
BOARD OF COUNTY COMMISSIONERS
Agenda Request Summary

<u>Type of Action Requested</u>	<u>Classification</u>
<input checked="" type="checkbox"/> Execute contract	<input checked="" type="checkbox"/> Consent agenda
<input type="checkbox"/> Pass resolution	<input type="checkbox"/> Public hearing
<input type="checkbox"/> Pass ordinance	<input type="checkbox"/> 1 st discussion
<input type="checkbox"/> Pass motion	<input type="checkbox"/> 2 nd discussion
<input type="checkbox"/> Other (describe)	<input type="checkbox"/> Other

Requested meeting date: 7/19/16
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

District Court contract defender Brandon Pang has been transferred to Superior Court to replace Staff Defender Alex Sheridan who has left the office. Therefore it is necessary to contract with an additional District Court contract defender to replace attorney Pang. Attorney Michael Prince has expressed interest in such a contract and appears to be very well qualified. A contract for public defense services in Benton County District Court with attorney Michael Prince has therefore been presented for execution.

SUMMARY

A contract for public defense services in Benton County District Court with attorney Michael Prince has been proposed for execution. This replaces another contract defender who has been moved to Superior Court.

RECOMMENDATION

Execute contract as proposed, approve resolution.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION
BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY MICHAEL PRINCE FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT.

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County District Court; and

WHEREAS, per Benton County resolution 2012-677, "...The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost..."; and

WHEREAS, since public defense contract attorney Brandon Pang has been transferred to Superior Court it is necessary to contract with an additional attorney for public defense services in District Court; and

WHEREAS, a Request for Qualifications ("RFQ") or other acceptable process was followed, attorney Michael Prince ("Attorney") has expressed interest in providing contract public defense services as detailed above and after due consideration Attorney was selected for contract award; and

WHEREAS, as represented by Attorney, and to the best knowledge of the County, Attorney meets all requisite professional, legal and rule-based standards for providing the public defense services as detailed above; and

WHEREAS, it therefore appears to be in the best interests of the County to contract with Attorney for the public defense services as detailed above and in the proposed professional services agreement;

NOW THEREFORE, BE IT RESOLVED THAT contract BCDC1618MSP001 with maximum Annual compensation of \$53,563.44 plus trial per diems, and other allowable costs and expenses (above and beyond the amount of the underlying agreement itself) be executed as presented.

Dated this day of , 20

Chairman of the Board

Chairman Pro-Tem

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

**Attest:
Clerk of the Board**

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT PERSONS IN
BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC1617CAB001A**

CONTRACT SUMMARY			
Contract Type	District Court – Regular Criminal Docket		
Contract Number	BCDC1618MSP001	Contract Holder	Michael Prince
WSBA #	34021	Effective Dates	July 18, 2016 – December 31, 2018
Caseload Cap	300	Compensation	\$4,463.62 per month

THIS AGREEMENT is entered into by and between **Michael S. Prince**, attorney at law, Washington State Bar Association # **34021** ("Attorney"), and **BENTON COUNTY**, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **July 18, 2016** and shall continue thereafter through and including **December 31, 2018** 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 **5200 W Nob Hill Blvd, #318, Yakima, WA 98908**. Attorney's current local office telephone and fax numbers are **(509) 322-**

1988 and (509) 826-3032 respectively; and Attorney's current office/work e-mail address is **Mprince_law@yahoo.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) 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 County Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. Regardless of the location or manner in which Attorney decides to maintain an office, throughout the entire term of this Agreement the office facility must comply with any and all applicable public defense standards adopted by the Washington Supreme Court.

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

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

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

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

(ii) Attorney shall notify the County in writing within three (3) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring checks as Counties may deem appropriate, in their sole discretion, even at a time after execution of this Agreement. 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.

d. During each calendar year of the term of this Agreement Attorney shall obtain at least seven (7) hours of WSBA-accredited Continuing Legal Education (CLE) credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Public Defense Manager 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 State Office of Public Defense ("WSOPD"), 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 WSOPD for purposes of the WSOPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM 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 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM 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 year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall

then become subject to potential termination under the provisions of paragraph 17.b. below.

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys, and also employs in-house staff attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the PDM to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process. Attorney shall accept all case assignments made by the District Court or PDM even if the case does not originate from the docket to which attorney is assigned.

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

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.
- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services

agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.
- Any post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.
- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

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

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

b) *Arraignment Counsel* assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

c) *On-call cell phone* assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empanelled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order

of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

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

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

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

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **300** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial 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 PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.
- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.
- RALJ appeals shall count as four (4) case equivalents.

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

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

equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

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

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned for the calendar year up to and including the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantiate eligibility for individual case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within

the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County District Court of such possibility for purposes of the District Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County District Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should 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 should 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 reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should 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 should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date. 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 PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct and a serious and incurable breach of this agreement that shall result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

- (i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130; under the laws of the State of Washington, any other State, or Federal law, or any misdemeanor sex offense.

- (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 or its equivalent in any other State or Federal Statute
- (iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney's monthly compensation hereunder shall be **\$4,463.62** per month (proratable for any partial month), payable on the last business day of the month.

b. During each calendar year, Attorney's monthly compensation hereunder shall be increased by the percentage that equals the cost of living increase percentage allotted to the non-bargaining Benton County employees for that year, if any. Provided, that if a cost of living increase is allotted to Benton County employees at a time other than at the beginning of the calendar year, then the increase contemplated by this paragraph shall be effective as of the same time the cost of living increase is paid to Benton County employees, and shall not be retroactive to the beginning of the calendar year under any circumstances.

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

d. In addition to the stated monthly compensation, 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, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of \$150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2016, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be

entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2016, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for trial per diems and arraignment docket assignment (12.e) and RALJ appeals (12.f) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. COSTS AND EXPENSES.

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated 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 (or other court-designated or delegated process) 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 locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges,

attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

- a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the Attorney shall secure and maintain at his/her own expense Professional Liability Insurance appropriate to the Attorney's profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) each claim and in the aggregate. Such insurance will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the Attorney's services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the Attorney's services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. Attorney is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. Attorney shall annually provide Counties with proof of all such insurance.

- b. **Workers Compensation:** Attorney shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of Attorney and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, Attorney waives all rights of subrogation against the Counties for recovery of damages to the extent they are covered by workers compensation and employers liability.

If Attorney, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and Counties (or either of them) incurs fines or is required by law to provide

benefits to or obtain coverage for such employees, Attorney shall indemnify the Counties (or either of them). Indemnity shall include all fines, payment of benefits to Attorney or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to Counties by Attorney pursuant to the indemnity agreement may be deducted from any payments owed by Counties to Attorney for performance of this Contract.

- c. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

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

The commercial general liability policy shall contain an endorsement naming the Counties, its elected and appointed officials, employees and agents as an Additional Insured and an endorsement that specifically states that Attorney's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the Counties.

The Attorney will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [7]. Attorney's commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

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

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

- d. **Other Insurance Provisions:**

1. The Attorney's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the Counties, its elected and appointed officers, officials, employees and agents. Attorney's liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the Counties shall be excess and not contributory to Attorney's insurance policies.
2. The Attorney's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.
4. The Attorney'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.
5. The Attorney shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
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. **If the Attorney maintains higher limits than the minimums required in this contract, the Counties require and shall be entitled to coverage for the higher limits maintained by the Attorney.**
7. The Attorney 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. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.
8. Attorney hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Attorney to enter into a pre-loss agreement to waive subrogation without an endorsement, then Attorney agrees to notify the insurer and obtain such endorsement. This

requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Attorney enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to Attorney under this Agreement are expressly conditioned upon Attorney's strict compliance with all insurance requirements. Payment to Attorney may be suspended in the event of non-compliance. Upon receipt of evidence of Attorney's compliance, such payments not otherwise subject to withholding or set-off will be released to Attorney.

f. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have a A. M. Best's rating of at least A-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 by the Counties' Risk Managers. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. All insurance to be maintained by the Attorney, other than Professional Liability and Workmen's Compensation, shall specifically include the Counties, its elected and appointed officers, officials, employees and agents as "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the Counties. Any insurance or self-insurance maintained by the Counties, its elected and appointed officials, employees and agents shall be excess of the Attorney's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Benton County Office of Public Defense within ten (10) days of execution of this Agreement.
3. All written notices under this Section [8] and notice of cancellation or change of required insurance coverages shall be mailed to the Benton County Office of Public Defense.
4. The Attorney or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Office of Public Defense: Attn: Office Manager, Benton County Office of Public Defense, 7122 W Okanogan Pl, Bldg A, Kennewick, WA 99336.

