

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, October 4, 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
❖ **September 27, 2016 Board Meeting**

Review Agenda

Consent Agenda

BOE

a. Notice of Approval to Hear Property Tax Appeals

Facilities

b. Contract w/Pacific Backflow Services for Water System Backflow Testing

Juvenile

c. Agreement w/State of WA Administrative Office of the Courts

d. Agreement w/Pearson Vue for General Education Diploma Testing

e. Contract w/D Campbell for Attorney Representation in BECCA Cases

Office of Public Defense

f. Public Defense Services Agreement w/S Henwood for Juvenile Court

g. Public Defense Services Agreement w/J Azure for Juvenile Court

h. Public Defense Services Agreement w/D Anderson for Juvenile Court

i. Public Defense Services Agreement w/D Campbell for Juvenile Court

j. Public Defense Services Agreement w/M Trombley for Juvenile Court

k. Public Defense Services Agreement w/K Moreno for Juvenile Court

l. Establishing Process to Equitably Divide Public Defense Juvenile Dependency Contracts

m. Terminating Agreement w/J Azure for Public Defense Services in Juvenile Dependencies

n. Terminating Agreement w/K Moreno for Public Defense Services in Juvenile Dependencies

o. Terminating Agreement w/D Anderson for Public Defense Services in Juvenile Dependencies

p. Terminating Agreement w/S Henwood for Public Defense Services in Juvenile Dependencies

q. Terminating Agreement w/D Campbell for Public Defense Services in Juvenile Dependencies

r. Terminating Agreement w/M Trombley for Public Defense Services in Juvenile Dependencies

s. Line Item Transfer, Fund No. 0000-101, Dept. 136

Personnel

t. Appointment & Designations for Member County w/WA Counties Risk Pool

u. Removing G Dorsett from Mosquito Control Board; Rescinding Resolution 2015-043

Public Safety

v. Amended Contract No. 1 w/BF Health District for Nurse Family Partnership Program

w. Amending Resolution 2016-580 w/Safe Harbor Crisis Nursery for My Friends Place Youth Shelter Proposal

Public Works

x. Payment to Johnny B Transport for Freight Charges from Idaho Asphalt Supply, Inc.

y. Change Order No. 1 w/D & D Tri-Rivers Excavating, Inc. for Annex Parking Lot Project

Sheriff

- z.** Contract w/S Castillo for Transcription & Translation Services
- aa.** Amended Contract #1 w/Tower Plaza Cleaners & Laundromat for Laundry Services

Treasurer

- bb.** Contract w/FTN Financial Main Street Advisors for Oversight of Investment Program
- cc.** Line Item Transfer, Fund No. 0000-101, Dept. 124

Scheduled Business

Purchase of Vehicles from Columbia Ford Nissan ~ Lt. White

- **Ford Fusion from Columbia Ford Nissan**
- **Ford Police Interceptor SUV**

Letter to City of Kennewick re Boys and Girls Club ~ A Fyall

GIS Update ~ M Phillips

Unscheduled Visitors

Other Business

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Tuesday, September 27, 2016, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Shon Small
Commissioner James Beaver
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Absent: Commissioner Jerome Delvin (vacation)

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Sustainable Development Manager; Assistant County Engineer Robert Blain; Planning Manager Mike Shuttleworth; DPA Ryan Brown; District Court Administrator Jacki Lahtinen; Public Services Administrator Fred Bowen.

Approval of Minutes

The Minutes of September 20, 2016 were approved.

Consent Agenda

MOTION: Commissioner Beaver moved to approve the consent agenda items "a" through "q". Chairman Small seconded and upon vote, the Board approved the following:

Commissioners

- a. Canvassing Board Appointment

Facilities

- b. Line Item Transfer, Fund No. 0305-101, Dept. 000
- c. Contract w/Roen Associates, Inc. for Constructability Review for Jail Addition

Human Services

- d. Copier Lease Contract w/Pacific Office Automation
- e. Agreement w/CI Information Management for Storage Services
- f. Lease Assignment w/Ardell and Sue Curtis Survivor's Trust & Our Lady of Lourdes Hospital

Information Technologies

- g. Purchase of Dell Laptop, Docking Station & Monitor for Sheriff's Office

Juvenile

- h. Truancy Contract w/Pasco School District
- i. Truancy Contract w/Kennewick School District

Office of Public Defense

- j. Line Item Transfer, Fund No. 0000-101, Dept. 136

Parks

- k. Purchase of Shelter Structure for Two Rivers Park from Double-Post Umbrella
- l. Letter to AHBL, Inc. re Parking Lot Project @ Candy Mountain

Public Works

- m. Purchase of Road Salt w/Salt Distributors, Inc.
- n. Traffic Control on Pleasant Drive & Lindhill Court
- o. Rental of Two Bucket Trucks from L & M Truck Sales, Inc.
- p. Approving Payment to Tom Denchel Ford for Fire Truck Engine for Fire District #6
- q. Contract w/Premier Excavation for Victoria Avenue Storm Water Improvements Project

Master Plan for Transferred Hanford Properties

Adam Fyall introduced Diahann Howard, Port of Benton and Kerwin Jensen, City of Richland who were partnering on the master plan for the recently transferred Department of Energy property.

Ms. Howard gave a Powerpoint presentation and briefly discussed the following:

- Purpose – transfer of 1,341 acres of property on the Hanford Site from DOE to local ownership for economic development uses
- Main goal – recruitment of industrial, manufacturing or research and development uses
- The Port and City were beginning work on a master plan - there would be impacts to the Benton County comprehensive plan and urban growth area
- Capital Facilities Plan
 - Used to support urban growth area expansion request to Benton County
 - UGA expansion allowed every 5 years (Dec. 2016 was the end of the current window)
 - Evaluating utilities, transportation, emergency support, schools, parks, financial
- Master Plan
 - Concepts for roadway, rail, and lot layouts; determine needs
 - Identify critical areas
 - Infrastructure needs
 - Design standards; cost estimates
- Stakeholders
- Schedule

Commissioner Beaver asked Planning Manager Mike Shuttleworth if there were any problems identified with the exchange as far as the State was concerned and Mr. Shuttleworth said no. Additionally, he indicated the Port had been working with Futurewise on this project.

Ms. Howard indicated that so far they had received positive input from Futurewise and they did not oppose this and positive feedback from the tribal perspective as well.

Vouchers

Check Date: 09/23/2016

Warrant #: 145752-145881
Total all funds: \$455,517.54

Transfers #: 09231601-09231605
Total all funds: \$62,026.91

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

Resolutions

- 2016-735: Line Item Transfer, Fund No. 0305-101, Dept. 000
- 2016-736: Contract w/Roen Associates, Inc. for Constructability Review for Jail Addition
- 2016-737: Copier Lease Contract w/Pacific Office Automation
- 2016-738: Agreement w/CI Information Management for Storage Services
- 2016-739: Lease Assignment w/Ardell and Sue Curtis Survivor's Trust & Our Lady of Lourdes Hospital
- 2016-740: Purchase of Dell Laptop, Docking Station & Monitor for Sheriff's Office
- 2016-741: Truancy Contract w/Pasco School District
- 2016-742: Truancy Contract w/Kennewick School District
- 2016-743: Line Item Transfer, Fund No. 0000-101, Dept. 136
- 2016-744: Purchase of Shelter Structure for Two Rivers Park from Double-Post Umbrella
- 2016-745: Purchase of Road Salt w/Salt Distributors, Inc.
- 2016-746: Traffic Control on Pleasant Drive & Lindhill Court
- 2016-747: Rental of Two Bucket Trucks from L & M Truck Sales, Inc.
- 2016-748: Approving Payment to Tom Denchel Ford for Fire Truck Engine for Fire District #6
- 2016-749: Contract w/Premier Excavation for Victoria Avenue Storm Water Improvements Project

There being no further business before the Board, the meeting adjourned at approximately 9:18 a.m.

Clerk of the Board

Chairman

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE BOARD OF COMMISSIONERS TO SIGN A NOTICE OF APPROVAL TO HEAR PROPERTY TAX APPEALS

WHEREAS The county Board of Equalization, with the approval of the county legislative authority, may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater. (RCW 84.48.010),

WHEREAS, the county Board of Equalization has received 35 appeals as of September 21, 2016 and requests the Board of Benton County Commissioners to approve additional property tax appeal hearings as is permitted by RCW 84.48.010; **NOW THEREFORE**,

BE IT RESOLVED that the Benton County Board of Commissioners approves additional property tax appeal hearings and is hereby authorized to sign the attached Notice of Approval to Hear Property Tax Appeals.

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**

NOTICE OF APPROVAL TO HEAR PROPERTY TAX APPEALS
BENTON COUNTY LEGISLATIVE AUTHORITY

The county board of equalization, with the approval of the county legislative authority, may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater. (RCW 84.48.010)

Pursuant to RCW 84.48.010, the Benton County Legislative Authority hereby approves the Benton County Board of Equalization's request to convene for the purpose of hearing property tax appeals for the current year. This approval is based on a finding that the requirements for convening under RCW 84.48.010 have been satisfied.

DATED THIS _____ day of _____, (yr) _____.

Chairperson

Member

Member

Member

Member

Member

For tax assistance, visit <http://dor.wa.gov/content/taxes/property/default.aspx> or call (360) 570-5900. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>		
Meeting Date:	10-4-16	Execute Contract	<u> X </u>	Consent Agenda
Subject:	<u>Contract award for Pacific Backflow</u>	Pass Resolution	<u> X </u>	Public Hearing
Prepared by:	<u>D. Waggoner</u>	Pass Ordinance	_____	1st Discussion
Reviewed by:		Pass Motion	_____	2nd Discussion
		Other	_____	Other

BACKGROUND INFORMATION / SUMMARY

The Facilities Department is responsible for the maintenance and servicing of water system backflow preventers on various County properties. This work is required to be performed by a certified backflow testing technician.

Benton County Facilities solicited quotes from several backflow testing companies. Responding vendors are listed below listed below:

Pacific Backflow Services	Kennewick, WA	\$50.00 per test, not including WSST
Riggle Plumbing	Kennewick, WA	\$150.00 per test, not including WSST
Cascade Fire	Kennewick, WA	Declined

Services will be provided at: Benton County Justice Center, Benton-Franklin Health District, Animal Control, Kennewick Annex, Horn Rapids Park, Two Rivers Park and the Prosser Courthouse.

RECOMMENDATION

Approve the attached Resolution and Contract between Benton County and Pacific Backflow Services.

FISCAL IMPACT

Total cost not to exceed \$34,999.00, including WSST and fees.

MOTION

Move to approve the attached Public Works contract between Benton County and Pacific Backflow Services, Inc.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A PUBLIC WORKS CONTRACT BETWEEN BENTON COUNTY AND PACIFIC BACKFLOW SERVICES, INC. FOR WATER SYSTEM BACKFLOW PREVENTION TESTING AND MAINTENANCE SERVICES

WHEREAS, the Facilities Department is responsible for the testing and maintenance of water system backflow prevention devices; and

WHEREAS, this work must be performed by a certified backflow testing company; and

WHEREAS, quotes were solicited from the several backflow testing companies and responses were received from:

-- Pacific Backflow Services	Kennewick, WA	\$50.00 per test, not including WSST
-- Riggle Plumbing	Kennewick, WA	\$150.00 per test, not including WSST
-- Cascade Fire	Kennewick, WA	Declined

and the lowest price was submitted by Pacific Backflow Services, Inc. in the amount of \$50.00 per test, not including WSST; and

WHEREAS, the Facilities Manager recommends authorizing a Public Works contract between Benton County and Pacific Backflow Services, Inc. to provide backflow assembly testing and maintenance services to various Benton County locations; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby approves the Public Works contract with Pacific Backflow Services, Inc. in the amount not to exceed \$34,999.00 including WSST; and

BE IT FURTHER RESOLVED, the Public Works contract will expire on December 31, 2019; and

BE IT FURTHER RESOLVED, the Board authorizes the Chairman to sign the agreement attached hereto.

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

**PUBLIC WORKS 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 **PACIFIC BACKFLOW SERVICES, LLC**, a limited liability corporation organized under the laws of the State of Washington, with its principal offices at 3107 S. Yelm Street, Kennewick, WA 99337 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of these terms and conditions and the following documents:

- a. Exhibit A - Quote from Pacific Backflow;
- b. Exhibit B - Request for Proposal; and
- c. Exhibit C - Washington State Prevailing Wage Rates for Public Works Contracts.

2. DURATION OF CONTRACT

The term of this Contract shall begin immediately upon execution by both parties and shall expire on December 31, 2019. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. The CONTRACTOR agrees to provide as needed inspection, testing, certification, and repair services to backflow assemblies for water supply in accordance with local and state regulations at any or all Benton County Facility location(s), including locations in Kennewick, Richland, Benton City, and Prosser, as set forth in Exhibit B, "Request for Proposal", attached hereto and incorporated herein by reference. Tester

will complete a Backflow Assembly test report and forward a copy of the report to the COUNTY's Contract Representative specified in Section 4 of this Contract. For all certifications performed within the City of Kennewick, inspection reports must be filed with www.TegrisFire.com. The filing fees for this will be reimbursed by the County. All work must be performed to industry standards by a certified Backflow Assembly Tester. All work will be performed between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in conjunction with the other contractor. In the event that the requested work requires, under state or local law, the issuance of a building permit, CONTRACTOR shall be responsible for procuring such building permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur. Thereafter, upon completion of services, CONTRACTOR shall ensure that a completed work order, detailing the work done, the time expended, and the parts used, is remitted to the COUNTY Contract Representative, or his designee, prior to CONTRACTOR leaving the work site.

- b. The COUNTY does not guarantee utilization of this Contract. The COUNTY may award contracts to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the COUNTY.
- c. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.
- d. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.

- e. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- f. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR:

Tyler Makeeff
3107 S. Yelm Street
Kennewick, WA 99337
Phone: 509-380-2086
Email: pacificbackflowservices@gmail.com

- b. For COUNTY:

Dan Waggoner
7122 W. Okanogan Place, Building A
Kennewick, WA 99336
Phone: 509-222-3704
Email: dan.waggoner@co.benton.wa.us

5. COMPENSATION

- a. The CONTRACTOR shall be paid for performing as needed inspection, testing, certification, and repair services, as provided in Section 3, to backflow systems at any or all Benton County Facility location(s), including locations in Kennewick, Richland, Benton City, and Prosser, at the Unit and Hourly Rates specified in Exhibit A, "Quote from Pacific Backflow", attached hereto and incorporated herein by reference. No payment shall be made for any work performed by

the CONTRACTOR, except for work identified and set forth in this Contract.

- b. The total amount payable by the COUNTY to the CONTRACTOR under this Contract may not to exceed Thirty-Four Thousand Nine Hundred Ninety Nine Dollars and Zero Cents (\$34,999.00), including W.S.S.T. CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not perform work in excess of the total amount payable under this Contract, and that total billings will not exceed the total amount payable. CONTRACTOR shall inform COUNTY promptly in writing if or when the cumulative accounts receivables attributable to COUNTY pursuant to this Contract reaches eighty percent (80%) of the total amount payable so that approval and budgeting for additional payable amounts may be obtained, if appropriate. Any dollar amount above the total amount payable will only be approved with an amendment to this Contract. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via <https://secureaccess.wa.gov/> and then forward a copy of the statement to COUNTY'S Contract Representative. At the completion of all work contemplated by this Contract, or at the end of the contract term, whichever comes first, CONTRACTOR shall submit an Affidavit of Wages Paid via <https://secureaccess.wa.gov/> and forward a copy to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with <https://secureaccess.wa.gov/>.