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County 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 and such complaint is not amenable to resolution by simply facilitating the communication between the client and 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 PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly 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 PDM within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The PDM 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 PDM then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

17. **TERMINATION.**

a. In addition to any other automatic or discretionary 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 the event of automatic termination or termination pursuant to suspension or disbarment, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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. A ninety (90) day notice of termination given by either party under this paragraph 17.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 30 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not

thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

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

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

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other

attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

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

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

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

21. **OTHER APPOINTMENTS.**

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

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation 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 PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this

Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. 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.

c. 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 (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). 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 after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The 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 Benton County Superior Court, and the most

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

30. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his below-stated office address; mailed to the County's PDM at his below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at the below-stated official email address for notices:

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

OPDNotices@co.Benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

32. **PUBLIC DEFENSE MANAGER.** Attorney acknowledges that the County has established and employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM 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 PDM to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

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

****SIGNATURES APPEAR ON FOLLOWING PAGE****

BENTON COUNTY

Date _____

Chairman

Commissioner

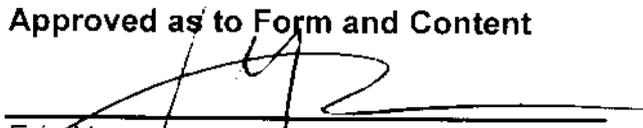
Commissioner

Constituting the Board of County
Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content



Eric Hsu
Public Defense Manager

ATTORNEY

Date 6/29/2016



Michael Prince, WSBA# 34021
*Not valid unless Performance Standards
Monitoring acknowledgment on following
page is signed.*

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

Attorney acknowledges that County will be engaging in Performance Standards Monitoring as more fully described in Section 34 of this Agreement and that said Monitoring will comprise of the following:

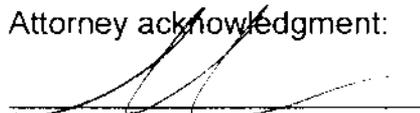
a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints
- Time expended on public defense cases (on an aggregate basis)

b. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:



I understand and acknowledge that Benton County will utilize the Performance Standards Monitoring as set out in this Exhibit to my public defense contract to evaluate my effectiveness as a public defender and that contract decisions, such as renewals, extensions, caseload increases, or assignment to other public defense duties will be made with reference to the results of such Performance Standards Monitoring.

**BENTON COUNTY
BOARD OF COUNTY COMMISSIONERS
Agenda Request Summary**

<u>Type of Action Requested</u>	<u>Classification</u>
<input checked="" type="checkbox"/> Execute contract <input type="checkbox"/> Pass resolution <input type="checkbox"/> Pass ordinance <input type="checkbox"/> Pass motion <input type="checkbox"/> Other (describe)	<input type="checkbox"/> Consent agenda <input type="checkbox"/> Public hearing <input type="checkbox"/> 1 st discussion <input type="checkbox"/> 2 nd discussion <input type="checkbox"/> Other
Requested meeting date: 7/19/16 Presentation length: Presenting elected office/department: OPD Prepared by: Eric Hsu Reviewed by: Loretta Smith-Kelty	

BACKGROUND INFORMATION

Caseloads have been increasing in Benton County District Court most likely due to additional police officers hired through funding from the Public Safety Sales Tax. To address these caseloads and provide for the case assignment flexibility that OPD needs, at least one (and possibly more) conflict and overflow contract needs to be awarded at this time. Attorney Adam Pechtel has expressed interest in such a conflict and overflow contract (which only pays "by the case" on an as-needed basis) and, since he is qualified and otherwise appears to be a good candidate for such a contract, it is proposed for execution at this time.

SUMMARY

A conflict and overflow public defense contract with attorney Adam Pechtel is proposed for execution at this time.

RECOMMENDATION

Execute contract as proposed.

ANTICIPATED FISCAL IMPACT

None beyond already budgeted

RESOLUTION
BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY ADAM PECHTEL FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT FOR CONFLICT AND OVERFLOW CASES.

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County District Court; and

WHEREAS, per Benton County resolution 2012-677, "...The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost..."; and

WHEREAS, there is a need at this time for an additional contract public defender to handle conflict and overflow cases since the caseload in Benton County District Court thus far in 2016 is higher than previously anticipated; and

WHEREAS, attorney Adam Pechtel ("Attorney") has expressed interest in providing contract public defense services as detailed above and after due consideration Attorney was selected for contract award; and

WHEREAS, as represented by Attorney, and to the best knowledge of the County, Attorney meets all requisite professional, legal and rule-based standards for providing the public defense services as detailed above; and

WHEREAS, it therefore appears to be in the best interests of the County to contract with Attorney for the public defense services as detailed above and in the proposed professional services agreement;

NOW THEREFORE, BE IT RESOLVED THAT contract BCDC1618ARP001 with maximum Per Case compensation of \$170 plus trial per diems, and other allowable costs and expenses be executed as presented.

Dated this day of , 20

Chairman of the Board

Chairman Pro-Tem

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

Attest:
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT PERSONS IN
BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC1618ARP001**

CONTRACT SUMMARY			
Contract Type	Conflict and Overflow		
Contract Number	BCDC1618ARP001 43743	Contract Holder	Adam R. Pechtel July 20, 2016 – Dec 31, 2018
WSBA #		Effective Dates	
Caseload Cap	160	Compensation	\$170 per case

THIS AGREEMENT is entered into by and between **Adam R. Pechtel**, attorney at law, Washington State Bar Association # **43743** ("Attorney") and **BENTON COUNTY**, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **July 20, 2016** and shall continue thereafter through and including **December 31, 2018**, 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 **21 N Cascade St, Kennewick, WA 99336**. Attorney's current local office telephone and fax numbers are **(509) 586-3091** and

no fax no respectively; and Attorney's current office/work e-mail address is Adam@pechtellaw.com.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) 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 Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. Regardless of the location or manner in which Attorney decides to maintain an office, throughout the entire term of this Agreement the office facility must comply with any and all applicable public defense standards adopted by the Washington Supreme Court.

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

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

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

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

(ii) Attorney shall notify the County in writing within three (3) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring checks as Counties may deem appropriate, in their sole discretion, even at a time after execution of this Agreement. 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.

d. During each calendar year of the term of this Agreement Attorney shall obtain at least seven (7) hours of WSBA-accredited Continuing Legal Education (CLE) credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Public Defense Manager 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 State Office of Public Defense ("WSOPD"), 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 WSOPD for purposes of the WSOPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM 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 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM 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 year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall

then become subject to potential termination under the provisions of paragraph 17.b. below.

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys, and also employs in-house staff attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the PDM to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process. Attorney shall accept all case assignments made by the District Court or PDM even if the case does not originate from the docket to which attorney is assigned.

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

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.
- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services

agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.
- Any post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.
- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

a) *Arraignment Counsel* assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

b) *On-call cell phone* assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted,

to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation.

6. **CONTINUED REPRESENTATION.**

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

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

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

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

c) In the case of expiration of this Agreement according to its terms, if Attorney provides less than 90 days' notice of intent not to renew the Agreement, then the

Attorney's responsibility to provide continuing legal representation to clients with cases that remain unresolved as of the effective date of the termination shall be for a period of time equivalent to 30 days plus the number of days corresponding to the difference between 90 days' notice and the actual number of days' notice. By way of illustration, if only 30 days' notice was provided, then Attorney shall be responsible for providing continued legal representation for: 30 days + (90 days – 30 days = 60 days) for a total number of days of 90.

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

7. NUMBER OF APPOINTMENTS.

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **160** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit.

8. CASE EQUIVALENTS.

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one-half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.
- If Attorney is appointed to a case and withdraws prior to the second pre-trial 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 PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.
- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.
- RALJ appeals shall count as four (4) case equivalents.

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

if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

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

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

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned for the calendar year up to and including the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantiate eligibility for individual case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the

original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County District Court of such possibility for purposes of the District Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County District Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with

the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should 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 should 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 reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should 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 should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date. 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 PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct and a serious and incurable breach of this agreement that shall result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

- (i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130; under the laws of the State of Washington, any other State, or Federal law, or any misdemeanor sex offense.
- (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 or its equivalent in any other State or Federal Statute
- (iv) Any crime of dishonesty or deception.

12. COMPENSATION.

a. Attorney's monthly compensation hereunder shall be **\$170** per case. Compensation shall be on a per-case, as-needed basis only. Attorney shall be entitled to compensation upon appointment, after conducting a conflict check and submitting a claim for compensation for the case. Attorney may file a claim for compensation as often as every two (2) weeks and a single claim for compensation may be filed for multiple case appointments, provided that a claim for compensation for multiple cases must list and specifically identify all of the cases for which compensation is being sought. Claims for Compensation for case compensation shall be submitted no more than sixty (60) days after the case has been appointed to Attorney. If Attorney fails to submit a Claim for Compensation within the sixty day period, then County shall be entitled to deny compensation and Attorney shall be deemed to have conclusively and affirmatively waived compensation for same, including any cause of action for unjust enrichment or similar.

b. **Payment of compensation shall be contingent on Attorney complying with case reporting provisions stated herein, including in Article 8(e). Failure by attorney to comply with case reporting provisions shall be cause to delay payment of compensation until such failure is remedied.**

c. In addition to the stated monthly compensation, 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, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of \$150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(a) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2016, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2016, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for trial per diems and arraignment docket assignment (12.e) and RALJ appeals (12.f) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. COSTS AND EXPENSES.