6. INVOICING

The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed, but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service, and shall also reference the work order provided to COUNTY as required in Section 3 "Services Provided" above. At such time as the first invoice is submitted, or any time thereto, CONTRACTOR, as well as all subcontractors and sub-subcontractors that are employed by the CONTRACTOR for the work contemplated by this

Contract, shall submit a Statement of Intent to Pay Prevailing Wages in the form and manner required by Section 5.b. of this Contract and RCW 39.12.040 to COUNTY'S Contract Representative. The CONTRACTOR shall not be paid for services rendered under this Contract until a Statement of Intent to Pay Prevailing Wages has been executed and submitted as required above by all required parties and the services have been performed to the COUNTY'S satisfaction. COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this Section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY, and will remit payment, less any retainage or other legally withheld funds, for the accepted work within thirty (30) days after receiving the invoice.

PROVIDED that for each invoiced and approved progress payment, COUNTY shall withhold from the earned portion of that payment (*i.e.* excluding sales tax or other tax) five percent (5%) as retainage pursuant to RCW 60.28.011 and subject to all other provisions of chapter 60.28 RCW. Within ten (10) days following the execution of this Contract, CONTRACTOR shall submit written notice to COUNTY stating its election of the method for holding moneys retained under this Section, pursuant to RCW 60.28.011(4). If such written election is not received, then the COUNTY may choose any of the methods allowed by RCW 60.28.011(4)(a)-(c) for holding the retained moneys.

7. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

8. **HOLD HARMLESS AND INDEMNIFICATION**

- a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or 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. In the event of the concurrent negligence of the CONTRACTOR, or its subcontractors, employees or agents, and the COUNTY, or its employees or agents, this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR, its subcontractors, employees and agents.
- b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract**

the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 8 shall survive termination and expiration of this Contract.

- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents or subcontractors. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into this Contract, are reflected in the CONTRACTOR'S compensation, and have been mutually negotiated by the parties.

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously, the following 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 Washington State 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 and 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 8. 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, any 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 and 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 or 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 that have an 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 Chapter 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 and its elected officials, employees, agents, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY or its elected and appointed officials, employees, or agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.
3. All written notices under this Section 9 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.

10. PERFORMANCE BOND

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to one hundred percent (100%) of the total amount payable by COUNTY to the CONTRACTOR under the Contract, specified above in Section 5.b., as security for the CONTRACTOR'S performance of this Contract and payment of all persons performing labor and supplying materials pursuant to this Contract. PROVIDED that CONTRACTOR may elect, in lieu of the bond, to allow COUNTY to retain fifty percent (50%) of the Contract amount for a period of thirty (30) days after date of final acceptance, or until COUNTY has received all necessary releases from the Washington State Department of Revenue and the Washington State Department of Labor and Industries and any liens filed under chapter 60.28 RCW have been settled, whichever is later. Proof of the performance bond, or written notification of the CONTRACTOR'S desire to elect the alternative to the bond as described above, must be received by COUNTY within ten (10) days following the execution 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, deem to be, 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. 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.

14. CHOICE OF LAW AND JURISDICTION

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.

15. SUCCESSORS AND ASSIGNS

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

16. TERMINATION

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

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

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

inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. NONDISCRIMINATION

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

19. DISPUTES

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

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

21. ENTIRE AGREEMENT

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

22. 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 Section 4 above. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be effective three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

23. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

24. 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 regarding the work performed under this Contract 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 any regularly scheduled purge schedule.

25. 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, CONTRACTOR 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.

26. 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: provisions for indemnification; insurance; non-waiver; inspection of books and records; choice of law; compliance with laws; litigation hold; and the Public Records Act.

27. CONFIDENTIALITY

The CONTRACTOR, and 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.

- This section was intentionally left blank -

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

The parties specifically certify that the provisions contained within Section 8 are mutually negotiated.

Date: _____

Date: 9-26-16

Benton County

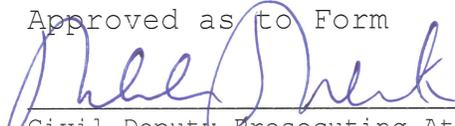
Pacific Backflow Services, LLC

Chairman
Benton County Commissioner

Signature

Approved as to Form

Title:


Civil Deputy Prosecuting Attorney

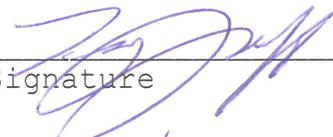

OWNER/OP
Tyler J Makeeff
PRINTED NAME

Exhibit A

Exhibit A

Request for Proposal Form
Benton County Backflow Services

REQUEST FOR PROPOSAL FORM

COMPANY NAME AND ADDRESS:

PACIFIC BACKFLOW SERVICES LLC
3107 S. YELM ST
KENNEWICK WA 99338

Contact Phone Number: 509.380.2086

Contractor License Number: PACIFBS868N9

Washington UBI Number: 603 426 799

UNIT and HOURLY RATES:

Please provide hourly billing rates for necessary services and repairs that are outside the scope of work consistent with this RFP. These rates shall not change during the term of the awarded contract. Additionally, any parts or supplies needed for repairs will be paid for by the County on an as-needed basis.

- Cost per Backflow Inspection

\$ 50.00

- Cost per Re-Inspection

\$ 50.00

- Repair Service Hourly Rate (Anticipate no more than 5 hours per year)

\$ 25.00

- Any Additional Costs such as travel, per diem, surcharges, etc.

NA

REQUEST FOR PROPOSAL

Project: Benton County Backflow Assembly Inspection, Certification & Repair Services – 2016-2019 (36 month contract)

Owner: Benton County

Submit To: Dan Waggoner, Facilities Manager
Benton County Facilities
7122 W. Okanogan Place
Kennewick, WA 99336

Proposals Due By: Thursday, September 1, 2016 at 4:00pm. –Proposals received after the time specified will be disregarded.

Submittal: Submittal must include a completed “Request for Proposal Form” Exhibit A of this document. Mail or deliver submittal to the address above. Proposal may alternatively be emailed to Dan.Waggoner@co.benton.wa.us

Benton County is soliciting proposals for certification of backflow assemblies for water supply at various Benton County Facility locations throughout Benton County, Washington, to include Kennewick, Richland, Benton City and Prosser; and any other Benton County facility as needed. There are approximately 55 backflow assemblies that require certification, the majority of which are located at the Benton County Justice Center complex in Kennewick, Washington.

SCOPE OF WORK:

The County requires and the CONTRACTOR agrees to perform the following services: inspect, test, certify and repair backflow assemblies for water supply in accordance with local and state regulations. Tester will complete a Backflow Assembly test report and forward a copy to the County’s representative.

All certifications performed within the City of Kennewick will require inspection reports be filed with www.TegrisFire.com. The filing fees for this will be reimbursed by the County.

All work must be performed to industry standards by a certified Backflow Assembly Tester.

All work will be performed between the hours of 7:00am and 4:00pm, Monday through Friday.

REQUEST FOR PROPOSAL AND ATTACHED EXHIBITS:

This request for proposal consists of this document and the following exhibits:

- Exhibit A - Request for Proposal Form
- Exhibit B - "Sample" - Contract between County and Contractor
- Exhibit C - "Sample" - Certificate of Insurance
- Exhibit D - Prevailing Wage Rates as of August 19, 2016
- Exhibit E - Background Check Form

CERTIFICATE OF INSURANCE:

CONTRACTOR is required to maintain the insurance outlined in (Exhibit B), Section 9 and submit a certificate of insurance outlined in the "sample" Certificate of Insurance attached hereto referenced as (Exhibit C) if awarded the Contract.

BOND:

If awarded the Contract, The CONTRACTOR shall furnish Benton County with a Performance Bond as outlined in Section 10 of Exhibit B. If the total contract amount is less than \$35,000.00, a Letter in lieu of Bond may be submitted.

BACKGROUND CHECK:

All CONTRACTOR'S employees working on site will be required to pass a background check. See attached Exhibit E.

PREVAILING WAGES:

- a. Prevailing wages are required for this project. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via <https://secureaccess.wa.gov/> and then forward a copy to COUNTY'S Contract Representative. At the completion of all work contemplated by this Contract, or at the end of the contract term, whichever comes first, CONTRACTOR shall submit an Affidavit of Wages Paid via <https://secureaccess.wa.gov/> and forward a copy to COUNTY'S Contract Representative. No final payment will be made until the Affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with <https://secureaccess.wa.gov/>. Intent forms must be filed prior to the start of work, if possible. Affidavits are filed after completion of the work. Approval and certification of those forms by the industrial statistician is based on the information provided on the forms, and does not constitute approval of the classifications of labor reported.

This document and the materials enclosed herewith constitute an invitation to submit proposals only and do not represent an offer by Benton County. Only upon the County's acceptance of such offer by proposal award shall any contractual commitment be created.

Benton County reserves the right to reject all proposals and discontinue the process if it determines that such course of action is in the best interests of the County.

Price quoted in the proposal shall be exclusive of federal taxes. Any Washington State Sales Tax included in the proposal price will not be considered a part of the net proposal amount.

Should any discrepancies or omissions be found in this Request for Proposal, or there are any questions about the Request for Proposal, bidder should at once notify Dan Waggoner by telephone at (509) 222-3704 or by e-mail at dan.waggoner@co.benton.wa.us. Written notice of changes or clarification to this RFP will be sent to all bidders when required. The County shall not be held responsible for verbal interpretations.

Exhibit A

Request for Proposal Form
Benton County Backflow Services

REQUEST FOR PROPOSAL FORM

COMPANY NAME AND ADDRESS:

Contact Phone Number: _____

Contractor License Number: _____

Washington UBI Number: _____

UNIT and HOURLY RATES:

Please provide hourly billing rates for necessary services and repairs that are outside the scope of work consistent with this RFP. These rates shall not change during the term of the awarded contract. Additionally, any parts or supplies needed for repairs will be paid for by the County on an as-needed basis.

- Cost per Backflow Inspection

- Cost per Re-Inspection

- Repair Service Hourly Rate (Anticipate no more than 5 hours per year)

- Any Additional Costs such as travel, per diem, surcharges, etc.

Exhibit C

State of Washington
 Department of Labor & Industries
 Prevailing Wage Section - Telephone 360-902-5335
 PO Box 44540, Olympia, WA 98504-4540

Washington State Prevailing Wage

The PREVAILING WAGES listed here include both the hourly wage rate and the hourly rate of fringe benefits. On public works projects, worker's wage and benefit rates must add to not less than this total. A brief description of overtime calculation requirements are provided on the Benefit Code Key.

Journey Level Prevailing Wage Rates for the Effective Date: 8/19/2016

<u>County</u>	<u>Trade</u>	<u>Job Classification</u>	<u>Wage</u>	<u>Holiday</u>	<u>Overtime</u>	<u>Note</u>
Benton	Sprinkler Fitters (Fire Protection)	Journey Level	\$50.95	<u>7J</u>	<u>1R</u>	

<p>AGENDA ITEM: <u>Consent Agenda</u> MEETING DATE: <u>F/C 9-21-16 B/C 10-04-16</u> SUBJECT: <u>Sign Interagency Agreement with AOC for support of CASA programs via # IAA17461</u> Prepared By: <u>Maria Loera</u> Reviewed By: <u>Darryl Banks</u></p>	<p><u>TYPE OF ACTION NEEDED</u></p> <p>Executive Contract <u> X </u> Pass Resolution <u> X </u> Pass Ordinance Pass Motion Other</p>	<p>CONSENT AGENDA <u> X </u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER</p>
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BACKGROUND INFORMATION
 The Benton/Franklin Counties Juvenile Justice Center would like to enter into an Agreement with the State of Washington, Administrative Office of the Courts (AOC), to provide Court Appointed Special Advocate (CASA) representation to dependent youth of Benton and Franklin Counties.

SUMMARY
 The term of the Interagency Agreement # IAA17461 is July 1, 2016, through June 30, 2017. The Program Agreement is backdated to July 1, 2016 so that services are not interrupted and the Juvenile Justice Center can maximize the use of available funds effective on July 1, 2016. The Program Agreement was not received by AOC until August 31, 2016.

RECOMMENDATION
 I recommend that the Boards of County Commissioners authorize their Chairs to sign the Interagency Agreement # IAA17461.

COORDINATION
 Coordination of the Program Agreement occurred as follows: Darryl Banks, Administrator; and Stephen Hallstrom, Benton County Deputy Prosecuting Attorney who reviewed the Program Agreement as to form.

FISCAL IMPACT
 This project is grant funded. The Program Agreement is based on expenditure reimbursement to the Benton-Franklin Counties Juvenile Justice Center. The maximum reimbursement amount is not to exceed \$104,786.00.

MOTION
 I move that the Chair of the Board of Benton County Commissioners, and the Chair of the Board of Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, the Interagency Agreement # IAA17461 between the Juvenile Justice Center and the State of Washington Administrative Office of the Courts, for the term of July 1, 2016, through June 30, 2017.

HANDLING/ROUTING
 Following signature from Franklin County, route to Benton County for signature. Following signature from Benton County all four (4) originals are to be returned to Maria Loera for AOC signature.

I certify the above information is accurate and complete.

Maria Loera

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

**IN THE MATTER OF AWARDING THE INTERAGENCY AGREEMENT BETWEEN THE
BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND THE STATE OF
WASHINGTON ADMINISTRATIVE OFFICE OF THE COURTS**

WHEREAS, Benton and Franklin Counties had an Interagency Agreement with the State of Washington Administrative Office of the Courts for support of CASA programs via Benton County Resolution numbered 2015 636 and Franklin County Resolution numbered 2015 309 which is Interagency Agreement # IAA16116; and

WHEREAS, Darryl Banks, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Interagency Agreement # IAA17461 between the State of Washington Administrative Office of the Courts, and the Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing July 1, 2016 and terminating on June 30, 2017, and

WHEREAS, the new Program Agreement was not received by the State of Washington Administrative Office of the Courts until August 31, 2016 and is backdated to July 1, 2016 so that services are not disrupted and so that the Juvenile Justice Center can maximize the use of available funds effective July 1, 2016; **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 Juvenile Administrator's recommendation and hereby approves the State of Washington Administrative Office of the Courts Interagency Agreement # IAA17461. The Program Agreement is based on expenditure reimbursement in which the maximum amount is not to exceed \$104,786.00

BE IT FURTHER RESOLVED, that the Chairman is authorized to sign the attached Interagency Agreement # IAA17461; and

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

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

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

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

**INTERAGENCY AGREEMENT IAA17461
BETWEEN
WASHINGTON THE STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
BENTON/FRANKLIN COUNTY JUVENILE COURT
FOR THE
SUPPORT OF CASA PROGRAMS**

THIS AGREEMENT is made and entered into by and between the Washington State Administrative Office of the Courts (AOC), and Benton/Franklin County Juvenile Court (COURT).

IT IS THE PURPOSE OF THIS AGREEMENT for the COURT to increase the number of children served by court-appointed special advocates (CASAs) in dependency matters or to reduce the average caseload of volunteers to recommended CASA standards.