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court designated or delegated 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 (or other court-designated or delegated process) 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 locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless, from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

- a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the Attorney shall secure and maintain at his/her own expense Professional Liability Insurance appropriate to the Attorney's profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) each claim and in the aggregate. Such insurance will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the Attorney's services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the Attorney's services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. Attorney is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. Attorney shall annually provide Counties with proof of all such insurance.

- b. **Workers Compensation:** Attorney shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of Attorney and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, Attorney waives all rights of subrogation against the Counties for recovery of damages to the extent they are covered by workers compensation and employers liability.

If Attorney, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and Counties (or either of them) incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Attorney shall indemnify the Counties (or either of them). Indemnity shall include all fines, payment of benefits to Attorney or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to Counties by Attorney pursuant to the indemnity agreement may be deducted from any payments owed by Counties to Attorney for performance of this Contract.

- c. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

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

The commercial general liability policy shall contain an endorsement naming the Counties, its elected and appointed officials, employees and agents as an Additional Insured and an endorsement that specifically states that Attorney's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the Counties.

The Attorney will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [7]. Attorney's commercial general liability policy shall provide

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

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

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

d. **Other Insurance Provisions:**

1. The Attorney's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the Counties, its elected and appointed officers, officials, employees and agents. Attorney's liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the Counties shall be excess and not contributory to Attorney's insurance policies.
2. The Attorney's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.
4. The Attorney'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.
5. The Attorney shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
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. **If the Attorney maintains higher limits than the minimums required in this contract, the Counties require and shall be entitled to coverage for the higher limits**

maintained by the Attorney.

7. The Attorney 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. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.
8. Attorney hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Attorney to enter into a pre-loss agreement to waive subrogation without an endorsement, then Attorney agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Attorney enter into such a waiver of subrogation on a pre-loss basis.
9. Compensation and/or payments due to Attorney under this Agreement are expressly conditioned upon Attorney's strict compliance with all insurance requirements. Payment to Attorney may be suspended in the event of non-compliance. Upon receipt of evidence of Attorney's compliance, such payments not otherwise subject to withholding or set-off will be released to Attorney.

f. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have a A. M. Best's rating of at least A-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 by the Counties' Risk Managers. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. All insurance to be maintained by the Attorney, other than Professional Liability and Workmen's Compensation, shall specifically include the Counties, its elected and appointed officers, officials, employees and agents as "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the Counties. Any insurance or self-insurance maintained by the Counties, its elected and appointed officials, employees and agents shall be excess of the Attorney's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Benton & Franklin Counties Office of Public Defense within ten (10) days of execution of this Agreement.
3. All written notices under this Section **[8]** and notice of cancellation or change of required insurance coverages shall be mailed to the Benton & Franklin Counties Office of Public Defense.
4. The Attorney or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Office of Public Defense: Attn: Office Manager, Benton & Franklin Counties Office of Public Defense, 7122 W Okanogan Pl, Bldg A, Kennewick, WA 99336.

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County 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 and such complaint is not amenable to resolution by simply facilitating the communication between the client and 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 PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly 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 PDM within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The PDM 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 PDM then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal

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

17. **TERMINATION.**

a. In addition to any other automatic or discretionary 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 the event of automatic termination or termination pursuant to suspension or disbarment, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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. A ninety (90) day notice of termination given by either party under this paragraph 17.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 30 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

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.

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

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County District Court Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such

absence on routine docket matters and routine court hearings on an as needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the District Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

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

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

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

21. **OTHER APPOINTMENTS.**

Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-

time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation 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 PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

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

29. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. 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.

c. 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 (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). 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 after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The 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 Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his below-stated office address; mailed to the County's PDM at his below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at the below-stated official email address for notices:

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

OPDNotices@co.Benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

32. **PUBLIC DEFENSE MANAGER.** Attorney acknowledges that the County has established and employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM 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 PDM to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute 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.

BENTON COUNTY

Date _____

Chairman

Commissioner

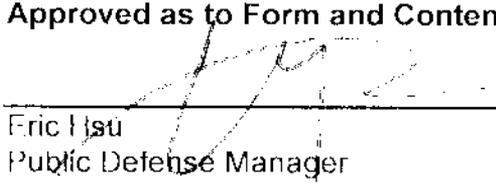
Commissioner

Constituting the Board of County
Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content



Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/7/2016



Adam Pecht, WSBA #43743

*Not valid unless Performance Standards
Monitoring Acknowledgment on following
page is also signed.*

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

Attorney acknowledges that County will be engaging in Performance Standards Monitoring as more fully described in Section 34 of this Agreement and that said Monitoring will comprise of the following:

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Time expended on cases
- Number of client complaints

b. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:

Adam R. Pechtel 7/7/2016

I understand and acknowledge that Benton County will utilize the Performance Standards Monitoring as set out in this Exhibit to my public defense contract to evaluate my effectiveness as a public defender and that contract decisions, such as renewals, extensions, caseload increases, or assignment to other public defense duties will be made with reference to the results of such Performance Standards Monitoring.

**BENTON COUNTY
BOARD OF COUNTY COMMISSIONERS
Agenda Request Summary**

<u>Type of Action Requested</u>	<u>Classification</u>
<input checked="" type="checkbox"/> Execute contract	<input checked="" type="checkbox"/> Consent agenda
<input checked="" type="checkbox"/> Pass resolution	<input type="checkbox"/> Public hearing
<input type="checkbox"/> Pass ordinance	<input type="checkbox"/> 1 st discussion
<input type="checkbox"/> Pass motion	<input type="checkbox"/> 2 nd discussion
<input type="checkbox"/> Other (describe)	<input type="checkbox"/> Other
Requested meeting date: 7/19/16 Presentation length: Presenting elected office/department: OPD Prepared by: Eric Hsu Reviewed by: Loretta Smith-Kelty	

BACKGROUND INFORMATION

The cities of Kennewick, Richland, West Richland and Prosser have existing interlocals with Benton County for the provision of public defense services in Benton County District Court. These existing interlocals contain a mechanism by which all costs associated with public defense services are divided amongst the listed cities and the County, based on each municipality's share of criminal filings in Benton County District Court. A Mental Health Court has been started in 2016 in Benton County District Court. The listed cities and Benton County jointly agree that the costs associated with providing public defense services in Mental Health Court are to be borne by the County only and should not be shared with the cities. The proposed amendments to the existing interlocals changes the cost calculation formula to reflect this agreement.

SUMMARY

Proposed amendments to public defense services interlocal agreements to exclude the cost of public defense services in Mental Health Court from the total cost to be shared with the cities of Kennewick, Richland, West Richland and Prosser.

RECOMMENDATION

Execute amendment as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted, including with funds from Public Safety Sales Tax.

RESOLUTION
BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE PUBLIC DEFENSE SERVICES INTERLOCAL AGREEMENT WITH THE CITY OF WEST RICHLAND, TO ACCOUNT FOR PROPER BILLING OF COSTS ASSOCIATED WITH BENTON COUNTY MENTAL HEALTH COURT.

WHEREAS, in 2010, Benton County ("County") entered into an interlocal agreement ("Agreement") with the City of West Richland ("City") for public defense services and Agreement provided that the costs billed to City would be calculated based on total costs incurred by County in provided public defense services in Benton County District Court; and

WHEREAS, in 2014, the voters of Benton County passed Initiative 14-5, a Public Safety Sales and Use Tax the County's share of which would fund, among other things, the entire cost of a Mental Health Court ; and

WHEREAS, it is now necessary to amend the Agreement so as to remove the costs of providing public defense services in Mental Health Court from the total costs from which the billings to City are calculated, thereby ensuring that no portion of the Mental Health Court operational costs are billed in any way to City; and

NOW THEREFORE, BE IT RESOLVED THAT the Agreement is hereby amended as proposed, removing Mental Health Court public defense costs from the total costs from which billings to City are calculated;

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

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

Attest:
Clerk of the Board

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR USE OF OFFICE OF
PUBLIC DEFENSE SERVICES**

THIS FIRST AMENDMENT is entered into on this _____ day of May, 2016, by and between **BENTON COUNTY**, a political subdivision of the State of Washington (hereinafter "County") and the **CITY OF WEST RICHLAND**, a Washington municipal corporation (hereinafter "City").