Funds received by the COURT under this Agreement may only be used to supplement, not supplant, any other local, state or federal funds received by the COURT.

STATEMENT OF WORK

The COURT shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of managing a CASA program to serve juvenile dependency cases. The COURT will ensure that the CASA program and CASA volunteers comply with the statutory requirements contained in RCW 13.34.100 - 107. The COURT will submit reports to AOC detailing information about the number of children served and the number of volunteers.

The CASA Bi-Annual Report to the Administrative Office of the Courts shall be **submitted electronically**. The required form for bi-annual reporting, which is incorporated in this agreement, is located on the Inside Courts website under 'Court Resources> Court Management' and **choose the "CASA Bi-Annual Report to AOC"**.

Reporting schedule:

Period	Report Due
07/01/16 - 12/31/16	01/31/17
01/01/17 - 06/30/17	07/31/17

Failure to submit a report by the due date may adversely affect state funding of the CASA program.

If you have questions, please contact the AOC Program Manager Yvonne Pettus at Yvonne.pettus@courts.wa.gov or (360) 705-5229

PERIOD OF PERFORMANCE

The execution of this Agreement shall constitute a ratification of an earlier verbal agreement between the parties that is now set forth in writing. Accordingly, the beginning date of performance under this Agreement is July 1, 2016 regardless of the date of execution and it

shall end on June 30, 2017, except for any remaining obligations of the Court as may exist or if terminated sooner as provided in this Agreement.

PAYMENT

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have determined that the cost of accomplishing the work herein will not exceed \$104,786. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount in writing, except as governed by the REVENUE SHARING section of this Agreement. The Court shall maintain sufficient backup documentation of direct costs under this Agreement. Costs will be reimbursed pursuant to CASA Cost Guidelines (Exhibit A).

Allocated administrative court costs must be applied at a rate that is set forth and supported by documented internal administrative rate plan that has been approved by the designated authority at the Superior Court and is readily accessible for review by AOC or the State Auditor.

BILLING PROCEDURE

The COURT shall submit monthly invoices on properly-completed Washington State form A-19 to:

AOC Financial Services
PO Box 41172
Olympia, Washington 98504-1172

Payment to the COURT for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of both properly-completed invoices and the detailed information outlined in the CASA Monthly Detail Report (see Exhibit B attached and incorporated into this agreement). Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

REVENUE SHARING

AOC, in its sole discretion and upon notice, may reallocate funding among state funded CASA programs. If it appears the COURT may not expend the maximum contract amount, AOC may reduce the maximum contract amount. AOC may increase the maximum contract amount if additional funds become available through this revenue sharing program.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of the Agreement and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The

receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. EXCEPT THAT, CASA Bi-Annual Reports will be distributed to Washington State CASA. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

BACKGROUND CHECKS

The **COURT** shall:

- Ensure a criminal background check has been completed for all employees, CASA Volunteers, and subcontractors who have access to children, prior to any access under this agreement;
- Based on the results from the criminal background check, determine each employee, CASA Volunteer, and subcontractor is suitable for access to children;
- Follow the AOC process, provided by the AOC Program Manager, for processing background checks.

The **AOC** will:

- Pay for CASA Volunteer criminal background checks.
- Provide CASA funding.

RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by AOC. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, video and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

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

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, either party may terminate this Agreement by providing written notice of such termination to the other party specifying the effective date thereof, at least five (5) calendar days prior to such date. If this contract is so terminated, the AOC shall be liable only for payment for work completed and accepted prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party

will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. Any other provisions of the Agreement, including materials incorporated by reference.

ASSIGNMENT

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

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

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

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the AOC may terminate the Agreement under the "Termination for Convenience" clause, without the five day notice requirement, subject to renegotiation under those new funding limitations and conditions. AOC, at its discretion, may also elect to amend the Agreement to reflect a budget reduction without terminating the contract if all parties agree to the amendment.

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

Darryl Banks 9/6/16
Darryl Banks, Juvenile Court Administrator

BENTON COUNTY APPROVAL

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Approved as to Form:

Stephen Hallstrom 09/02/16
Stephen Hallstrom, Deputy Prosecuting Attorney Date

Civil Deputy Prosecuting Attorney Date

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

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

Clerk of the Board: _____

Clerk of the Board: _____

EXHIBIT A
CASA COST GUIDELINES

A. PURPOSE and SCOPE

This document establishes the allowable cost guidelines for CASA reimbursements. It also sets forth the required documentation needed to support a reimbursement request. This supporting documentation needs to be retained at the local level and should not be submitted to AOC.

B. GENERAL

The legislature has previously stated that CASA funds are provided solely for court-appointed special advocate programs in dependency matters. The guidelines take into consideration the financial needs of a court working with court-appointed special advocates in dependency cases. These guidelines recognize the restrictions placed on CASA reimbursements and attempts to identify those costs that can and cannot be reimbursed.

C. ROLES AND RESPONSIBILITIES

1. Court Project Manager

- Person designated by the court to manage the CASA contract according to its terms including report preparation, scope of work, and performance
- Submits invoices, and other required documentation in an accurate and timely manner
- Keeps all supporting documentation for audit purposes for at least six years after contract expires

2. AOC Project Manager

- Acts as central contact with the court
- Oversees distribution of funds
- Approves invoices and submitted supporting documentation for CASA reimbursement
- Responds to cost and budget questions from the courts
- Reviews all reports required under the CASA agreement

3. Management Services Director

- Resolves policy and procedural issues related to CASA funding

4. AOC Comptroller

- Determines CASA annual fund allocation based on monies received from the legislature
- Periodically audits Courts to ensure reimbursement requests are supported

5. Contract Manager

- Drafts, reviews, and approves CASA agreements
- Answers questions regarding compliance with the agreements
- Provides advise on interpretation of agreement

6. State Auditor

- Audits Courts and AOC for compliance with CASA.

D. ALLOWABLE COSTS AND SUPPORTING DOCUMENTATION

1. Staff/FTE (salaries and benefits)

- Payroll record/time and attendance records related to the CASA program. If employee is not assigned fulltime to working with the CASA program then compensation reimbursement must be proportioned to the amount of time the employee works with the CASA program and must be documented by time and attendance records. NOTE: This does not mean that timesheets must be completed to track the time spent on CASA. Document the process for determining the amount of time the person(s) spend on CASA duties. For example, keep track of time for at least a week and then determine the percentage to be charged.

2. Professional Services

- General - Detailed vendor invoice to include detailed description of work performed, contract number, hours and hourly rate or time and attendance cards must be kept locally. All work must be related to the CASA program and invoice must be approved by authorizing authority (i.e. county court administrator or his or her delegate) before inclusion in reimbursement request. However, these documents do not need to accompany the invoice to AOC. They should be readily available for audit purposes.
- Attorney – Invoice must identify the specific CASA case for which reimbursement is requested, hours worked, and the hourly rate that was charged. Reimbursement is only for the legal representation of the CASA volunteer with regard to a specific case. There is no CASA reimbursement for representation of a minor child. If the CASA volunteer

has legal representation there must be a court order that: (1) states the need for the representation; and (2) identifies the attorney being appointed to represent the CASA volunteer. These documents do not need to accompany the invoice to AOC. They should be readily available for audit purposes.

3. Goods

- Supplies
 - Actual Costs - Supplies should be necessary for CASA program and may include consumable supplies. Vendor invoices should be kept locally for audit purposes.
 - Costs Allocated by Internal Administrative Rate - Supplies may be allocated, but an internal administrative rate must be documented and approved by the county court administrator. This internal administrative rate must be documented with the formula used to determine the rate. Documentation must be on file and available to AOC and State Auditor. The vendor invoices must also be on file locally.

4. Equipment

- Actual Costs – Reimbursement request does not need to include the vendor invoice if directly related to the CASA program; however, it must be kept locally. Any major purchase must be approved by AOC Project Manager prior to purchase. Major purchase is defined as purchase of an item where the cost is greater than \$500 or where the service/maintenance period on the equipment is greater than one year and could exceed \$500 in total maintenance costs. Vehicle and other high cost items are not allowable purchases.
- Costs Allocated by an Internal Administrative Rate – Equipment costs may be allocated, but reimbursement request must be documented by an internal administrative rate specific to the Court and approved by the court administrator. The internal administrative rate documentation must be on file and available to AOC and State Auditor. The vendor invoice must also be on file.

5. Training

- Reimbursement for attending the annual Washington State CASA and Children's Justice conferences. Any other paid training program where attendee is seeking reimbursement must be approved by the AOC Project Manager in advance of the training.

6. Travel

- Travel/Expense Vouchers from staff or volunteers for travel expense reimbursement for child, witness, parent or other interviews related to a case filed with the court to which volunteer or CASA staff was assigned. CASA staff or CASA volunteer may also be reimbursed for travel to and from the Washington State CASA or the Children's Justice conferences. Travel expenses to any other training programs must be pre-approved by AOC Project Manager.
 - Supporting Documentation –Travel reimbursement requests must be kept locally for audit purposes.
 - All travel expenses must be within the travel costs permitted by the AOC at the time of travel.

CASA MONTHLY DETAIL REPORT

EXHIBIT B

Administrative Office of the Courts
(submit monthly with A-19 invoice)

COURT: _____

MONTH/YEAR: _____

ADMINISTRATIVE

Computer Set-Up
CASA Membership Dues

Total \$ _____ -

STAFF/FTE

Salaries
Benefits

Total \$ _____ -

CONTRACTS/ SERVICE DELIVERY

Advertising

Total \$ _____ -

GOODS/SERVICES

- Supplies
- Communication (Telephone/Postage)
- Other (Computer/Licenses)

Total \$ _____ -

TRAVEL

- Mileage
- Per Diem
- Other (4 Registrations: Justice Conf)

Total \$ _____ -

GRAND TOTAL

\$ _____ -

<p>AGENDA ITEM: <u>Consent Agenda</u></p> <p>MEETING DATE: <u>F/C 9-21-16 B/C 10-04-16</u></p> <p>SUBJECT: <u>Agreement With Pearson VUE</u></p> <p>Prepared By: <u>Maria Loera</u></p> <p>Reviewed By: <u>Darryl Banks</u></p>	<p><u>TYPE OF ACTION NEEDED</u></p> <p>Executive Agreement <u> X </u></p> <p>Pass Resolution <u> X </u></p> <p>Pass Ordinance <u> </u></p> <p>Pass Motion <u> </u></p> <p>Other <u> </u></p>	<p>CONSENT AGENDA</p> <p>PUBLIC HEARING</p> <p>1ST DISCUSSION <u> X </u></p> <p>2ND DISCUSSION</p> <p>OTHER</p>
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BACKGROUND INFORMATION
 Benton Franklin Counties Juvenile Justice Center would like to enter into an Agreement with Pearson VUE to provide General Education Diploma (GED) testing for the Juvenile Justice Center Day Reporting Program.

Pearson VUE provides various services for the benefit of organizations who have established certain levels of education, training and/or testing experience necessary to qualify for a specified certification or other form of recognized position, title or status. Pearson VUE furnishes testing services and provides a secure and uniform testing environment high quality service and dependability.

RECOMMENDATION
 We recommend that the Boards of County Commissioners authorize their Chairs to sign the Agreement between Pearson VUE Authorized Center Agreement and Benton-Franklin Counties Juvenile Justice Center.

COORDINATION
 Coordination of the Agreement occurred as follows: Darryl Banks, Administrator; Jennifer Bowe, Administrative Services Manager, Ryan Ulwelling, Pearson VUE; and Steve Hallstrom, Benton County Deputy Prosecuting Attorney who reviewed the agreement as to form.

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

MOTION
 I move that the Chair of the Board of Benton County Commissioners, and the Chair of the Board of Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, the Agreement between Pearson VUE and the Benton Franklin Counties Juvenile Justice Center. For the term commencing on the Date of Execution and will expire twelve (12) months after the Date of Execution, unless terminated sooner. Following initial term the Agreement will automatically renew on the same terms and conditions for successive periods of one (1) year each, unless terminated earlier as provided in Agreement.

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. _____

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

RE: IN THE MATTER OF ENTERING INTO AN AGREEMENT BETWEEN PEARSON VUE AND BENTON FRANKLIN COUNTIES JUVENILE JUSTICE CENTER TO PROVIDE GENERAL EDUCATION DIPLOMA (GED) TESTING FOR THE JUVENILE JUSTICE CENTER DAY REPORTING PROGRAM

WHEREAS, Benton Franklin Counties Juvenile Justice Center would like to enter into an Agreement with Pearson VUE to provide General Education Diploma (GED) testing for the Juvenile Justice Center Day Reporting Program; and

WHEREAS, Pearson VUE provides various services for the benefit of organizations who have established certain levels of education, training and/or testing experience necessary to qualify for a specified certification or other form of recognized position, title or status. Pearson VUE furnishes testing services and provides a secure and uniform testing environment high quality service and dependability; and

WHEREAS, Darryl Banks, Administrator believes it is in the best interest of the Benton-Franklin Counties Juvenile Justice Center to provide General Education Diploma (GED) testing for the Juvenile Justice Center Reporting Day Program:

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, that the Boards concur with the Administrator's recommendation and hereby approves the Agreement between Pearson VUE and Benton-Franklin Counties Juvenile Justice Center; and

BE IT FURTHER RESOLVED, that the Chairman is authorized to sign the attached Agreement in which there is no financial obligation to the Benton-Franklin Counties Juvenile Justice Center; and

BE IT FURTHER RESOLVED, the term of the attached Agreement commences on Date of Execution and will expire twelve (12) months after the Date of Execution, unless terminated sooner. Following initial term the Agreement will automatically renew on the same terms and conditions for successive periods of one (1) year each, unless terminated earlier as provided in Agreement

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

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

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

Pearson VUE Authorized Center Agreement

OBJECT OF THE AGREEMENT

Pearson VUE is in the business of contracting to provide various services for the benefit of organizations known as Sponsors which have established certain levels of education, training and/or testing experience necessary to qualify for a specified certification or other form of recognized position, title or status. Sponsors require that dependable, high quality, secure, and uniform testing be available to be delivered electronically throughout the world. Pearson VUE furnishes testing services to Sponsors by contracting with companies which provide one or more testing centers. The testing centers provide a secure and uniform testing environment, high quality service and dependability.

Company is an organization which provides facilities for electronic testing. This Agreement sets forth the terms and conditions, responsibilities, rights and remedies which Company and Pearson VUE accept and intend to govern their relationship. Company will use Pearson VUE software and applications appropriately, operate its PVTC(s) responsibly, deliver the electronic Tests successfully, and upload Candidate results proficiently. Company shall perform Services in accordance with this Agreement, which includes, but is not limited to, the Guide.