The County and City entered into an Interlocal Agreement for Use of Office of Public Defense Services in 2012 (the "Agreement") and now agree to amend it as follows:

1. Section 2(a) shall be replaced with the following:
 - (a) "BCOPD District Court Expenditures" shall mean the salary and benefits paid to County-employed public defenders plus the gross payments to all contracted public defenders less the portion of any such contract(s) payable for services provided to defend persons in cases accepted by the Benton County Mental Health Court.

2. All other provisions of the Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have entered into this First Amendment as of the date written above.

Benton County, Washington

Member

Member

Chair

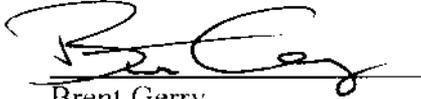
Constituting the Board of County
Commissioners of Benton County, WA.

Attest
Clerk of the Board

Approved as to content:

Eric Hsu, Public Defense Manager

City of West Richland



Brent Gerry
Mayor



Attest
City Clerk

Approved as to Form:



City Attorney

BENTON COUNTY
BOARD OF COUNTY COMMISSIONERS
Agenda Request Summary

<u>Type of Action Requested</u>	<u>Classification</u>
<input checked="" type="checkbox"/> Execute contract	<input checked="" type="checkbox"/> Consent agenda
<input checked="" type="checkbox"/> Pass resolution	<input type="checkbox"/> Public hearing
<input type="checkbox"/> Pass ordinance	<input type="checkbox"/> 1 st discussion
<input type="checkbox"/> Pass motion	<input type="checkbox"/> 2 nd discussion
<input type="checkbox"/> Other (describe)	<input type="checkbox"/> Other
Requested meeting date: 7/19/16 Presentation length: Presenting elected office/department: OPD Prepared by: Eric Hsu Reviewed by: Loretta Smith-Kelty	

BACKGROUND INFORMATION

The cities of Kennewick, Richland, West Richland and Prosser have existing interlocals with Benton County for the provision of public defense services in Benton County District Court. These existing interlocals contain a mechanism by which all costs associated with public defense services are divided amongst the listed cities and the County, based on each municipality's share of criminal filings in Benton County District Court. A Mental Health Court has been started in 2016 in Benton County District Court. The listed cities and Benton County jointly agree that the costs associated with providing public defense services in Mental Health Court are to be borne by the County only and should not be shared with the cities. The proposed amendments to the existing interlocals changes the cost calculation formula to reflect this agreement.

SUMMARY

Proposed amendments to public defense services interlocal agreements to exclude the cost of public defense services in Mental Health Court from the total cost to be shared with the cities of Kennewick, Richland, West Richland and Prosser.

RECOMMENDATION

Execute amendment as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted, including with funds from Public Safety Sales Tax.

RESOLUTION
BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE PUBLIC DEFENSE SERVICES INTERLOCAL AGREEMENT WITH THE CITY OF PROSSER, TO ACCOUNT FOR PROPER BILLING OF COSTS ASSOCIATED WITH BENTON COUNTY MENTAL HEALTH COURT.

WHEREAS, in 2010, Benton County ("County") entered into an interlocal agreement ("Agreement") with the City of Prosser ("City") for public defense services and Agreement provided that the costs billed to City would be calculated based on total costs incurred by County in provided public defense services in Benton County District Court; and

WHEREAS, in 2014, the voters of Benton County passed Initiative 14-5, a Public Safety Sales and Use Tax the County's share of which would fund, among other things, the entire cost of a Mental Health Court ; and

WHEREAS, it is now necessary to amend the Agreement so as to remove the costs of providing public defense services in Mental Health Court from the total costs from which the billings to City are calculated, thereby ensuring that no portion of the Mental Health Court operational costs are billed in any way to City; and

NOW THEREFORE, BE IT RESOLVED THAT the Agreement is hereby amended as proposed, removing Mental Health Court public defense costs from the total costs from which billings to City are calculated;

Dated this day of , 20

Chairman of the Board

Chairman Pro-Tem

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

Attest:
Clerk of the Board

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR USE OF OFFICE OF
PUBLIC DEFENSE SERVICES**

THIS FIRST AMENDMENT is entered into on this _____ day of _____, 2016, by and between **BENTON COUNTY**, a political subdivision of the State of Washington (hereinafter "County") and the **CITY OF PROSSER**, a Washington municipal corporation (hereinafter "City").

The County and City entered into an Interlocal Agreement for Use of Office of Public Defense Services in 2009 (the "Agreement") and now agree to amend it as follows:

1. Section 2(a) shall be replaced with the following:
 - (a) "BCOPD District Court Expenditures" shall mean the salary and benefits paid to County-employed public defenders plus the gross payments to all contracted public defenders less the portion of any such contract(s) payable for services provided to defend persons in cases accepted by the Benton County Mental Health Court.

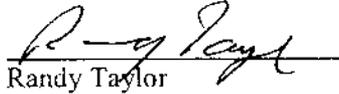
2. All other provisions of the Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have entered into this First Amendment as of the date written above.

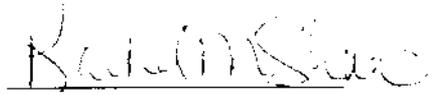
Benton County, Washington

City of Prosser

Member


Randy Taylor
Mayor

Member


Attest
City Clerk

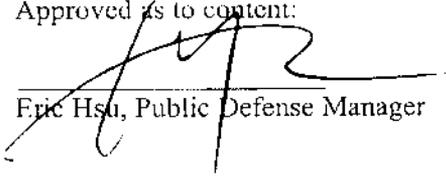
Chair

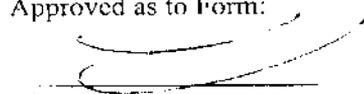
Constituting the Board of County
Commissioners of Benton County, WA.

Attest
Clerk of the Board

Approved as to content:

Approved as to Form:


Eric Hsu, Public Defense Manager


City Attorney

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>July 19, 2016</u>	Execute Contract <u> X </u>	Consent Agenda <u> X </u>
Subject: <u>Service Agreement between Benton County and Kiona-Benton City School District</u>	Pass Resolution <u> X </u>	Public Hearing <u> </u>
Prepared by: Shyanne Faulconer, Community Programs & Public Relations Coordinator	Pass Ordinance <u> </u>	1st Discussion <u> </u>
Reviewed by:	Pass Motion <u> </u>	2nd Discussion <u> </u>
	Other <u> </u>	Other <u> </u>

BACKGROUND INFORMATION

Benton County would like to enter into an agreement with Kiona-Benton City School District for Kiona-Benton Crime Prevention Program under the Public Safety Tax.

Kiona-Benton City School District will use funds to provide youth in Benton City area that are at risk of dropping out or have dropped out with services for mental/medical health, educational and vocational resources, and an advocate. The Kiona-Benton Crime Prevention Program “seeks to reduce and eventually eliminate gang and other criminal activity for young people age 14-21 in the Benton City area.”

Services may include funding site coordinator, equipment and supplies for running the program, and the cost of establishing and managing a parenting class.

SUMMARY

Budget: \$26,800.00, prorated monthly
Period: August 1, 2016 through December 31, 2016
Funding Source: Public Safety Tax

RECOMMENDATION

- Sign the Resolution to accept the proposed agreement
- Approve the proposed agreement by signing all the copies where indicated

FISCAL IMPACT

Funding for the services described in this agreement is provided by the Benton County Public Safety Tax. There is no impact on the Current Expense budget. All revenues and expenditures are from the Public Safety Tax Fund 0148101; for a contract amount of \$26,800.00.

MOTION

To approve signing a Personal Services Agreement between Benton County, Washington and Kiona-Benton City School District for Kiona-Benton Crime Prevention Program by the Board of County Commissioners.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF SIGNING A PERSONAL SERVICES AGREEMENT BETWEEN BENTON COUNTY, WASHINGTON AND KIONA-BENTON CITY SCHOOL DISTRICT FOR KIONA-BENTON CRIME PREVENTION PROGRAM PROPOSAL

WHEREAS, in August, 2014, the voters of Benton County approved Proposition 14-5, a 3/10 of one percent sales and use tax pursuant to RCW 82.14.450 to fund criminal justice and public safety programs in Benton County; and

WHEREAS, funding decisions must fall within the parameters and guidance of the text of voter-approved Proposition 14-5 where to “*improve public safety and combat criminal gang activity and other crime by hiring additional police officers, corrections officers and prosecutors; continuing the Metro Drug Task Force; funding gang and crime prevention efforts; and funding court and clerk programs including a seventh Superior Court Judge; and drug and mental health courts*”; and

WHEREAS, funding gang and crime prevention efforts, the Benton County Gang and Crime Prevention and Intervention Initiative is to improve the quality of life for the residents of Benton County by reducing the incidence of gang-related and other crime in Benton County; and

WHEREAS, on April 12, 2016 the Benton County Board of Commissioners approved funding for gang and crime prevention efforts, utilizing an Request for Proposal process; and

WHEREAS, Kiona-Benton City School District has proposed a Kiona-Benton Crime Prevention Program in the annual amount of \$26,800.00 for 2016; **NOW, THEREFORE**

BE IT RESOLVED the amount of \$26,800.00, the 2016 annual budgeted amount prorated for the remaining six months of 2016, has been approved by the Board of Benton County Commissioners; and

BE IT FURTHER RESOLVED each monthly payment will be made payable to Kiona-Benton City School District; and

BE IT FURTHER RESOLVED, this agreement will start August 1, 2016.