DEFINITIONS

1. DEFINITIONS

These definitions apply to this Agreement:

- a. **Administrator**— PVTC employee(s) who has been certified under Pearson VUE's Certified Administrator Program.
- b. **Agreement**—This PVTC Agreement which includes the Guide, the Exhibits, Schedules and other related documents referred to herein.
- c. **Candidate**— An individual who registers for a Test.
- d. **Company**— The organization contracting with Pearson VUE to provide facilities for the electronic delivery of Tests.
- e. **Effective Date**— The date Pearson VUE signs and dates this Agreement.
- f. **Enhanced Equipment**— Signature pad, digital camera, camera stand, or any additional equipment as required by Pearson VUE for delivery of Tests by Company.
- g. **Guide(s)**— Pearson VUE Authorized Test Center Policies and Procedures Guide; PVTC Policies and Procedures Guide; Regulatory Policies and Procedures Guide; and Exam Sponsor Procedures for Pearson VUE Authorized Test Centers and Regulatory Exam Sponsor Documentation, all of which are inclusive, and, that set forth the testing policies and procedures, the Sponsors' requirements, and explains the use of Pearson VUE's applications. The Guides will change at Pearson VUE's sole discretion upon reasonable notice to Company. The Guides and changes to the Guides shall be found at <https://vss.pearsonvue.com>, or other site as communicated by Pearson VUE in writing. If there is a conflict between this Agreement and the Guide with respect to a nonmaterial change, the Guide(s) will govern. There may be additional Guides that set forth policies and procedures that Company is required to follow. Pearson VUE's Policies and Procedures manual that sets forth the testing policies and procedures, the Sponsors' requirements, and explains the use of Pearson VUE's applications.
- h. **Mobile Site**— PVTC that is not a fixed location and is furnished by Company for delivery of electronic testing.
- i. **PVTC**— The facilities furnished by Company for delivery of electronic testing.
- j. **RMA**— Pearson VUE Remote Maintenance Agent software that allows for the transfer of data (registrations, Tests, scores) to and from Pearson VUE.
- k. **Services**— Those actions and obligations which are to be performed by Company as specifically described in this Agreement.
- l. **Site Manager**— Pearson VUE software application that provides Candidate scheduling and site information.
- m. **Software**— All or any part of Pearson VUE owned proprietary software or non-restricted third party software, including any updates and related documentation thereto, that is licensed or sublicensed to Company.
- n. **Sponsor**— Organizations which have established certain levels of education, training and/or testing experience necessary to qualify for a specified certification or other form of recognized position, title

Pearson VUE Authorized Center Agreement

or status and who have contracted with Pearson VUE to provide electronic testing services to Candidates who are seeking to demonstrate those qualifications.

- o. **System** – Pearson VUE’s computerized system, Software and applications designed for registration, scheduling, delivery of Tests and testing. The System includes the Software, test drivers, test files, documentation and other related materials and information as specified and described in this Agreement including any documentation made a part of this Agreement.
- p. **Test** – A computer administered exercise, authorized by a Sponsor, designed to examine a Candidate’s progress or test qualification or knowledge.

RESPONSIBILITIES OF THE PARTIES

A. COMPANY RESPONSIBILITIES

1. READINESS FOR TEST DELIVERY

To begin offering testing to Candidates at the earliest possible date, Company agrees to make every effort to see that all elements of its PVTC are installed and the PVTC is fully ready for Test delivery within 30 days from receipt of the installation kit. If the PVTC is not installed within 30 days, or as otherwise mutually agreed upon in writing, Pearson VUE will have the immediate right to terminate this Agreement.

2. PVTC OPERATIONS

- a. Company will (i) furnish facilities and Services including, but not limited to, furnished building(s), testing equipment, facilities management, Candidate orientation, Test delivery, and daily system backup to provide testing for a variety of Candidates and Pearson VUE’s Sponsors and (ii) operate its PVTC, all in accordance with this Agreement and the requirements of the most recent version of the Guide. Further, Company will comply with the Software License in this Agreement.
- b. PVTC may be located at Company’s street address indicated on the signature page of this Agreement and/or the additional location(s) shown on Exhibit B, if applicable, which may be attached to this Agreement by the mutual written agreement of the parties. Each PVTC will be operated and equipped as required in this Agreement and the Guide. Company must notify Pearson VUE in writing at least 30 days in advance of any intended relocation of a PVTC or for any name change.
- c. Subject to Sponsor’s and Pearson VUE’s approval, Company will deliver Tests as authorized by Pearson VUE.
- d. Company must have a minimum of one PVTC Administrator certified and trained for Test delivery at all times. An Administrator must pass a Pearson VUE required certified administration certification exam and recertify **annually**, maintain strict security, follow all instructions from Pearson VUE, and adhere to the Rules of Conduct and Certification Agreement. Administrator is responsible for fulfilling all duties associated with the operation of the PVTC in accordance with the Guide.
- e. Sponsors prohibit PVTC Administrator’s serving as a PVTC Administrator for a Test that they hold a Sponsor certification or will be taking a Sponsor certification. Consult the Exam Sponsor Guide for specific Sponsor requirements and restrictions, including but not limited to, Cisco and Adobe. One such example is an Administrator shall not administer a Cisco exam if they hold a Cisco certification or are a Cisco certified instructor, including those that intend to pursue such certification.
- f. Company will establish and regularly update through the Pearson VUE Site Manager, a listing of PVTC employees. Company must notify Pearson VUE any time a certified Administrator is added or deleted.
- g. Company will provide and continually update its own testing availability schedule using Pearson VUE’S Site Manager. PVTC(s) will be open during the business hours Company establishes for testing.
- h. If Company anticipates changing its time(s) and/or date(s) of Test delivery, Company is responsible for determining whether there are any Candidates scheduled during that time(s) and/or date(s), and making the necessary arrangements to deliver such Tests or to reschedule such Tests accommodating Candidate’s requests. All such accommodations must be undertaken immediately to the complete satisfaction of the Candidate.
- i. Company will regularly check the Pearson VUE website and run the PVTC Report Card report detailing Candidate feedback on their testing experience. Company will make every effort to improve areas that do not meet Pearson VUE’s criteria.

Pearson VUE Authorized Center Agreement

- j. Company will continuously monitor Candidates during the entire testing process by having the Administrator be able to view all Candidates directly, or by video, **at all times**. The Administrator must be aware of all activities in the test room and be alert for any misconduct. Further, Company will not facilitate and will discourage any actions by Candidates that could be construed as cheating and will not allow any Candidate to copy or misuse the Systems or Software, applications, and any related Test materials or documentation.
- k. Within 24 hours of delivery of any Test at either a fixed or mobile PVTC, Company will report the results to Pearson VUE by running RMA software provided by Pearson VUE in accordance with the Guide.
- l. If applicable, Pearson VUE, its authorized representatives, or any Sponsor whose Tests are being administered at the PVTC, may periodically inspect and audit the PVTC operations and records during testing hours. Company Administrators will cooperate fully with all such inspections and allow complete access to the PVTC and all equipment, software, systems and records. Company will refer any questions about the inspection to Pearson VUE Support Services.
- m. Company will provide Pearson VUE with remote access to the administrator workstation and/or testing server for the purpose of recovering Test results and related records and supporting or auditing the system, except where explicitly prohibited by law.
- n. Company will maintain strict security in the storage and distribution of the Systems or Software and any copies to protect the copyright and/or trade secret rights therein, and not provide, permit access to or otherwise make available, the Systems or Software, documentation or related materials (or copies, summaries, notes or modified versions thereof), to any other party or for any other use.
- o. Additional equipment may be necessary for delivery of some Sponsor Tests, if a Company decides to proceed with delivering Tests for Sponsors that require Enhanced Equipment. Company will need to obtain the necessary Enhanced Equipment to deliver Tests for that Sponsor.

3. PVTC SPECIFICATIONS

To provide for Candidate's testing needs and meet the Sponsors' requirements, PVTC will meet or exceed the minimum specifications in the Guide and Company will:

- a. Provide a clean, comfortable, and professional environment conducive to testing Candidates which is free of distractions.
- b. Maintain a quiet Test environment by turning off or not using equipment such as printers, fax machines, copiers, and telephones while testing is in progress.
- c. Provide adequate lighting, ventilation and comfortable seating and work surface for Candidate's comfort during the testing session.
- d. Provide adequate storage for such personal belongings as pagers, note paper, books, briefcases and the like, that Candidates cannot take into the testing room.
- e. Provide access to testing services by disabled persons at least to levels required by the Americans with Disabilities Act or similar laws in force in the country where the PVTC is located.

4. CANDIDATE TESTING SPECIFICATIONS

- a. Company will monitor and administer the delivery of Tests as specified in the Guide.
- b. Company will make all reasonable efforts to resolve Candidate problems, questions or issues, but will not counsel a Candidate on Test content.
- c. Company will complete check-in and/or check-out procedures as set forth in the Guide.
- d. Pearson VUE furnished Test exhibits and/or erasable noteboards, (if required) will be given to Candidates before testing begins and will be collected at the end of the Test. Company will keep the exhibits and/or erasable noteboards in good condition and use its best efforts to prevent loss or theft of any such exhibits, including compact disks, and/or erasable noteboards.
- e. Company will provide each Candidate with a score report upon completion of the testing session, if applicable.
- f. Company must open a PVTC Incident in accordance with Pearson VUE's procedures provided in the Guide, or when an unusual situation occurs, including, but not limited to, any cheating, copying or misuse of any Systems or Software, applications and any related Test materials or documentation. Incidents are created using the Pearson VUE Support Services Web page. In addition, Company shall call Pearson VUE Support Services immediately upon discovery of any cheating, copying or misuse of any Systems or Software, applications and any related Test materials or documentation and/or theft or misplacement of any confidential information or materials (exhibits, software, applications and the like) as well as any computer media or hardware.

5. PVTC SYSTEM SPECIFICATIONS

Pearson VUE Authorized Center Agreement

This Agreement incorporates the then-current technical and system requirements for PVTC sites, located at the following link http://www.pearsonvue.com/pvtc/technical_reqs.pdf, or other site as communicated by Pearson VUE in writing. Company agrees to meet the system requirements and specifications for testing stations, administrator station, shared file storage, software licenses, virus prevention, internet access, backups, printers and other peripherals as provided in the most recent revision of the Guide. Company understands and hereby acknowledges that such incremental enhancements of hardware and software are inherent and essential to the provision of electronic test delivery services and that the system requirements and specifications required at the PVTC will change periodically, in response to Sponsor's and/or Pearson VUE's need to maintain industry standards. Company agrees to update its hardware and software to meet or exceed such requirements.

6. TEST FEES

Sponsors determine the maximum testing fees for each of their Tests. Company will not collect from Candidates a sitting fee, administration charge, or any other fee, payment, cost, or charge over and above the testing fee determined by Sponsor, except for a country-wide or regional value added tax (VAT) pursuant to the laws of the applicable jurisdiction.

B. PEARSON VUE RESPONSIBILITIES

1. SUPPORT MATERIALS

Pearson VUE may provide the Tests, operating procedures, Test Administrator training and support for the operation of the PVTC. Pearson VUE may furnish testing exhibits (written and electronic), if any, to Company. Pearson VUE will furnish training materials to Company to provide training to Company's Test Administrators.

2. CANDIDATE SCHEDULE

Pearson VUE will electronically provide Company with a daily Candidate Schedule.

3. INCIDENT REPORTING SYSTEM

Pearson VUE will provide a browser accessible incident reporting system and report card data.

GENERAL TERMS AND CONDITIONS

1. TERM

The term of this Agreement ("Term") will commence on the Effective Date and will expire twelve months after the Effective Date, unless terminated earlier as provided in this Agreement. Following the initial Term, this Agreement will automatically renew on the same terms and conditions for successive periods of one year each, unless terminated earlier as provided in this Agreement. Nothing in this Agreement shall be interpreted as requiring either party to renew or extend this Agreement.

2. SUSPENSION / DEACTIVATION

If Pearson VUE determines, or has a reasonable basis to believe that Company, or its representatives, have committed or permitted misconduct or failed to comply with responsibilities, specifications, technical specifications, or other requirements in this Agreement or the Guide, Pearson VUE may suspend testing until it is resolved to Pearson VUE's satisfaction.

3. TERMINATION / DEAUTHORIZED

- a. Either party may terminate this Agreement without cause by giving the other at least 30 days prior written notice. For any actual or threatened breach of this Agreement, or with cause of any kind, Pearson VUE may immediately terminate this Agreement. Termination will be in addition to any other remedies either party may have.
- b. Subject to any right of set off or other remedy, termination will not affect: (i) payment for Services furnished prior to termination; (ii) Company's and Pearson VUE's compliance with this Agreement for Services actually furnished; or (iii) payment/reimbursement from Company to Pearson VUE for any Candidate Testing Fees collected or vouchers purchased by Company from Pearson VUE.
- c. If Company subcontracts, sells, or otherwise transfers or assigns, Company's business, or any part thereof, including responsibility for the Services described in this Agreement, without Pearson VUE's prior written consent, Pearson VUE may, in its sole discretion, temporarily suspend testing, and immediately terminate this Agreement.
- d. Notwithstanding any provision contained in this Agreement to the contrary, a party to this Agreement may immediately terminate this Agreement, upon written notice to the other party in the event that the other party makes an assignment for the benefit of its creditors; is unable to pay its

Pearson VUE Authorized Center Agreement

debts as they become due; files a voluntary petition in bankruptcy; is adjudicated to be a bankrupt or an insolvent debtor; files a petition seeking for itself any reorganization; or consents to or acquiesces in the appointment of a trustee, receiver or liquidator. In the event a proceeding seeking involuntary reorganization, or similar relief is filed against one of the parties to this Agreement, which is not dismissed within one (1) month after filing, or if any trustee, receiver or liquidator of a party or any substantial part of a party's business assets, or properties is appointed without the party's consent or acquiescence and such appointment is not vacated within one (1) month after such appointment, then in such event, the other party shall have the right to terminate without notice.

- e. At the expiration or termination of this Agreement, Company agrees to abide by the expiration or termination steps in the Guide.

4. CONFIDENTIALITY

Company acknowledges and agrees that: (a) confidentiality and security of Tests, exhibits and other materials related to Tests, and other materials related to Sponsor's standards, requirements and testing is highly confidential to Sponsor and to Pearson VUE; and (b) information and data identifying or describing Candidates, Candidates' scores and performance, Candidates' participation in testing and other information relating to each Candidate is private, confidential information of Candidate and is highly confidential to Candidate, Sponsor and Pearson VUE; and (c) the System, software, applications, Test files, manuals, the Guide, PVTC materials and related materials in any medium provided by Pearson VUE are private and confidential business information of Pearson VUE, and accordingly, Company will scrupulously maintain the security of the Tests, testing information and Candidate data and information described in (a) and (b) above, and will undertake all necessary and appropriate efforts, but never less than reasonable care, to protect the confidentiality of all of the information and materials described in this Section and to prevent any unauthorized use or disclosure. Confidential information also includes other information that should reasonably have been understood because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be confidential information. Confidential information shall expressly include any and all information derived from a party's proprietary information and the terms and conditions of this Agreement. Pearson VUE's confidential information shall include any software provided hereunder. No information or materials provided under and pursuant to this Agreement will be used, disclosed or permitted to be used by Company for any purpose not expressly provided for in this Agreement. Company acknowledges and agrees that the requirements set forth in this Section are of the most critical importance to Pearson VUE, Sponsors and Candidates and that any breach will likely result in severe damage. Each party acknowledges that it acquires only the right to use the confidential information of the other party under the terms and conditions of this Agreement for as long as this Agreement is in effect and does not acquire any rights of ownership or title in the confidential information. Each party agrees not to use such confidential information for any purpose not reasonably required by this Agreement. The requirements of this Section are perpetual and will survive the termination or expiration of this Agreement for any reason.