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

**BENTON COUNTY
PERSONAL SERVICES CONTRACT
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 (hereinafter "COUNTY"), and Kiona-Benton City School District, with its principal offices at 1105 Dale Ave., Benton City, WA 99320, (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. Terms and Conditions (this document);
- b. Exhibit A, Scope of Work Kiona-Benton Crime Prevention Program; and
- c. Exhibit B, Progress Reporting and Measures; and
- d. Exhibit C, Project Budget Worksheet; and
- e. Exhibit D, Invoice.

2. DURATION OF CONTRACT

The term of this Contract shall begin August 1, 2016 and shall expire on December 31, 2016. The CONTRACTOR shall complete all services 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. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Scope of Work", which is attached hereto and incorporated herein by reference.
- b. 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.
- c. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the services performed. In addition, when requested by the COUNTY, the CONTRACTOR shall prepare

and present status reports in the form of Exhibit B demonstrating services completed to date.

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:

Joe Lloyd
1105 Dale Ave.
Benton City, WA 99320
Phone: (509) 588-2077
Fax:
Email: jlloyd@kidesd.org

b. For COUNTY:

Shyanne Faulconer
PO Box 190
Prosser, WA 99350
Phone: (509) 786-5600 x2442
Fax: (509) 786-3080
Email: Shyanne.Faulconer@co.benton.wa.us

5. COMPENSATION

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

- a. A detailed description of the costs to CONTRACTOR for the services set forth in Exhibit A is set forth in Exhibit C, "Project Budget Worksheet", which is attached hereto and incorporated herein by reference. For the time period of August 1, 2016, through December 31, 2016, CONTRACTOR shall be compensated by the COUNTY in an amount not to exceed twenty six thousand eight hundred dollars (\$26,800).
- b. No payment shall be made for any services performed by the CONTRACTOR, except for services and expenditures identified and set forth in this Contract.
- c. The CONTRACTOR may, in accordance with Exhibit D, submit invoices to the COUNTY not more than once per month during

the progress of the services for partial payment of the services completed to date. Invoices shall cover the time the CONTRACTOR performed services during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of services and will remit payment within thirty (30) days from the date of receipt.

- d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- f. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. AMENDMENTS

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

7. 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 deaths to persons or damage to property or business, which are caused in whole or in part by any act or omission, negligent or otherwise, of CONTRACTOR or its subcontractors, which arise in connection with the services performed under this

Contract, or are caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the County. 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.

- 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 services hereunder. CONTRACTOR'S obligations under this Section [7] 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.

8. INSURANCE

- a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of

or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to commencement of work. 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 and employers liability.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

b. **Commercial General Liability and Employers Liability**

Insurance: Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury and property damage, which may arise from any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

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

The commercial general liability policy will contain an endorsement naming the COUNTY, its elected and appointed officials, employees and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR will provide commercial general liability coverage that does not exclude any activity to be performed

in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [7]. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

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

c. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any auto (Symbol 1), or if the Contractor has no owned autos, hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

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. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY,

its officers, officials, employees or agents.

4. 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.
5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
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. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
7. 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. All liability insurance required under this Contract, shall be written on an Occurrence Policy form.
8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.
9. Compensation and/or payments due to CONTRACTOR under this Agreement are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

e. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have a A. M. Best's rating of at least A-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 by the Benton County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Auto Liability and Workmen's Compensation, shall specifically include the COUNTY, its elected officials, employees and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY, its elected and appointed officials, employees and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the County's Contract Representative referenced in Section 4.
3. All written notices under this Section [8] and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.
4. 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 at the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. 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 all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services and expenditures accepted by the COUNTY, in accordance with the Compensation Section of this Contract.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- a. The CONTRACTOR shall perform the terms of 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 express written consent of the COUNTY.
- b. The CONTRACTOR 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 CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. 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. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section [5] of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to COUNTY employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.
- d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the County upon request, all records relating to the performance of this Contract for six (6) years after Contract termination or expiration.

15. 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 age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless there from to the extent such use is not agreed to in writing by the CONTRACTOR.
- b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY 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 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.

19. CONFIDENTIALITY

The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. 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 County, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR 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.

22. 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 this 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.

23. 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.

24. 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.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections [7] and [17]); inspection and keeping of records and books (Section [14]); litigation hold notice (Section [26]); Public Records Act (Section [27]) and confidentiality (Section [19]).

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section [14] of this agreement may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Section [14].

27. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 *et seq.* Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and is effective on August 1, 2016.

Dated: _____

Benton County Board of Commissioners

Chairman

Member

Member

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

Attest: _____
Clerk of the Board

Approved as to Form



Civil Deputy Prosecuting Attorney

Dated: July 7, 2016

Kiona-Benton City School District



Signature

Assistant Superintendent
Title:

Joe Lloyd

PRINTED NAME

Exhibit A

Title of program or project

Kiona-Benton Crime Prevention Program (KBCPP)

Executive summary of program or project (max 100 words).

The Kiona-Benton Crime Prevention Program (KBCPP) seeks to reduce and eventually eliminate gang and other criminal activity for young people age 14-21 in the Benton City area of Benton County. Specifically, the project will target young people who have dropped out of public school or who are in danger of dropping out of school and connect them with an advocate to help them access necessary mental or medical health, educational, vocational resources so they can become a productive adult. We believe that bridging this gap for our at-risk youth will prevent them from participating in gang and other criminal activities.

Name, purpose, vision, and/or mission of your organization (max 200 words).

The mission of Kiona-Benton Schools is to educate students of all ages, abilities and cultural backgrounds within a caring environment of staff and community, to provide opportunities for all students to develop to their potential, to be confident of their abilities to learn, create, think work, recreate, take responsibility, be productive, and treat others with respect and dignity in an ever-changing global society.

Purpose and need for the program or project – current and historic challenges, opportunity or issue that the program or project seeks to address (max 400 words).

The purpose for this project is simply to help keep young people engaged in progressing toward becoming productive adults instead of taking situational detours that can get them and our community in trouble. In September 2004, Jordan E. Castillo, then 14, stabbed and killed a beloved teacher and coach, Bob Mars as an initiation act for the MSP (Mexicans Stand Proud) gang in Benton City. In December of 2007, Joshua Tucker (then 16) and Donald Schalchlin (then 15) fatally stabbed Donald's 13-year-old sister Elizabeth Schalchlin and his 41-year-old mother Ellen Schalchlin. In September of 2013, 19-year-old Noel Gonzalez and 18-year-old Noah Matlack of Benton City were charged with the stabbing murder of 55-year-old Mike Edwards. These three examples are of young people in the boundaries of the Kiona-Benton City School District in Benton City, Washington who fell off the "radar" of what mainstream education services have to offer and tumbled into the consequences for poor choices influenced by gangs or friends. These are doubly tragic not only because people lost their lives but in that the perpetrators also in a real sense lost their lives from incarceration. We want to stop this waste. Only the 19-year-old mentioned above was currently enrolled in school – the rest had dropped out. We want to establish a safety net that captures and engages the population of young people that drop out, drug out, or don't care and get involved in gang and other criminal behavior. We need a "jump start" to provide such a support in our community. The logical place for us to approach this is through the

schools. The State of Washington does not support such activities so we are approaching Benton County to help us fill in this important gap.

While all of our surrounding communities have received direct assistance from the public safety tax through their local police departments, Benton City only indirectly benefitted because we contract through the Benton County Sheriff's department for our law enforcement services. Though regular patrols are provided, in many instances, help is never quite instantly available because of the nature of the county coverage they provide. In a sense, receiving this grant would "balance the scale" and give a direct benefit of this portion of the safety tax. Because of our lack of access to these funds, our quality of life has been compromised as described in the above crimes by juvenile offenders.

Detailed program or project description – need, origins, phases, partners and their roles, timeline (max 500 words).

We propose using this as a startup grant to establish a program similar to the Communities in Schools program at Kiona-Benton City High School. We have requested being included in this program but they currently have no plans on expanding this next year. Richland and Kennewick school district have 13 schools involved in this program and it has been shown to be highly successful in helping students stay in school and engaged in productive behaviors. We have reached out to the Communities in Schools program manager and she has agreed to collaborate with us to the extent she can if we were to hire a similar position in our school district.

Besides funding the site coordinator position at our high school, we propose a small amount of funds for offering a parenting class for those families that are struggling since troubled youth most often come from troubled families. This would be a wrap-around service that would affect youth beyond the school day.

Lastly, we would propose a small operational fund for materials and supplies for us to establish this program in our school including, technology, curriculum supplies, other teaching materials, and a modest budget for light refreshments (a proven motivator for student and parent participation in our community).

With these components in place, we would launch our prevention program to provide for the non-academic needs for troubled youth in our community not only who are enrolled in school but those who have dropped out recently. Our site coordinator would specifically seek out those students who are struggling to stay in school and work with them to provide access to public and private services which will help normalize their lives so they can stay in school and become a productive adult. This coordinator would use the same approach as the Communities in Schools program to:

- Gather and mobilize local community partnerships including the Benton County Sheriff's department, the Benton Franklin Community Action Committee, and local medical and mental health providers.
- Work with school administrators and staff to build a site problem solving team to assess needs and provide supports to the school and students
- Establish relationships of trust with troubled youth and their families
- Work with partners to deliver tiers of support to the school, students and their families

The timeline for the project would begin in July of 2016 by advertising and hiring a site coordinator. Orientation and training would occur in August of 2016 with active program participation beginning in September 2016 when school starts. September through December of 2016 will include generate the data that we will report on and monitor. We would appreciate being considered for either an extension or renewal to keep this program going through the end of the 2016-17 school year (which ends in June 2017). The Parenting class will be organized and offered to participating families of youth by November 1, 2016 and conclude by December 20, 2016.

Regularly monitor and track progress of all student participants with attendance, participation and academic achievement as discrete data points of reference.

We anticipate that the results will be measurable over the year with four (4) distinct data collection points – upon entrance in September and in November, January and May. The data to be collected would include attendance, participation in program activities, and academic achievement. This data would be used in not only individualized planning for each student but collectively for program evaluation and adjustments. In addition, we will hold our site coordinator accountable to report monthly on the types of activities provided to help students access services. These data points and reports will be available for review as part of our school's public record in accordance with FERPA regulations.

Similar work your organization has done previously (max 300 words).

The Kiona-Benton City School District has an operating budget of over 16 million dollars and coordinates not only academic but transportation, food services, maintenance and other essential services for students. We have a student advocate position in the high school that is primarily tasked with the academic support for students. We would expect that the position created with this grant work in concert with that staff member in providing the social, emotional, mental, and physical support that students need to succeed and stay in or come back to school.

Previous grants received, projects or programs conducted on behalf of, or for, government agencies, or public-private partnerships entered into.

The Kiona-Benton City School District has written and managed numerous competitive grants including Federal and State grants such as:

- USDA's Rural Utilities Service grant (\$168,000). 2013-16
- Washington State Department of Commerce Grant to pave HS parking lot (\$125,000). 2014-15
- Washington State Career and Technical Education Grant for Materials Science Program Start up (\$50,000). 2015-16
- Washington Reading Corps Grant (\$150,000). 2015-16
- Office of the Superintendent of Public Instruction (OSPI) Response to Intervention grant (\$125,000). 2008-12
- OSPI Math and Science Partnership Grant (\$625,000). 2011-14

- In this current year’s budget, the school district manages over \$1,933,000 in grants (both public and private). These grants are regularly audited and our management practices and expenditures were found in compliance with state auditing practices.

Organizational finances – Provide the following financial documentation for the past two years (2014 & 2015): a) copies of 990-series filings made with the IRS; b) copies of audited financial statements (at a minimum this includes balance sheets and cash-flow statements).

Attachment A – Nonprofit Statement
Attachment B – Audited Financial Statement

Provide a copy of your 2016 operating budget as approved by your Board of Directors or similar governing body.

Attachment C – Approved Operating Budget for Kiona-Benton City School District

Project budget – Provide detailed project/program budget. Include leverage funds to be received from other third parties.

See Exhibit C – Project Budget Worksheet

Provide resumes for any key personnel associated with the project.

Attachment D –Resume of Joe Lloyd

Provide the names, brief bios and contact information for the members of your Board of Directors or similar governing body.

Board Chair	Leslie Johnson	#3	Leslie.Johnson@kibesd.org	509-591-6569
Vice Chair	Tawny Garrett	#5	tawny.garrett@kibesd.org	509-308-2991
School Board Member	Dale Thornton	#4	Dale.Thornton@kibesd.org	509-205-9712
Legislative Representative	Ivan Howard	#2	ivan.howard@kibesd.org	509-591-6639
WIAA Representative	Julie Rheinschmidt	#1	jrheinschmidt@kibesd.org	509-438-3928

- Leslie Johnson – Homemaker with a Bachelor’s Degree in Business Administration
- Tawny Garrett – A homemaker with two preschoolers at home.
- Dale Thornton – A father of students in the district and a plant engineer at Hanford
- Ivan Howard – A father of students in the district and a teamster that works at Hanford.
- Julie Rheinschmidt – A mother of students in the district and a science teacher at Kennewick School District

Provide primary and alternate contact information for the program or project lead.

Joe Lloyd
1105 Dale Ave.
Benton City, WA
jllloyd@kibesd.org
509-588-2077 (Work)
509-727-5581 (Cell)

(For capital projects or programs in operation for less than three years only) Provide a letter of reference and good standing from the bank where your organization does its banking.

Not applicable – not a capital project request

Provide copies of your current bylaws and conflict of interest policy (as approved by the IRS for your 501(c)3 or 501(c)4 registration).

Note: Because we are a public agency of the State of Washington, we are bound by all of the codified laws and regulations contained in the Washington Administrative Code (WAC) and Revised Code of Washington (RCW). Specifically, we adhere to the State Ethics in Public Service Act as outlined in RCW 42.52 in its entirety which generally addresses conflicts of interest, improper use of state resources, compensation for outside activities, and gifts. We also follow all of the common school provisions outlined in RCW 28A and are reviewed and audited by the office of the superintendent of public instruction (OSPI) and the state auditor's office regularly.

Please include all of the following with your submittal, saved in PDF format.

Attachment E – W9 Form

Attachment F – Tax Statement Letter

Attachment G – Debarment and Criminal History Certification

**Exhibit D
Invoice**

Kiona-Benton City School District

1105 Dale Ave.
Benton City WA 99320
Phone 509-588-2000 Fax 509-588-5580



INVOICE

**INVOICE #
DATE:**

TO:
Benton County Gang and Crime Prevention Program
Attn: Loretta Smith Kelty
PO Box 190
Prosser, WA 99350

FOR:
Reimbursement for contracted costs for Kiona-Benton
Crime Prevention Program

DESCRIPTION	AMOUNT
TOTAL	

Make all checks payable to Kiona-Benton City Schools
Payment is due within 30 days.
If you have any questions concerning this invoice, contact Kim Scott, Exec Director of Finances or Mona Van Hollebeke 588-2000.

Thank you for your business!

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION</u>		
Meeting Date :	July 19, 2016	Execute Contract :		Consent Agenda : X
Subject :	Speed Limit Res.	Pass Resolution :	X	Public Hearing :
Prepared by :	slc	Pass Ordinance :		1st Discussion :
Reviewed by :	MSR	Pass Motion :		2nd Discussion :
		Other :		Other :

BACKGROUND INFORMATION

Recently a new middle school was approved for construction on Clodfelter Road, north of the intersection with Ridgeline Drive. The school district worked closely with the County Road Department and the City of Kennewick as adjacent road improvements spanned both jurisdictions. During the design of the road improvements for the school it was recommended that the speed limit be reduced from the current posted speed of 50 miles per hour (MPH). The recommendation stems from the addition of the school and the associated pedestrian traffic that is anticipated from nearby homes and apartments. A traffic study was conducted and the 85th percentile speed on Clodfelter Road (the predominant factor in the Manual on Uniform Traffic Control Devices used to establish speed limits) is approx. 40 MPH. Adjoining roads currently have a posted speed of 35 MPH. Based on this information an appropriate speed would be 35 MPH to remain consistent with similar roads in the area and near to the 85th percentile speed.

The speed reduction is proposed to be south of the 1-82 overpass and to extend north to the City of Kennewick corporate boundary. This allows drivers ample time to slow down to the reduced speed before entering the area where higher vehicle and pedestrian traffic will be present. It also reduces the speed going over the overpass, which can become icy in winter driving conditions.

The school is nearing completion and is expected to open at the end of August. The reduced speed should be in place a week or two prior to school opening to allow drivers to adapt to the change.