Notwithstanding anything herein, either party may disclose confidential information to the extent required or compelled by a court order, or local, state or federal law, or regulation, provided that the disclosing party, using best efforts, gives the other party written notice of the proposed disclosure with sufficient time to seek relief and that such disclosure, if made, is made in a fashion to maximize the protection of the confidential information from further disclosure.

Company recognizes and acknowledges that any use or disclosure of any confidential information by Company in a manner inconsistent with the provisions of this Agreement may cause Pearson VUE irreparable damage for which remedies other than injunctive relief may be inadequate, and Company agrees that in any request by Pearson VUE to a court of competent jurisdiction for injunctive or other equitable relief seeking to restrain such use or disclosure, Company will not maintain that such remedy is not appropriate under the circumstances. The parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.

5. USE OF MARKS, ETC.

Company may use or make reference to Pearson VUE or any trade names, trademarks, service marks, logos or other designations of Pearson VUE only to the extent and in the manner which is expressly provided for in writing by Pearson VUE, which will be subject to modification or rescission by Pearson VUE at any time. All use which is not in the exact manner provided by Pearson VUE will be submitted

Pearson VUE Authorized Center Agreement

to Pearson VUE for prior approval in writing before any publication thereof. Use by Company of any trade names, trademarks, service marks, logos or other designations of Sponsors will be strictly subject to express prior written permission of the Sponsor or Pearson VUE. Upon expiration or termination of this Agreement, Company will cease any reference to Pearson VUE permitted by this Agreement and any reference to, or use of, any Pearson VUE trade names, trademarks, service marks, logos or other designations.

6. **INSURANCE COVERAGE**

Company is self-insured and Pearson VUE understands that Company participates in a formal self-insurance program to fund the potential legal liability associated with those exposures that may otherwise be covered by Commercial General Liability Insurance.

7. **LIABILITY**

Notwithstanding anything contained in this Agreement, in no event shall Pearson VUE be liable to Company for any incidental, consequential, special, exemplary or other indirect damages, or for lost profits, lost revenues, or loss of business arising out of this Agreement, regardless of the cause of action, even if Pearson VUE has been advised of the likelihood of damages. Pearson VUE's aggregate liability for any claim arising under this Agreement shall not in any event exceed an amount equal to the Test delivery and registration fees paid by Pearson VUE to Company during the twelve months preceding the date of the claim.

8. **EXCLUSION OF WARRANTIES**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE. SOFTWARE PROVIDED BY PEARSON VUE IS NEITHER WARRANTED NOR EXPECTED TO BE FREE FROM ERRORS.

9. **MONITORING PERFORMANCE INTENTIONALLY LEFT BLANK.**

10. **GENERAL PROVISIONS**

- a. Company may not assign, subcontract or otherwise transfer its rights or obligations under this Agreement without Pearson VUE's prior written consent. Any prohibited assignment will be void. Company will advise Pearson VUE promptly of any anticipated transfer or other material change in the status of Company or the PVTC. Subject to the foregoing limitations, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs and assigns.
- b. This Agreement will be governed by and construed and enforced in accordance with the laws of the state of where PVTC is located in the United States. If any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, the court may modify such provision to make it valid, legal, and enforceable. All remaining provisions of this Agreement shall remain in full force and effect.
- c. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled, or waived in whole or in part, except by written amendment duly executed by the parties hereto.
- d. This Agreement is the entire agreement of the parties and supersedes all prior oral or written proposals and communications related to this Agreement. Company acknowledges it has not been induced to enter into this Agreement by any oral or written representations or statements not contained in this Agreement.
- e. Neither party is responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control and without its fault or negligence, provided that, as promptly as reasonably possible: (i) notice of any actual or anticipated failure is given; and (ii) such cause is eliminated and failure cured.
- f. **Payment of Taxes**
 - 1) **Taxes on Sales by Company** - Company has the sole responsibility for the collection and remittance of all applicable taxes (including any sales tax, use tax, value-added tax, consumption tax, goods and services tax, gross receipts tax and any other tax lawfully imposed on fees or other amounts associated with Company's sales transactions) based on any sales by Company, including the sale of Tests.
 - 2) **Taxes on Fees paid by Pearson VUE to Company** - It is Company's responsibility to invoice Pearson VUE, if Pearson VUE is required to pay any applicable tax on any fee Pearson VUE pays to Company under this Agreement, (including any sales tax, use tax, value-added tax, consumption tax, goods and services tax, gross receipts tax and any other tax lawfully imposed on fees or other amounts associated with Pearson VUE's payment of fees to Company).

Pearson VUE Authorized Center Agreement

- g. Company warrants:
- (i) that its performance under this Agreement will not compromise any relationships or create a conflict of interest for Company, nor, to the best of Company's knowledge and belief, for Pearson VUE or any other party. Company will notify Pearson VUE of any potential conflicts of interest;
 - (ii) that its Services under this Agreement will be performed in accordance with all applicable United States federal, state, and local laws and regulations, and with all applicable laws and regulations in the country where the PVTTC is located;
 - (iii) it shall (a) conduct business in conformance with sound ethical standards of integrity and honesty and in compliance with all applicable laws; (b) conduct business in such a way as to not give the appearance of impropriety, even when the behavior or activity is in compliance with the law; (c) not achieve business results by illegal acts or unethical conduct; (d) comply with U.S. and local anti-bribery laws, such as the United States Foreign Corrupt Practices Act, United Kingdom Bribery Act, and other similar local laws; (e) prohibit the Company, its employees, agents and subcontractors (and all contractors of the Company) from offering, paying or authorizing financial or other advantage to be given to any official or employee of any government or political party, political candidates or employees of government enterprises (each, an Official) for the purposes of (1) obtaining an improper business advantage; (2) influencing such Official to take, or not to take, any action or decision; or (3) inducing such Official to use his or her influence to affect any act or decision of a government; and (f) provide employees and any contracted individuals engaged by a party with a work environment free of coercion and harassment. (These laws include, but are not limited to, laws governing international business, trade embargoes, boycotts, import and export administration, housing and health, processing or transmission of personal data, laws guaranteeing nondiscrimination against persons based on sex, race, creed, physical disability or other protected category.); and
 - (iv) that all software used in performing its obligations under this Agreement will have been legally obtained from legitimate sources.
- h. This provision shall not be construed to limit Company's rights, claims or defense which arise as a matter of law pursuant to any provisions of this Agreement, including but not limited to any claim or defense to the fullest extent permissible by law, Company will indemnify, defend and hold Pearson VUE harmless against, all claims or demands of any nature brought by others against Pearson VUE, (including, but not limited to, reimbursement of reasonable costs incurred by Candidates scheduled but unable to take a Test), unless and to the extent the failure to test is due to the fault of Pearson VUE, the Candidate, the Sponsor or Force Majeure, which may arise from alleged or actual acts, representations, or omissions which, if proven, would constitute Company's breach of its duties under this Agreement.
- i. This provision shall not be construed to limit Company's rights, claims or defense which arise as a matter of law pursuant to any provisions of this Agreement, including but not limited to any claim or defense to the fullest extent permissible by law, Company will indemnify, defend and hold Pearson VUE harmless against any liability for injury or damage caused by Company to persons or property during the performance of this Agreement and all claims of loss or damage arising from Company's or Candidate's use of the PVTTC. Neither the existence of, nor the assent of Pearson VUE to, the types or limits of insurance carried by Company will be considered a waiver or release of Company's liability or responsibility under this Agreement.
- j. Any notice to be given under this Agreement will be in writing and will be deemed given and effective (i) when delivered personally, by fax, telex, or telecopier, or (ii) when received if sent by overnight express or mailed by certified, registered mail, postage prepaid, return receipt requested, addressed to a party at its address indicated on the signature page, or to such other address as such party may designate by written notice in accordance with the provisions of this Section. Email notice may be considered written notice if receipt of such notice is confirmed by reply email or other electronic means.
- k. Company is an independent contractor under this Agreement and is not part of a partnership, employment, principal-agent, franchisor-franchisee or similar relationship with Pearson VUE.
- l. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall be enforced to the maximum extent possible.

Pearson VUE Authorized Center Agreement

- m. Failure of either party to enforce its rights on one occasion will not operate as a waiver of said rights or any other rights on any other occasion.
- n. **INTENTIONALLY LEFT BLANK.**
- o. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

SOFTWARE LICENSE

1. GRANT

Pearson VUE grants Company, who hereby acknowledges and accepts, a personal, non-transferable, non-sublicenseable, non-assignable and nonexclusive limited term license or sublicense ("License") to use one copy of the Software provided by Pearson VUE to Company, on a single or multiple processor within Company's PVTC and to store in, transmit through or display the Software on peripheral units directly associated with Company's delivery of Services to Candidates.

2. TERM OF AGREEMENT

The Software License term is concurrent with Company's appointment as a PVTC for Pearson VUE under this Agreement and all rights and privileges hereunder will terminate when such appointment terminates or expires.

3. TITLE

Software title and ownership, including any modifications, will remain at all times with Pearson VUE or Pearson VUE's licensor.

4. PROVIDING SOFTWARE

Pearson VUE shall provide to Company a copy of the Software in machine-readable object code and user documentation. Revisions deemed appropriate by Pearson VUE will be provided by Pearson VUE to Company at no additional cost.

5. USE

Company agrees to the following restrictions on its use of the licensed or sublicensed Software:

- a. To use the Software exclusively to administer Tests provided by Pearson VUE as described in and subject to the terms and conditions of this Agreement.
- b. To limit the use of all Software copies and versions thereof to the use provided for herein and to make copies solely for emergency backup purposes for such use.
- c. To include appropriate copyright notices on all copies of the Software and documentation, and to explicitly follow Pearson VUE's additional instructions, if any, relating to copyright protection of the Software, documentation and related materials.
- d. To maintain strict security in the storage and distribution of the Software and any copies to protect the copyright and/or trade secret rights therein, and not provide, permit access to or otherwise make available, the Software, documentation or related materials (or copies, summaries, notes or modified versions thereof), to any other party or for any other use.
- e. Not to reverse engineer, decompile, disassemble, create derivative works from, alter, modify or otherwise vary the Software without the express, written consent of Pearson VUE (such authorized alteration or modification not to limit or alter the copyright or trade secret rights).

6. TERMINATION

If Company attempts to sell, remove, duplicate without authorization, transfer, encumber, part with possession of, or sublet the Software, or any portion thereof, or any modification or version thereof; or upon discontinuance of the use of the Software by Company, the Software License granted by this Agreement shall terminate automatically and all copies of the Software and documentation (in any medium and including summaries, notes and the like) shall be immediately returned to Pearson VUE at Company's sole cost and expense. Upon termination for any reason by either party, and within ten days of such termination, all copies of the Software and documentation (in any medium and including summaries, notes and the like) shall be returned to Pearson VUE by Company without delay by delivering all such items to Pearson VUE's place of business, complete and in good order and condition.

7. LIABILITY

Pearson VUE Authorized Center Agreement

Company, having possession of and control over the Software, shall be responsible for its use, operation, storage, management and safety. Consequently, except to the extent that damage or injury is caused by Pearson VUE's negligence or the intentional misconduct of Pearson VUE's employees, Company assumes the risk and sole responsibility for damage or injury to equipment, Software, personal property or to third parties caused by Company's use or possession of the Software, and Company shall be obligated to protect itself against any such occurrences, including claims by Company's employees or any other persons or organizations with which Company does business, all at Company's sole cost and expense.

8. PEARSON VUE REMEDIES

It will be a default and breach of the Agreement if Company fails to perform any of its obligations under this Software License, or if Company becomes insolvent or makes any assignment for the benefit of its creditors, or if any proceeding under the bankruptcy laws or comparable statute is commenced by or against Company, or a writ of attachment or execution is levied on any item of the Software and such proceeding is not terminated or such writ is not satisfied or released within 15 days after attachment of levy. On Company's default, Pearson VUE at its sole option may require Company to return any or all copies of the Software and documentation (in any medium and including summaries, notes and the like) or pursue any other remedy at law or in equity. Any taking of possession of the Software shall not release Company from any of its obligations hereunder unless Pearson VUE, or its assignee, notifies Company in writing. If it is necessary for Pearson VUE to enforce this Software License or any of its terms, Company shall pay all costs related to such enforcement.

9. GENERAL

Without Pearson VUE's prior written consent, Company will not sell, assign, sublet, pledge, otherwise encumber or permit a lien to exist against any interest in this Software License, or remove the Software from its place of installation.

Pearson VUE Authorized Center Agreement

Exhibit A – No Payment Schedule for Academic or Correctional Facilities

Site Name Benton Franklin Counties Juvenile Justice Center
Site ID master

All other Exhibit As, if there are any, are deleted in their entirety and replaced with this Exhibit A effective as of the date signed by Pearson VUE.

This Exhibit A – No Payment Schedule is governed by and incorporated by reference into the Pearson VUE Authorized Center Agreement (“Agreement”) as executed between Company and NCS Pearson, Inc. (“Pearson VUE”).

PAYMENTS

- a. **Payment of Fees by Pearson VUE to Company**
The parties agree that Pearson VUE shall not provide any payment to Company for any Test delivered under the Agreement.
- b. **Payments by Company to Pearson VUE**
If Company owes any payment to Pearson VUE in connection with, or pursuant to, this Agreement, Company agrees to pay Pearson VUE, in full, any amounts not in dispute, within 30 days of the invoice date (“Invoice Expiration Date”), any amounts invoiced by Pearson VUE. In addition, Company agrees to pay, at its own expense, any banking transaction fees (such as wire transfer fees which Company shall pay in advance, and non-sufficient fund fees), including those fees charged by any intermediate banks or financial institutions involved in the process of Pearson VUE receiving payment. At its sole discretion, Pearson VUE may charge Company the lesser of \$30 USD or the maximum amount allowed by applicable law if any payment by check, draft or other instrument is not honored by the financial institution upon which it is drawn. If Company does not pay the invoiced amount before the Invoice Expiration Date, Pearson VUE may take all steps it deems necessary, subject to applicable law, to collect the outstanding amount without prior notice of default. Company shall not offset any amount invoiced by Pearson VUE against any amount that is, or may be, payable by Pearson VUE to Company under this Agreement without Pearson VUE’s prior written approval. Company understands that failure to make payment, of undisputed amounts, within 90 days of Pearson VUE’s invoice date shall constitute a breach of this Agreement.

Except as explicitly amended by this Exhibit A, all terms and conditions of the Agreement, as amended, remain unchanged and fully enforceable to the extent permitted under applicable laws.

Company
Signature 
Print Name Darryl Banks
Title Administrator
Date 08/15/2016
Email address Darryl.Banks@co.benton.wa.us

NCS Pearson, Inc.

Signature Ryan Ulwelling (Aug 23, 2016)
Print Name Ryan Ulwelling
Title _____
Date Director, Global Selects

160815

Pearson VUE
5601 Green Valley Drive
Bloomington, MN 55437

**Benton Franklin Counties
Juvenile Justice Center**
5606 W Canal PL STE 106
Kennewick WA 99336-1388

Ryan Ullwelling
Ryan Ullwelling (Sep 9, 2016)

Daryl Banks 8-17-16

160815
Ryan Ullwelling, Director Date

Daryl Banks, Administrator Date

BENTON COUNTY APPROVAL

Approved as to Form:

Stephen Hallstrom 08/16/16
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: _____
Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	CONSENT AGENDA xx
MEETING DATE: FC 09/21/16 BC 10/04/16	Executive Contract XX	PUBLIC HEARING
SUBJECT: Personal Services Contract with Darin R. Campbell	Pass Ordinance XX	1 st DISCUSSION
Prepared By: Maria Loera	Pass Motion	2 nd DISCUSSION
Reviewed By: Darryl Banks	Other	OTHER

BACKGROUND INFORMATION

Darin R. Campbell wishes to contract with the Benton-Franklin Counties Juvenile Justice Center to provide legal services for Attorney representation of persons in all BECCA cases/matters.