SUMMARY

Conditions along Clodfelter Road have changed that warrant a re-evaluation of the posted speed. Based on those conditions and a recent traffic study it is recommended that the speed be reduced from 50 miles per hour to 35 miles per hour beginning at the 1-82 overpass and heading north to the City of Kennewick corporate boundary.

RECOMMENDATION

Staff recommends the Board approve a Resolution reducing the speed limit on Clodfelter Road from the 1-82 overpass to the City of Kennewick corporate boundary from 50 miles per hour to 35 miles per hour.

FISCAL IMPACT

Two new signs will need to be fabricated and installed, the cost for this will be approximately \$500. There are sufficient funds available for this work in the current signs and marking budget lines.

MOTION

Approve as part of the consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF TRAFFIC CONTROL ON CERTAIN COUNTY ROADS RE:

Establish the speed limit on Clodfelter Road from the south side of the I-82 overpass extending north to the City of Kennewick corporate boundary.

WHEREAS, the Board of County Commissioners of Benton County, Washington in the exercise of a governmental function for and on behalf of said Benton County in the protection of life, health, safety, welfare and convenience of the inhabitants of said County, is desirous of making certain restrictions on the traffic using the County Road designated below; **NOW, THEREFORE**,

BE IT RESOLVED by the Board of County Commissioners of Benton County, Washington, that the traffic control on County Roads designated below shall be as follows:

That it shall be unlawful for the operator of any vehicle to exceed 35 MPH on Clodfelter Road from the south side of the I-82 overpass extending north to the City of Kennewick corporate boundary.

This resolution shall be effective July 19, 2016.

Dated this 19th day of July, 2016.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest : _____
Clerk of the Board

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

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING A CONTRACT FOR THE HANKS ROAD ASPHALT REPAIR AND CR12 PATHWAY ASPHALT REPAIR PROJECT TO B.C.V., INC., BURBANK, WASHINGTON

WHEREAS, per Resolution 2012-677, the Board of Benton County Commissioners approved a County-Wide Procurement, Leasing and Contracting Policy; and

WHEREAS, per Section 3.4.2, for contracts between \$40,000 and \$300,000, County departments are able to solicit bids from the small public works roster and award to the lowest responsible bidder. Such award is to be approved by the Board of Benton County Commissioners by resolution; and

WHEREAS, quotes for the asphalt repair of Hanks Road and the CR12 Pathway were solicited from contractors on the Small Public Works Roster; and

WHEREAS, the following three quotes were received from contractors:

B.C.V., Inc., Burbank, WA	\$ 32,000.00
Ray Poland & Sons, Kennewick, WA	\$ 52,300.00
Stripe Rite, Inc., Kennewick, WA	\$ 57,560.00

WHEREAS, the County Engineer reviewed the quotes for completeness and recommends awarding the contract for the Hanks Road Asphalt Repair and CR 12 Pathway Asphalt Repair project to B.C.V., Inc., Burbank, WA as the lowest bidder; **NOW, THEREFORE**,

BE IT RESOLVED the Board of Benton County Commissioners hereby awards the contract for the Hanks Road Asphalt Repair and CR 12 Pathway Asphalt Repair project to B.C.V., Inc., Burbank, WA in the total amount of \$32,000.00; and

BE IT FURTHER RESOLVED the Board of Benton County Commissioners direct staff to prepare a contract with B.C.V., Inc., Burbank, WA to be brought back to the Board for approval at a later date.

Dated this 19th day of July 2016.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
 BENTON COUNTY
 PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned hereby certifies that the undersigned has examined the location of the public works project outlined in these attached special provisions, specifications, and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

(NOTE: Unit prices for all items, all extensions, and total amount of bid shall be shown. Show unit price and total amounts in figures only.)

ITEM NO.	APPROX. QUANTITY	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts	Dollars	Cts
1	LUMP SUM	L.S.	MOBILIZATION	500	00	500	00
2	4	TON	CRACK SEALING	2,950	00	11,800	00
3	650	Gal.	ASPHALT PATCHING	24	00	15,600	00
4	80	HR.	FLAGGERS	50	00	4,000	00
5	LUMP SUM	L.S.	SPCC PLAN	100	00	100	00
				SUBTOTAL		32,000	00
				TOTAL BID		32,000	00

Dated at 2:00 AM This 7th Day of July, 2016.

Signed:  Title: President

Printed Name: Brett Manning

Name of Company: B.C.V., Inc.

Address: 1089 W Sunset Dr, Burbank, WA 99323

Telephone: (509) 521-8528

State Contractor's License No.: BCVIN ~~XXXX~~ 994CF

ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

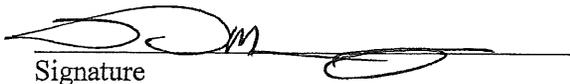
DATED this 7th day of July, 2016.

FIRM NAME: B. C. V., Inc.

ADDRESS: 1089 W Sunset Dr
Burbank, WA 99323

TELEPHONE: (509) 821-8528

SIGNATURE OF AUTHORIZED OFFICIAL(S)


Signature

Brett Manning President
Print Name and Title

Signature

Print Name and Title

Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
 BENTON COUNTY
 PROSSER, WASHINGTON 99350

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(NOTE: Unit prices for all items, all extensions, and total amount of bid shall be shown. Show unit price and total amounts in figures only.)

ITEM NO.	APPROX. QUANTITY	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts	Dollars	Cts
1	LUMP SUM	L.S.	MOBILIZATION	1500	00	1500	00
2	4	TON	CRACK SEALING	7100	00	28,400	00
3	650	Gal.	ASPHALT PATCHING	24	00	15,600	00
4	80	HR.	FLAGGERS	70	00	5,600	00
5	LUMP SUM	L.S.	SPCC PLAN	1200	00	1,200	00
				SUBTOTAL		52,300	00
				TOTAL BID		52,300	00

Dated at 3:30 PM This 8th Day of July, 2016.

Signed: J. E. Lynch Title: Engineer/Estimator

Printed Name: Jack Lynch

Name of Company: Ray Poland & Sons

Address: 503 W. Columbia Drive Kennewick, WA

Telephone: (509) 586-2150

State Contractor's License No.: Ray Pos *243JE

ASSURANCE OF NON-DISCRIMINATION

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It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

DATED this 8TH day of July, 2016.

FIRM NAME: Ray Poland & Sons, Inc

ADDRESS: 503 W. Columbia Drive
Kennecook, WA 99336

TELEPHONE: (509) 586-2158

SIGNATURE OF AUTHORIZED OFFICIAL

J. S. Lynn
Signature

Engineer/Estimator
Print Name and Title

Signature

Print Name and Title

Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
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TO: THE BOARD OF COUNTY COMMISSIONERS
 BENTON COUNTY
 PROSSER, WASHINGTON 99350

Gentlemen:

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ITEM NO.	APPROX. QUANTITY	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts	Dollars	Cts
1	LUMP SUM	L.S.	MOBILIZATION	15.00	00	15.00	00
2	4	TON	CRACK SEALING	35.00	00	140.00	00
3	650	Gal.	ASPHALT PATCHING	56	00	364.00	00
4	80	HR.	FLAGGERS	52	00	416.00	00
5	LUMP SUM	L.S.	SPCC PLAN	15.00	00	15.00	00
SUBTOTAL						575.00	00
8.6% tax						49.50	16
TOTAL BID						624.50	16

57,560.00 ple

Dated at KENNEWICK WA. ? This 8th Day of July, 2016.

Signed: [Signature] Title: BRANCH MANAGER

Printed Name: FRANK ACTZ

Name of Company: STRIDE RITE INC

Address: 723 W Deschutes Ave KENNEWICK WA 99336

Telephone: 509 585-0181

State Contractor's License No.: STRIPRI 121 JM

no tax

ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

DATED this 8th day of July, 2016.

FIRM NAME: Stripe Rite Inc

ADDRESS: 723 W Deschutes Ave
Newell WA 99336

TELEPHONE: 509 585-0181

SIGNATURE OF AUTHORIZED OFFICIAL(S)

[Handwritten Signature]
Signature

Frank Artz Branch Mgr
Print Name and Title

Signature

Print Name and Title

Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

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The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ACCEPTING WORK PERFORMED BY B.C.V., INC. UNDER CONTRACT FOR C.E. 1995 SMP - CRACK SEAL FALL 2015 PROJECT

WHEREAS, on November 3, 2015 the Board of County Commissioners entered into a contract with B.C.V., Inc. of Burbank, Washington (Resolution 2015-784) for C.E. 1995 SMP-Crack Seal Fall 2015; and

WHEREAS, the contractor has completed all work required pursuant to their contract with Benton County for the project; and

WHEREAS, all releases for the project retainage have been received and all close out paper work is in order; and

WHEREAS, this project has been examined by the County Engineer and has been found to be in compliance with the applicable project specifications and drawings; and

WHEREAS, it is the County Engineer’s recommendation that the Board of Benton County Commissioners formally accept the contractor’s work and the project as complete; **NOW, THEREFORE**,

BE IT RESOLVED that the County Commissioners concur with the County Engineer’s recommendation and hereby accept the work performed by B.C.V., Inc. under contract for C.E. 1995 SMP - Crack Seal Fall 2015 project as being completed in conformance with the contract documents.

Dated this 19th day of July 2016.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ACCEPTING WORK PERFORMED BY FOWLER GENERAL CONSTRUCTION UNDER CONTRACT FOR THE CONSTRUCTION OF THE NEW KENNEWICK MAINTENANCE FACILITY

WHEREAS, on December 16, 2014 the Board of County Commissioners entered into a contract with Fowler General Construction of Richland, Washington (Resolution 2014-1041) for construction of a new road and vehicle maintenance facility in Kennewick; and

WHEREAS, the contractor has completed all work required pursuant to their contract with Benton County for the project; and

WHEREAS, all releases for the project retainage have been received and all close out paper work is in order; and

WHEREAS, this project has been examined by the County Engineer and has been found to be in compliance with the applicable project specifications and drawings; and

WHEREAS, it is the County Engineer’s recommendation that the Board of Benton County Commissioners formally accept the contractor’s work and the project as complete; **NOW, THEREFORE**,

BE IT RESOLVED that the County Commissioners concur with the County Engineer’s recommendation and hereby accept the work performed by Fowler General Construction under contract for the construction of the new Kennewick Maintenance Facility as being completed in conformance with the contract documents.

Dated this 19th day of July 2016.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>			
Meeting Date:	<u>7/19/2016</u>	Execute Contract	_____	Consent Agenda	<u> X </u>
Subject:	<u>Salary Request Statement</u>	Pass Resolution	_____	Public Hearing	_____
Prepared by:	<u>Linda Ivey</u>	Pass Ordinance	_____	1st Discussion	_____
Reviewed by:	<u>Sheriff Keane</u>	Pass Motion	_____	2nd Discussion	_____
		Other	_____	Other	_____

BACKGROUND INFORMATION

The Sheriff has the option to request salary increases for lateral applicants based off of their previous experience and education.

SUMMARY

The Sheriff's Office is in the process of hiring or has hired a lateral corrections officer with the experience and training to warrant the requested increase from a grade 7 (\$3,950) to a grade 6 (\$4,110).

RECOMMENDATION

Approve the attached Salary Request Statement based off of the attached detailed information.

FISCAL IMPACT

There is no financial impact in the 2015-2016 budget

MOTION

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>7/19/2016</u>	Execute Contract _____	Consent Agenda <u>X</u>
Subject: <u>Salary Request Statement</u>	Pass Resolution _____	Public Hearing _____
Prepared by: <u>Linda Ivey</u>	Pass Ordinance _____	1st Discussion _____
Reviewed by: <u>Sheriff Keane</u>	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

The Sheriff has the option to request salary increases for lateral applicants based off of their previous experience and education.

SUMMARY

The Sheriff's Office is in the process of hiring or has hired a lateral corrections officer with the experience and training to warrant the requested increase from a grade 7 (\$3,950) to a grade 5 (\$4,317).

RECOMMENDATION

Approve the attached Salary Request Statement based off of the attached detailed information.

FISCAL IMPACT

There is no financial impact in the 2015-2016 budget

MOTION

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>			
Meeting Date:	<u>7/19/2016</u>	Execute Contract	_____	Consent Agenda	<u>X</u>
Subject:	<u>Salary Request Statement</u>	Pass Resolution	_____	Public Hearing	_____
Prepared by:	<u>Linda Ivey</u>	Pass Ordinance	_____	1st Discussion	_____
Reviewed by:	<u>Sheriff Keane</u>	Pass Motion	_____	2nd Discussion	_____
		Other	_____	Other	_____

BACKGROUND INFORMATION

The Sheriff has the option to request salary increases for lateral applicants based off of their previous experience and education.

SUMMARY

The Sheriff's Office is in the process of hiring or has hired a lateral corrections officer with the experience and training to warrant the requested increase from a grade 7 (\$3,950) to a grade 5 (\$4,317).

RECOMMENDATION

Approve the attached Salary Request Statement based off of the attached detailed information.

FISCAL IMPACT

There is no financial impact in the 2015-2016 budget

MOTION

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>	
Meeting Date:	<u>07-26-2016</u>	Execute Contract	_____
Subject:	<u>Historical Preservation</u>	Pass Resolution	<u> X </u>
Prepared by:	<u>Yuliana Perez</u>	Pass Ordinance	_____
Reviewed by:	<u>E Rivera</u>	Pass Motion	_____
		Other	_____
		Consent Agenda	<u> X </u>
		Public Hearing	_____
		1st Discussion	_____
		2nd Discussion	_____
		Other	_____

BACKGROUND INFORMATION

The Historical Preservation Fund (0157-101) provides for resources to be utilized for the purposes of funding historical preservation projects. The Board of Benton County Commissioners, in support of historical preservation projects, appointed Duane Davidson, Benton County Treasurer, to serve as the charter chairman of an Advisory Committee to evaluate certain proposed projects for funding.

SUMMARY

Interviews were conducted June 29, 2016. The Advisory Committee has set forth recommendations for funding selected projects totaling \$44,190.00.

RECOMMENDATION

N/A

FISCAL IMPACT

Resources totaling \$44,190.00 will be utilized from the Historical Preservation Fund (0157-101) for purpose of funding Historical Preservation Projects.

MOTION

N/A

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVAL FOR DISBURSEMENTS FROM THE HISTORICAL PRESERVATION FUND (0157-101) FOR THE PURPOSES OF FUNDING HISTORICAL PRESERVATION PROJECTS.

WHEREAS, the Board of Benton County Commissioners is supportive of historical preservation projects and appointed Duane Davidson, Benton County Treasurer, to serve as the charter chairman of an Advisory Committee to evaluate certain proposed projects for funding; and

WHEREAS, the Advisory Committee has set forth recommendations for funding selected projects described in the attached memorandum ("Exhibit A") totaling \$44,190.00; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners agrees with the Advisory Committee's findings and approves the funding of the recommended projects described in "Exhibit A", totaling \$44,190.00; and

BE IT FURTHER RESOLVED, by the Benton County Board of Commissioners, the Benton County Treasurer is authorized to have the County Auditor's Office to make such payments and execute any agreements necessary for the disbursement of the aforementioned funds.

Dated this _____ day of _____, 2016.

Chairman of the Board

Member

Member

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

Attest.....

Clerk of the Board

APPLICANT	AMOUNT REQUESTED	COMMITTEE RECOMMENDATION
BENTON COUNTY MUSEUM & HISTORICAL SOCIETY	\$5,790.00	\$5,790.00
PROSSER CEMETERY ASSOCIATION	\$15,400.00	\$12,450.00
WHITE BLUFFS QUILT MUSEUM HISTORIC FIBERS	\$2,600.00	\$2,850.00
WHITE BLUFFS QUILT MUSEUM BENTON COUNTY QUILT INDEX	\$6,236.00	\$4,530.00
WHITE BLUFFS QUILT MUSEUM BRING OUR WEBSITE HOME	\$2,000.00	\$0.00
WASHINGTON STATE UNIVERSITY TRI-CITIES DOCUMENTING PRE-MANHATTAN PROJECT TOWNS	\$18,570.00	\$18,570.00
TOTAL AMOUNT REQUESTED/RECOMMENDED	\$50,596.00	\$44,190.00

Historical Preservation Fund (0157-101) balance as of 6/29/16 \$145,560.14

BENTON COUNTY AGENDA ITEM

AGENDA ITEM: _____	Type of Action	
MEETING DATE: 07/19/2016	Execute Contract _____	CONSENT AGENDA _____
SUBJECT: Update on Bi-County IT Agreement	Pass Resolution _____	PUBLIC HEARING _____
	Pass Ordinance _____	1 ST DISCUSSION _____
Prepared By: Pat Austin	Pass Motion _____	2 ND DISCUSSION _____
	Other _____	OTHER _____
Reviewed By: Loretta Smith-Kelty	Approve for Hearing _____	

BACKGROUND INFORMATION

In the fall of 2015 the Judge Robert Swisher met with the Board of Benton County Commissioners and discussed the need to establish a Bi-County IT Interlocal Agreement. After discussion between the judges and the Board it was determined that Judge Swisher would assist in facilitating an agreement between Benton and Franklin Counties for a IT Interlocal Agreement to allow the Superior Court to access all State and local computer programs from any court location and associated costs to be determined. The Court has been working with the administrative staff of both counties and has been advised to address the Benton County Board with a status of the project.

SUMMARY

See background information

RECOMMENDATION

Recommend approval.

FISCAL IMPACT

No fiscal impact at this time

MOTION