SUMMARY

The attached Personal Services Contract commences on October 1, 2016 and expires on September 30, 2017.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Personal Services Contract between Darin R. Campbell and the Benton-Franklin Counties Juvenile Justice Center for services.

COORDINATION

Coordination of the contract occurred as follows: Maria Loera, Senior Administrative Secretary who compiled the contract; Stephen Hallstrom, Benton County Deputy Prosecuting Attorney; Darin R. Campbell and Darryl Banks, Administrator for the Benton-Franklin Counties Juvenile Justice Center.

FISCAL IMPACT

These are state funds whereby we are reimbursed for services which are incorporated in the Juvenile Court's budget. Amount not to exceed \$31,000.00 to be paid out of Fee For Services Dept. 173. No Supplemental required.

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 Personal Services Contract with Darin R. Campbell.

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. _____

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

RE: IN THE MATTER OF AWARDING DARIN R. CAMPBELL A PERSONAL SERVICES CONTRACT FOR ATTORNEY REPRESENTATION OF PERSONS IN ALL BECCA CASES/MATTERS

WHEREAS, per Resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but 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, Benton Franklin Counties Juvenile Justice Center would like to enter into a Personal Services Contract with Darin R. Campbell for Attorney Representation of persons in all BECCA cases/matters; and

WHEREAS, the Juvenile Administrator recommends entering into a Personal Services Contract;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Benton County Commissioners, Benton County, Washington; and the Board of Franklin County Commissioners, Franklin County, Washington, concur with the Juvenile Administrator's recommendation and hereby awards the Personal Services Contract to Darin R. Campbell in an amount not to exceed \$31,000.00; and

BE IT FURTHER RESOLVED, that the Chairman is authorized to sign the attached Personal Services Contract; and

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

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

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

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

**BENTON-FRANKLIN COUNTIES
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 and Franklin County, a political subdivision of the State of Washington, 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 **Darin R. Campbell**, attorney at law, Washington State Bar Association #21301 with his principal office at 1030 N. Center Parkway, Ste. 307, Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin **October 1, 2016** and shall expire on **September 30, 2017**. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

2. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. The Contractor will provide legal services for Attorney representation of persons in all BECCA cases/matters.
- 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 COUNTIES.
- c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- e. The CONTRACTOR shall confer with the COUNTIES from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as

may be requested by the COUNTIES.

3. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR: **Darin R. Campbell**
1030 N. Center Parkway, Ste. 307
Kennewick, WA 99336
Phone: (509) 735-5070
Email: dcampbelllaw@hotmail.com
- b. For COUNTIES: **Darryl Banks, Administrator**
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 222-2316
E-mail: darryl.banks@co.benton.wa.us

4. COMPENSATION

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

- a. Attorney shall be paid as professional service attorney fees, the sum of \$2,572.63 per month for Attorney's representation of persons in all BECCA cases/matters under this Contract.
- b. In the event that public funding for BECCA Programs is lost or reduced the parties will renegotiate in good faith adjustment compensations.
- c. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this CONTRACT shall not exceed \$31,000.00.
- d. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- e. The CONTRACTOR may submit invoices to the COUNTIES not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTIES during the billing period. The COUNTIES

shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.

- f. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTIES.
- g. 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 COUNTIES 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.
- h. 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.

5. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTIES.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTIES.

6. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and

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 Counties. 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 COUNTIES, its officers, officials, employees or agents.

- b. Contractor acknowledges and represents that Contractor currently does not have any employees and, therefore, does not maintain workers compensation, disability benefits, or other employee benefits. In any and all claims against the COUNTIES, its officers, officials, employees and agents by any future employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section [6] 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.

7. INSURANCE

- a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the CONTRACTOR shall secure and maintain at its own expense Professional Liability Insurance appropriate to the CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR'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. CONTRACTOR 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. CONTRACTOR shall annually provide COUNTIES with proof of all such insurance.

- b. **Workers Compensation:** Contractor acknowledges and represents that Contractor currently does not have any employees and, therefore, does not maintain workers compensation insurance. To the extent Contractor hires any employees; however, Contractor shall comply with all State of Washington workers compensation statutes and regulations. 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.

Except as prohibited by law, Contractor waives all rights of subrogation against the Counties for recovery of damages to the extent they are covered by workers compensation, employer's liability, commercial liability or commercial umbrella liability insurance.

If Contractor, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and Counties incur fines or are required by law to provide benefits to or obtain coverage for such employees, Contractor shall indemnify the Counties. 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 Counties by Contractor pursuant to the indemnity agreement may be deducted from any payments owed by Counties to Contractor for performance of this Contract.

- c. **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
\$1,000,000 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 COUNTIES, 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 COUNTIES.

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 [6]. 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

- d. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (CA0001), or equivalent coverage, in the amount of not less than one hundred thousand dollars (\$100,000) per accident for Bodily Injury and Property Damage

combined for any vehicle used in conjunction with the provision of services under this contract 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. CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by Auto Liability Insurance.

e. **Other Insurance Provisions:**

1. The CONTRACTOR'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.
2. The CONTRACTOR'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 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.
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, except for professional liability under Section [7(a)], shall be written on an

Occurrence Policy form.

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 Benton and Franklin 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 CONTRACTOR, other than Professional Liability, Auto Liability and Workmen's Compensation, shall specifically include the COUNTIES as an "Additional Insured" 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 CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance are to be provided to the Counties Contract Representative referenced in Section 4.b.
3. All written notices under this Section [7] and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES Contract Representative referenced in Section 4. b.
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 and Franklin Counties Risk Manager at the following address:
Benton-Franklin Counties Juvenile Justice Center 5606
W. Canal Place, Suite 106 Kennewick WA 99336.

8. TERMINATION

- a. The COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determines, in its sole discretion, that such termination is in the best interests of the COUNTIES. The COUNTIES may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTIES 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 COUNTIES 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 COUNTIES 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 COUNTIES, the COUNTIES may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTIES shall pay the CONTRACTOR only for the costs of services accepted by the COUNTIES, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTIES, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTIES in completing the work and all damage sustained by the COUNTIES by reason of the CONTRACTOR'S breach.

9. 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 COUNTIES.
- 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.

10. 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.

11. 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 COUNTIES. 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 [4] of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTIES 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 COUNTIES.
- 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 COUNTIES contract representative or designee.

12. COMPLIANCE WITH LAWS

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

13. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

14. 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.

15. 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 COUNTIES. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTIES 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 Counties upon request or at the end of the job using the word processing program and version specified by the COUNTIES.

16. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTIES, 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 COUNTIES of any notice of such claim.

17. DISPUTES

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

18. CONFIDENTIALITY

The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the COUNTIES or acquired by the COUNTIES in performance of this Contract, except upon the prior written consent of the COUNTIES or an order entered by a court of competent jurisdiction.

The CONTRACTOR shall promptly give the COUNTIES written notice of any judicial proceeding seeking disclosure of such information.

19. CHOICE OF LAW, JURISDICTION AND VENUE

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton and Franklin Counties, Washington.

20. SUCCESSORS AND ASSIGNS

The COUNTIES, 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.

21. 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.

22. 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.

23. 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.

24. 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 [6] and [16]); extended reporting period requirements for professional liability insurance (Section [7(a)]); inspection and keeping of records and books (Section [13]); litigation hold notice (Section [25]); Public Records Act (Section [26]) and confidentiality (Section [18]).

25. LITIGATION HOLD NOTICE

In the event the COUNTIES learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section [13] of this agreement may be of evidentiary value, the COUNTIES 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 COUNTIES 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 [13].

26. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTIES 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 COUNTIES may be required by virtue of that Act to disclose any records actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTIES by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTIES 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 COUNTIES release of records covered under the Public Records Act. COUNTIES 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.

The parties to this Contract have executed this Contract to take effect as of the date written below.

**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
<p>Requested meeting date: October 4, 2016 Presentation length: Presenting elected office/department: OPD Prepared by: Eric Hsu Reviewed by: Loretta Smith-Kelty</p>	

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts and a resolution for the same has been presented contemporaneously. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, are hereby presented for execution to replace the bi-county contracts being terminated.

SUMMARY

The bi-county public defense contracts with the above referenced attorneys are proposed to be terminated. Replacement Benton County-only contracts are proposed for execution.

RECOMMENDATION

Execute all attached contract for public defense services. Approve resolutions as proposed.

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 SUSAN HENWOOD FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT REPRESENTING CHILDREN ON DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS MATTERS.

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court to children in dependency and termination of parental rights matters ("Cases"); 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, attorney Susan Henwood ("Attorney") currently already provides public defense services on Cases by and through a joint contract with Franklin County but that contract is being terminated as provided in the resolution being presented contemporaneously with this resolution; and

WHEREAS, Attorney has performed services on Cases satisfactorily and it appears to be in the best interests of Benton County to re-contract with her (on a Benton County-only basis) for the same services on Cases;

NOW THEREFORE, BE IT RESOLVED THAT contract BCJUV1618SDH001 with maximum Annual compensation of \$34,300.56 initially (with increases as allowed in the contract) plus trial per diems, and other allowable costs and expenses, with payment of such compensation to be split between Benton and Franklin Counties pursuant to the cost-sharing resolution presented contemporaneously with this resolution, 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 JUVENILES IN BENTON
COUNTY JUVENILE COURT
(DEPENDENCY CASELOAD)**

CONTRACT SUMMARY			
Contract Type	Juvenile – Dependency		
Contract Number	BCJUV1618SDH001	Contract Holder	Susan D. Henwood
WSBA #	33843	Effective Dates	10/1/16 – 12/31/18
Caseload Cap	30	Compensation	\$2858.38

THIS AGREEMENT is entered into by and between **Susan D. Henwood**, attorney at law, Washington State Bar Association # **33843** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions ("County"), for and on behalf of the Benton-Franklin County Superior Court.

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

- A.** The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively "Civil Proceedings") in the Juvenile Division of the Benton-Franklin Counties Superior Court (the "Juvenile Court Division" or "Juvenile Court").
- B.** Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.
- C.** While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **October 1, 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 (or has access to) an office adequate and appropriate for the practice of law at **1030 N. Center Parkway, Ste 316, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **509-366-8078 and 509-222-2223**, respectively; and Attorney's current office/work e-mail address is **nsndhenwood@gmail.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton-Franklin County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile 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 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; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; 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 other 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 potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is 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 within five (5) business days if any event specified in paragraph 3.a.(i) 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 the County, to immediate termination.

(iii) Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in their sole discretion, even at times 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.

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

(v) Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDMs of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if the County is timely notified by Attorney, the County may elect, at its sole discretion, to terminate this Agreement and, if they elect to do so, may do so with ten (10) days written notice to Attorney:

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

- (c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or
- (d) Any crime of dishonesty or deception.

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

c. 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 effectively 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.

d. 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 PDMs 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 attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, 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' 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 19.b. below.

f. 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 ATTORNEYS.

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. CASE APPOINTMENTS. During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (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 Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.
- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or

any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest.

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 adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, 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 program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only). The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of

providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

This paragraph is not applicable to this Agreement, but has been retained for internal referencing and formatting consistency.

9. **CLIENT ELIGIBILITY.** The Juvenile 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 Juvenile Court of such possibility for purposes of the 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 Juvenile 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 Juvenile 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 Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile 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 Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION AND 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/adjudication (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Juvenile Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, 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-adjudication reviews.

a. Without limiting Attorney's obligation to initially meet with a juvenile client 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 with such person 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) or otherwise as soon thereafter as reasonably possible.

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) or otherwise as soon thereafter as reasonably possible. 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.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. MONTHLY COMPENSATION.

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation for the remainder of 2016 shall be \$2,858.38 and, for the remainder of the term of this Agreement, shall increase at a rate

equal to the cost of living increase provided to the bi-county non-bargaining employees at the Benton-Franklin Counties Juvenile Justice Center, effective prospectively on the date of the increase (with no retroactivity).

c. 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. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of \$300 per full day and \$150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **\$65.00 per hour** up to a maximum aggregate amount of \$5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County.

All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to a juvenile client'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 or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will 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 pre-authorization 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 PDM-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 eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's

request) and that has attached thereto a copy of the PDM's pre-authorization 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 claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM 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 claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of 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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any

immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall

be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile 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 is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/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 Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto 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 JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic 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 such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile 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 Juvenile Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court 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 if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). 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. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned 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 public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his 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 Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) 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 PDMs) 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 and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly 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 PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA 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. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration 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 persons in Juvenile Court.

23. **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.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Juvenile 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 PDMs' prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDMs' sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. 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 Benton-Franklin Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days 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 or Franklin 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 or Franklin 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.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton-Franklin County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@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.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and

policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGERS** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County have the right and discretion to direct the PDMs to assume and fulfill various roles and functions under this Agreement. Though the PDMs 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 with the PDMs (and their designees), and to promptly comply with reasonable requests from the PDMs (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under 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.

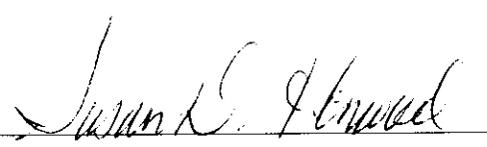
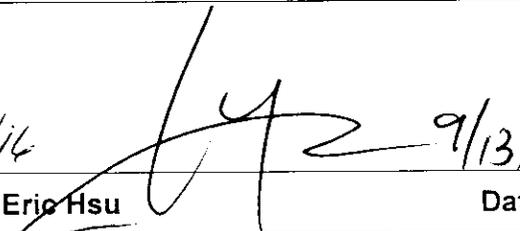
Attorney	Benton County Office Of Public Defense
	
Susan D. Henwood	Eric Hsu
Date	Date
09/13/16	9/13/16
BENTON COUNTY APPROVAL By: _____ Name: _____ Title: <u>Chairman, Board of Commissioners</u> Date: _____ Attest: Clerk of the Board: _____	

EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County (“Counties”) are obligated by law to provide indigent defense services (“Services”) in Benton and Franklin County Juvenile Court to affected children in dependency cases (“Cases”); 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, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders (“Defenders”) to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of \$2,858.38 (for 30 case contracts) and \$5,777.12 (for 60 case contracts) total per month (“Total Compensation”), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center (“JJC”) accurately reflects the proportional caseload of Cases for each County; and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of \$2,858.38 for 30 case contracts and \$5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton-Franklin Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this day of , 20

Chairman of the Board

Chairman of the Board

Chairman Pro-Tem

Chairman Pro-Tem

Member
Constituting the Board of County
Commissioners, Benton County
Washington

Member
Constituting the Board of County
Commissioners, Franklin County
Washington

Attest:

Attest:

**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: October 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts and a resolution for the same has been presented contemporaneously. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, are hereby presented for execution to replace the bi-county contracts being terminated.

SUMMARY

The bi-county public defense contracts with the above referenced attorneys are proposed to be terminated. Replacement Benton County-only contracts are proposed for execution.

RECOMMENDATION

Execute all attached contract for public defense services. Approve resolutions as proposed.

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 JENNIFER AZURE FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT REPRESENTING CHILDREN ON DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS MATTERS.

WHEREAS, Benton County (“County”) is obligated by law to provide indigent defense services in Benton County Juvenile Court to children in dependency and termination of parental rights matters (“Cases”); 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, attorney Jennifer Azure (“Attorney”) currently already provides public defense services on Cases by and through a joint contract with Franklin County but that contract is being terminated as provided in the resolution being presented contemporaneously with this resolution; and

WHEREAS, Attorney has performed services on Cases satisfactorily and it appears to be in the best interests of Benton County to re-contract with her (on a Benton County-only basis) for the same services on Cases;

NOW THEREFORE, BE IT RESOLVED THAT contract BCJUV1618JMA001 with maximum Annual compensation of \$34,300.56 initially (with increases as allowed in the contract) plus trial per diems, and other allowable costs and expenses, with payment of such compensation to be split between Benton and Franklin Counties pursuant to the cost-sharing resolution presented contemporaneously with this resolution, 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 JUVENILES IN BENTON
COUNTY JUVENILE COURT
(DEPENDENCY CASELOAD)**

CONTRACT SUMMARY			
Contract Type	Juvenile – Dependency		
Contract Number	BCJUV1618JMA001	Contract Holder	Jennifer M. Azure
WSBA #	30494	Effective Dates	10/1/16 – 12/31/18
Caseload Cap	30	Compensation	\$2858.38

THIS AGREEMENT is entered into by and between **Jennifer M. Azure**, attorney at law, Washington State Bar Association # **30494** (“Attorney”), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions (“County”), for and on behalf of the Benton-Franklin County Superior Court.

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

- A.** The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively “Civil Proceedings”) in the Juvenile Division of the Benton-Franklin Counties Superior Court (the “Juvenile Court Division” or “Juvenile Court”).
- B.** Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.
- C.** While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **October 1, 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 (or has access to) an office adequate and appropriate for the practice of law at **7135 W Hood Pl, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **509-491-3941 and (no fax number)**, respectively; and Attorney's current office/work e-mail address is **jennifer@azurelawoffice.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton-Franklin County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile 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 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; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; 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 other 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 potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is 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 within five (5) business days if any event specified in paragraph 3.a.(i) 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 the County, to immediate termination.

(iii) Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in their sole discretion, even at times 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.

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

(v) Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDMs of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if the County is timely notified by Attorney, the County may elect, at its sole discretion, to terminate this Agreement and, if they elect to do so, may do so with ten (10) days written notice to Attorney:

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

- (c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or
- (d) Any crime of dishonesty or deception.

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

c. 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 effectively 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.

d. 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 PDMs 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 attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, 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' 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 19.b. below.

f. 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 ATTORNEYS.

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (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 Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.
- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or

any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest.

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 adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, 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 program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. NUMBER OF APPOINTMENTS. During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only). The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of

providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

This paragraph is not applicable to this Agreement, but has been retained for internal referencing and formatting consistency.

9. **CLIENT ELIGIBILITY.** The Juvenile 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 Juvenile Court of such possibility for purposes of the 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 Juvenile 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 Juvenile 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 Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile 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 Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION AND 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/adjudication (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Juvenile Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, 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-adjudication reviews.

a. Without limiting Attorney's obligation to initially meet with a juvenile client 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 with such person 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) or otherwise as soon thereafter as reasonably possible.

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) or otherwise as soon thereafter as reasonably possible. 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.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. MONTHLY COMPENSATION.

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation for the remainder of 2016 shall be \$2,858.38 and, for the remainder of the term of this Agreement, shall increase at a rate

equal to the cost of living increase provided to the bi-county non-bargaining employees at the Benton-Franklin Counties Juvenile Justice Center, effective prospectively on the date of the increase (with no retroactivity).

c. 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. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of \$300 per full day and \$150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **\$65.00 per hour** up to a maximum aggregate amount of \$5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County.

All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to a juvenile client'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 or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will 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 pre-authorization 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 PDM-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 eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's

request) and that has attached thereto a copy of the PDM's pre-authorization 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 claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM 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 claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of 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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any

immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall

be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile 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 is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/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 Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto 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 JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic 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 such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile 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 Juvenile Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court 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 if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). 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. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned 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 public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his 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 Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) 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 PDMs) 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 and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly 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 PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA 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. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration 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 persons in Juvenile Court.

23. **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.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Juvenile 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 PDMs' prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDMs' sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. 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 Benton-Franklin Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days 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 or Franklin 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 or Franklin 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.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton-Franklin County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@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.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and

policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGERS** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County have the right and discretion to direct the PDMs to assume and fulfill various roles and functions under this Agreement. Though the PDMs 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 with the PDMs (and their designees), and to promptly comply with reasonable requests from the PDMs (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under 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.

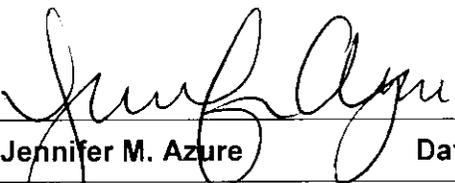
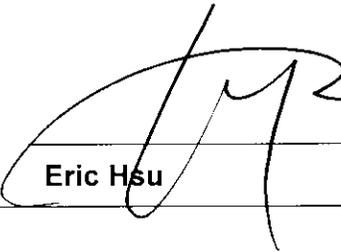
Attorney	Benton County Office Of Public Defense
 Jennifer M. Azure Date 9/12/16	 Eric Hsu Date 9/13/16
<p>BENTON COUNTY APPROVAL</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: <u>Chairman, Board of Commissioners</u></p> <p>Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>	

EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County (“Counties”) are obligated by law to provide indigent defense services (“Services”) in Benton and Franklin County Juvenile Court to affected children in dependency cases (“Cases”); 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, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders (“Defenders”) to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of \$2,858.38 (for 30 case contracts) and \$5,777.12 (for 60 case contracts) total per month (“Total Compensation”), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center (“JJC”) accurately reflects the proportional caseload of Cases for each County; and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of \$2,858.38 for 30 case contracts and \$5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton-Franklin Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this day of , 20

Chairman of the Board

Chairman of the Board

Chairman Pro-Tem

Chairman Pro-Tem

Member
Constituting the Board of County
Commissioners, Benton County
Washington

Member
Constituting the Board of County
Commissioners, Franklin County
Washington

Attest:

Attest:

**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: October 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts and a resolution for the same has been presented contemporaneously. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, are hereby presented for execution to replace the bi-county contracts being terminated.

SUMMARY

The bi-county public defense contracts with the above referenced attorneys are proposed to be terminated. Replacement Benton County-only contracts are proposed for execution.

RECOMMENDATION

Execute all attached contract for public defense services. Approve resolutions as proposed.

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 DIANA ANDERSON FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT REPRESENTING CHILDREN ON DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS MATTERS.

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court to children in dependency and termination of parental rights matters ("Cases"); 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, attorney Diana Anderson ("Attorney") currently already provides public defense services on Cases by and through a joint contract with Franklin County but that contract is being terminated as provided in the resolution being presented contemporaneously with this resolution; and

WHEREAS, Attorney has performed services on Cases satisfactorily and it appears to be in the best interests of Benton County to re-contract with her (on a Benton County-only basis) for the same services on Cases;

NOW THEREFORE, BE IT RESOLVED THAT contract BCJUV1618DLA001 with maximum Annual compensation of \$34,300.56 initially (with increases as allowed in the contract) plus trial per diems, and other allowable costs and expenses, with payment of such compensation to be split between Benton and Franklin Counties pursuant to the cost-sharing resolution presented contemporaneously with this resolution, 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 JUVENILES IN BENTON
COUNTY JUVENILE COURT
(DEPENDENCY CASELOAD)**

CONTRACT SUMMARY			
Contract Type	Juvenile – Dependency		
Contract Number	BCJUV1618DLA001	Contract Holder	Diana L. Anderson
WSBA #	18297	Effective Dates	10/1/16 – 12/31/18
Caseload Cap	30	Compensation	\$2858.38

THIS AGREEMENT is entered into by and between **Diana L. Anderson**, attorney at law, Washington State Bar Association # **18297** (“Attorney”), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions (“County”), for and on behalf of the Benton-Franklin County Superior Court.

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

- A.** The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively “Civil Proceedings”) in the Juvenile Division of the Benton-Franklin Counties Superior Court (the “Juvenile Court Division” or “Juvenile Court”).
- B.** Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.
- C.** While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **October 1, 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 (or has access to) an office adequate and appropriate for the practice of law at **PO Box 6082, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **509-783-3748 and 509-783-8754**, respectively; and Attorney's current office/work e-mail address is **anderson@delphiforums.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton-Franklin County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile 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 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; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; 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 other 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 potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is 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 within five (5) business days if any event specified in paragraph 3.a.(i) 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 the County, to immediate termination.

(iii) Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in their sole discretion, even at times 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.

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

(v) Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDMs of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if the County is timely notified by Attorney, the County may elect, at its sole discretion, to terminate this Agreement and, if they elect to do so, may do so with ten (10) days written notice to Attorney:

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

- (c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or
- (d) Any crime of dishonesty or deception.

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

c. 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 effectively 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.

d. 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 PDMs 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 attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, 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' 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 19.b. below.

f. 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 ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (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 Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.
- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or

any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest.

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 adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, 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 program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only). The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of

providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

This paragraph is not applicable to this Agreement, but has been retained for internal referencing and formatting consistency.

9. **CLIENT ELIGIBILITY.** The Juvenile 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 Juvenile Court of such possibility for purposes of the 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 Juvenile 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 Juvenile 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 Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile 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 Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION AND 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/adjudication (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Juvenile Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, 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-adjudication reviews.

a. Without limiting Attorney's obligation to initially meet with a juvenile client 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 with such person 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) or otherwise as soon thereafter as reasonably possible.

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) or otherwise as soon thereafter as reasonably possible. 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.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. MONTHLY COMPENSATION.

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation for the remainder of 2016 shall be \$2,858.38 and, for the remainder of the term of this Agreement, shall increase at a rate

equal to the cost of living increase provided to the bi-county non-bargaining employees at the Benton-Franklin Counties Juvenile Justice Center, effective prospectively on the date of the increase (with no retroactivity).

c. 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. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of \$300 per full day and \$150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **\$65.00 per hour** up to a maximum aggregate amount of \$5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County.

All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to a juvenile client'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 or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will 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 pre-authorization 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 PDM-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 eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's

request) and that has attached thereto a copy of the PDM's pre-authorization 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 claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM 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 claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of 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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any

immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall

be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile 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 is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/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 Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto 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 JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic 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 such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile 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 Juvenile Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court 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 if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). 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. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned 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 public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his 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 Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) 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 PDMs) 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 and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly 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 PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA 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. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration 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 persons in Juvenile Court.

23. **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.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Juvenile 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 PDMs' prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDMs' sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. 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 Benton-Franklin Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days 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 or Franklin 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 or Franklin 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.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton-Franklin County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@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.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and

policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGERS** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County have the right and discretion to direct the PDMs to assume and fulfill various roles and functions under this Agreement. Though the PDMs 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 with the PDMs (and their designees), and to promptly comply with reasonable requests from the PDMs (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under 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.

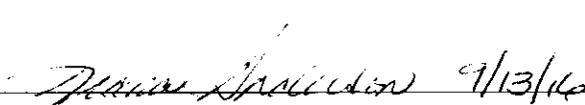
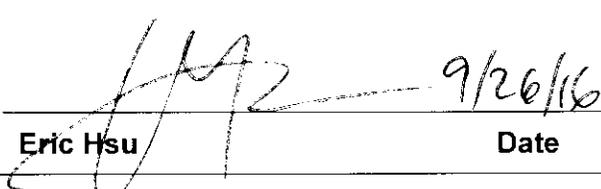
Attorney	Benton County Office Of Public Defense
 Diana L. Anderson Date	 Eric Hsu Date
<p>BENTON COUNTY APPROVAL</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: <u>Chairman, Board of Commissioners</u></p> <p>Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>	

EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County (“Counties”) are obligated by law to provide indigent defense services (“Services”) in Benton and Franklin County Juvenile Court to affected children in dependency cases (“Cases”); 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, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders (“Defenders”) to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of \$2,858.38 (for 30 case contracts) and \$5,777.12 (for 60 case contracts) total per month (“Total Compensation”), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center (“JJC”) accurately reflects the proportional caseload of Cases for each County; and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of \$2,858.38 for 30 case contracts and \$5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton-Franklin Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this day of , 20

Chairman of the Board

Chairman of the Board

Chairman Pro-Tem

Chairman Pro-Tem

Member
Constituting the Board of County
Commissioners, Benton County
Washington

Member
Constituting the Board of County
Commissioners, Franklin County
Washington

Attest:

Attest:

**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: October 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts and a resolution for the same has been presented contemporaneously. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, are hereby presented for execution to replace the bi-county contracts being terminated.

SUMMARY

The bi-county public defense contracts with the above referenced attorneys are proposed to be terminated. Replacement Benton County-only contracts are proposed for execution.

RECOMMENDATION

Execute all attached contract for public defense services. Approve resolutions as proposed.

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 DARIN CAMPBELL FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT REPRESENTING CHILDREN ON DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS MATTERS.

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court to children in dependency and termination of parental rights matters ("Cases"); 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, attorney Darin Campbell ("Attorney") currently already provides public defense services on Cases by and through a joint contract with Franklin County but that contract is being terminated as provided in the resolution being presented contemporaneously with this resolution; and

WHEREAS, Attorney has performed services on Cases satisfactorily and it appears to be in the best interests of Benton County to re-contract with him (on a Benton County-only basis) for the same services on Cases;

NOW THEREFORE, BE IT RESOLVED THAT contract BCJUV1618DRC001 with maximum Annual compensation of \$69,325.44 initially (with increases as allowed in the contract) plus trial per diems, and other allowable costs and expenses, with payment of such compensation to be split between Benton and Franklin Counties pursuant to the cost-sharing resolution presented contemporaneously with this resolution, 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 JUVENILES IN BENTON
COUNTY JUVENILE COURT
(DEPENDENCY CASELOAD)**

CONTRACT SUMMARY			
Contract Type	Juvenile – Dependency		
Contract Number	BCJUV1618DRC001	Contract Holder	Darin Campbell
WSBA #	21301	Effective Dates	Oct 1, 2016 – Dec 31, 2018
Caseload Cap	60 open cases	Compensation	\$5,777.12 per month

THIS AGREEMENT is entered into by and between **Darin Campbell**, attorney at law, Washington State Bar Association # **21301** (“Attorney”), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions (“County”), for and on behalf of the Benton-Franklin County Superior Court.

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

- A.** The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively “Civil Proceedings”) in the Juvenile Division of the Benton-Franklin Counties Superior Court (the “Juvenile Court Division” or “Juvenile Court”).
- B.** Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.
- C.** While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **October 1, 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 (or has access to) an office adequate and appropriate for the practice of law at **1030 N Center Parkway, Suite 307, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **(509) 735-5070 and (509) 222-2223**, respectively; and Attorney's current office/work e-mail address is **dcampbelllaw@hotmail.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton-Franklin County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile 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 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; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; 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 other 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 potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is 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 within five (5) business days if any event specified in paragraph 3.a.(i) 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 the County, to immediate termination.

(iii) Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in their sole discretion, even at times 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.

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

(v) Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDMs of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if the County is timely notified by Attorney, the County may elect, at its sole discretion, to terminate this Agreement and, if they elect to do so, may do so with ten (10) days written notice to Attorney:

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

- (c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or
- (d) Any crime of dishonesty or deception.

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

c. 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 effectively 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.

d. 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 PDMs 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 attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, 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' 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 19.b. below.

f. 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 ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (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 Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.

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 adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, 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 program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **60** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties). The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

This paragraph is not applicable to this Agreement, but has been retained for internal referencing and formatting consistency.

9. **CLIENT ELIGIBILITY.** The Juvenile 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 Juvenile Court of such possibility for purposes of the 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 Juvenile 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 Juvenile 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 Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile 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 Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION AND 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/adjudication (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Juvenile Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, 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-adjudication reviews.

a. Without limiting Attorney's obligation to initially meet with a juvenile client 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 with such person 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) or otherwise as soon thereafter as reasonably possible.

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) or otherwise as soon thereafter as reasonably possible. 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.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. MONTHLY COMPENSATION.

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation for the remainder of 2016 shall be **\$5,777.12** and, for the remainder of the term of this Agreement, shall increase at a rate equal to the cost of living increase provided to the bi-county non-bargaining employees at the Benton-Franklin Counties Juvenile Justice Center, effective on the date of the increase (with no retroactivity).

c. 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. If the termination date falls mid-way through a given month, then

the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of \$300 per full day and \$150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **\$65.00 per hour** up to a maximum aggregate amount of \$5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to a juvenile client'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 or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will 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 pre-authorization 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 PDM-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 eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization 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 claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to

the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM 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 claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of 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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile 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 is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/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 Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto 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 JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic 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 such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile 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 Juvenile Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court 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 if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). 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. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned 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 public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his 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 Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) 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 PDMs) 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 and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly 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 PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA 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. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration 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 persons in Juvenile Court.

23. **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.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Juvenile 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 PDMs' prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDMs' sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. 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 Benton-Franklin Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days 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 or Franklin 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 or Franklin 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.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton-Franklin County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@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.

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

34. **PUBLIC DEFENSE MANAGERS** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public

defense agreements with the County. Attorney further acknowledges that the County have the right and discretion to direct the PDMs to assume and fulfill various roles and functions under this Agreement. Though the PDMs 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 with the PDMs (and their designees), and to promptly comply with reasonable requests from the PDMs (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under 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.

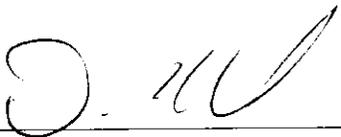
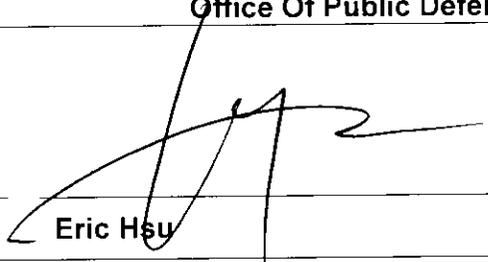
Attorney		Benton County Office Of Public Defense	
	9-13-16		9/13/16
Darin Campbell	Date	Eric Hsu	Date
BENTON COUNTY APPROVAL			
By: _____			
Name: _____			
Title: <u>Chairman, Board of Commissioners</u>			
Date: _____			
Attest:			
Clerk of the Board: _____			

EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County (“Counties”) are obligated by law to provide indigent defense services (“Services”) in Benton and Franklin County Juvenile Court to affected children in dependency cases (“Cases”); 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, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders (“Defenders”) to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of \$2,858.38 (for 30 case contracts) and \$5,777.12 (for 60 case contracts) total per month (“Total Compensation”), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Washington State Administrative Office of the Courts (“AOC”) and published by the same on their website accurately reflects the proportional caseload of Cases for each County; and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data published by AOC; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective

Offices of Public Defense for each County, shall be free to assign Cases to Defenders as necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of \$2,858.38 for 30 case contracts and \$5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton-Franklin Superior Court's Juvenile Division.

Dated this day of , 20

Chairman of the Board

Chairman of the Board

Chairman Pro-Tem

Chairman Pro-Tem

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

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

Attest:

Attest:

**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: October 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts and a resolution for the same has been presented contemporaneously. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, are hereby presented for execution to replace the bi-county contracts being terminated.

SUMMARY

The bi-county public defense contracts with the above referenced attorneys are proposed to be terminated. Replacement Benton County-only contracts are proposed for execution.

RECOMMENDATION

Execute all attached contract for public defense services. Approve resolutions as proposed.

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 MICHELLE TROMBLEY FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT REPRESENTING CHILDREN ON DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS MATTERS.

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court to children in dependency and termination of parental rights matters ("Cases"); 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, attorney Michelle Trombley ("Attorney") currently already provides public defense services on Cases by and through a joint contract with Franklin County but that contract is being terminated as provided in the resolution being presented contemporaneously with this resolution; and

WHEREAS, Attorney has performed services on Cases satisfactorily and it appears to be in the best interests of Benton County to re-contract with her (on a Benton County-only basis) for the same services on Cases;

NOW THEREFORE, BE IT RESOLVED THAT contract BCJUV1618MTT001 with maximum Annual compensation of \$34,300.56 initially (with increases as allowed in the contract) plus trial per diems, and other allowable costs and expenses, with payment of such compensation to be split between Benton and Franklin Counties pursuant to the cost-sharing resolution presented contemporaneously with this resolution, 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 JUVENILES IN BENTON
COUNTY JUVENILE COURT
(DEPENDENCY CASELOAD)**

CONTRACT SUMMARY			
Contract Type	Juvenile – Dependency		
Contract Number	BCJUV1618MTT001	Contract Holder	Michelle T. Trombley
WSBA #	42912	Effective Dates	10/1/16– 12/31/18
Caseload Cap	30	Compensation	\$2858.38

THIS AGREEMENT is entered into by and between **Michelle T. Trombley**, attorney at law, Washington State Bar Association # **42912** (“Attorney”), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions (“County”), for and on behalf of the Benton-Franklin County Superior Court.

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

- A.** The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively “Civil Proceedings”) in the Juvenile Division of the Benton-Franklin Counties Superior Court (the “Juvenile Court Division” or “Juvenile Court”).
- B.** Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.
- C.** While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **October 1, 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 (or has access to) an office adequate and appropriate for the practice of law at **7135 W Hood PI, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **509-491-3941 and (no fax number)**, respectively; and Attorney's current office/work e-mail address is **trombleylaw@outlook.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton-Franklin County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile 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 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; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; 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 other 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 potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is 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 within five (5) business days if any event specified in paragraph 3.a.(i) 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 the County, to immediate termination.

(iii) Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in their sole discretion, even at times 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.

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

(v) Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDMs of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if the County is timely notified by Attorney, the County may elect, at its sole discretion, to terminate this Agreement and, if they elect to do so, may do so with ten (10) days written notice to Attorney:

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

- (c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or
- (d) Any crime of dishonesty or deception.

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

c. 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 effectively 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.

d. 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 PDMs 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 attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, 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 19.b. below.

f. 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 ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (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 Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.
- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or

any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest.

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 adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, 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 program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only). The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of

providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

This paragraph is not applicable to this Agreement, but has been retained for internal referencing and formatting consistency.

9. **CLIENT ELIGIBILITY.** The Juvenile 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 Juvenile Court of such possibility for purposes of the 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 Juvenile 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 Juvenile 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 Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile 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 Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION AND 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/adjudication (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Juvenile Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, 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-adjudication reviews.

a. Without limiting Attorney's obligation to initially meet with a juvenile client 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 with such person 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) or otherwise as soon thereafter as reasonably possible.

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) or otherwise as soon thereafter as reasonably possible. 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.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. MONTHLY COMPENSATION.

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation for the remainder of 2016 shall be \$2,858.38 and, for the remainder of the term of this Agreement, shall increase at a rate

equal to the cost of living increase provided to the bi-county non-bargaining employees at the Benton-Franklin Counties Juvenile Justice Center, effective prospectively on the date of the increase (with no retroactivity).

c. 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. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of \$300 per full day and \$150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **\$65.00 per hour** up to a maximum aggregate amount of \$5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County.

All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to a juvenile client'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 or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will 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 pre-authorization 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 PDM-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 eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's

request) and that has attached thereto a copy of the PDM's pre-authorization 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 claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM 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 claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE**. Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS**. Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of 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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any

immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall

be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile 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 is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/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 Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto 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 JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic 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 such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile 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 Juvenile Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court 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 if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). 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. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned 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 public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his 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 Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) 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 PDMs) 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 and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly 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 PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA 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. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration 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 persons in Juvenile Court.

23. **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.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Juvenile 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 PDMs' prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDMs' sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. 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 Benton-Franklin Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days 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 or Franklin 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 or Franklin 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.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton-Franklin County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@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.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and

policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGERS** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County have the right and discretion to direct the PDMs to assume and fulfill various roles and functions under this Agreement. Though the PDMs 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 with the PDMs (and their designees), and to promptly comply with reasonable requests from the PDMs (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under 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.

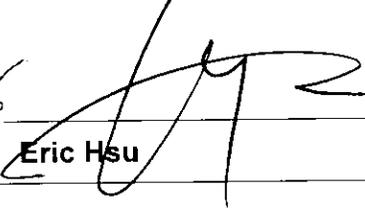
Attorney	Benton County Office Of Public Defense
	
Michelle T. Trombley	Eric Hsu
Date	Date
9-13-16	9/13/16
BENTON COUNTY APPROVAL By: _____ Name: _____ Title: <u>Chairman, Board of Commissioners</u> Date: _____ Attest: Clerk of the Board: _____	

EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County (“Counties”) are obligated by law to provide indigent defense services (“Services”) in Benton and Franklin County Juvenile Court to affected children in dependency cases (“Cases”); 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, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders (“Defenders”) to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of \$2,858.38 (for 30 case contracts) and \$5,777.12 (for 60 case contracts) total per month (“Total Compensation”), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center (“JJC”) accurately reflects the proportional caseload of Cases for each County; and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of \$2,858.38 for 30 case contracts and \$5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton-Franklin Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this day of , 20

Chairman of the Board

Chairman of the Board

Chairman Pro-Tem

Chairman Pro-Tem

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

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

Attest:

Attest:

**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: October 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts and a resolution for the same has been presented contemporaneously. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, are hereby presented for execution to replace the bi-county contracts being terminated.

SUMMARY

The bi-county public defense contracts with the above referenced attorneys are proposed to be terminated. Replacement Benton County-only contracts are proposed for execution.

RECOMMENDATION

Execute all attached contract for public defense services. Approve resolutions as proposed.

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 KATHLEEN MORENO FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT REPRESENTING CHILDREN ON DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS MATTERS.

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court to children in dependency and termination of parental rights matters ("Cases"); 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, attorney Kathleen Moreno ("Attorney") currently already provides public defense services on Cases by and through a joint contract with Franklin County but that contract is being terminated as provided in the resolution being presented contemporaneously with this resolution; and

WHEREAS, Attorney has performed services on Cases satisfactorily and it appears to be in the best interests of Benton County to re-contract with her (on a Benton County-only basis) for the same services on Cases;

NOW THEREFORE, BE IT RESOLVED THAT contract BCJUV1618KLM001 with maximum Annual compensation of \$34,300.56 initially (with increases as allowed in the contract) plus trial per diems, and other allowable costs and expenses, with payment of such compensation to be split between Benton and Franklin Counties pursuant to the cost-sharing resolution presented contemporaneously with this resolution, 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 JUVENILES IN BENTON
COUNTY JUVENILE COURT
(DEPENDENCY CASELOAD)**

CONTRACT SUMMARY			
Contract Type	Juvenile – Dependency		
Contract Number	BCJUV1618KLM001	Contract Holder	Kathleen L. Moreno
WSBA #	15725	Effective Dates	10/1/16 – 12/31/18
Caseload Cap	30	Compensation	\$2858.38

THIS AGREEMENT is entered into by and between **Kathleen L. Moreno**, attorney at law, Washington State Bar Association # **15725** (“Attorney”), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions (“County”), for and on behalf of the Benton-Franklin County Superior Court.

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

- A.** The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively “Civil Proceedings”) in the Juvenile Division of the Benton-Franklin Counties Superior Court (the “Juvenile Court Division” or “Juvenile Court”).
- B.** Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.
- C.** While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **October 1, 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 (or has access to) an office adequate and appropriate for the practice of law at **1030 N Center Parkway Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **509-528-8464 and 509-222-2223**, respectively; and Attorney's current office/work e-mail address is **klmoreno@charter.net**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton-Franklin County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile 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 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; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; 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 other 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 potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is 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 within five (5) business days if any event specified in paragraph 3.a.(i) 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 the County, to immediate termination.

(iii) Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in their sole discretion, even at times 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.

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

(v) Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDMs of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if the County is timely notified by Attorney, the County may elect, at its sole discretion, to terminate this Agreement and, if they elect to do so, may do so with ten (10) days written notice to Attorney:

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

- (c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or
- (d) Any crime of dishonesty or deception.

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

c. 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 effectively 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.

d. 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 PDMs 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 attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, 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 19.b. below.

f. 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 ATTORNEYS.

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (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 Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.
- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or

any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest.

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 adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, 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 program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only). The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of

providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

This paragraph is not applicable to this Agreement, but has been retained for internal referencing and formatting consistency.

9. **CLIENT ELIGIBILITY.** The Juvenile 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 Juvenile Court of such possibility for purposes of the 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 Juvenile 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 Juvenile 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 Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile 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 Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION AND 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/adjudication (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Juvenile Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, 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-adjudication reviews.

a. Without limiting Attorney's obligation to initially meet with a juvenile client 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 with such person 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) or otherwise as soon thereafter as reasonably possible.

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) or otherwise as soon thereafter as reasonably possible. 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.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. MONTHLY COMPENSATION.

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation for the remainder of 2016 shall be \$2,858.38 and, for the remainder of the term of this Agreement, shall increase at a rate

equal to the cost of living increase provided to the bi-county non-bargaining employees at the Benton-Franklin Counties Juvenile Justice Center, effective prospectively on the date of the increase (with no retroactivity).

c. 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. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of \$300 per full day and \$150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **\$65.00 per hour** up to a maximum aggregate amount of \$5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County.

All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. COSTS AND EXPENSES.

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

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to a juvenile client'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 or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will 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 pre-authorization 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 PDM-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 eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's

request) and that has attached thereto a copy of the PDM's pre-authorization 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 claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM 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 claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of 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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any

immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall

be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile 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 is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/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 Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto 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 JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic 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 such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile 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 Juvenile Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court 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 if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). 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. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned 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 public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his 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 Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) 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 PDMs) 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 and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly 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 PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA 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. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration 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 persons in Juvenile Court.

23. **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.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Juvenile 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 PDMs' prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDMs' sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. 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 Benton-Franklin Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days 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 or Franklin 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 or Franklin 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.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton-Franklin County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@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.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and

policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGERS** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County have the right and discretion to direct the PDMs to assume and fulfill various roles and functions under this Agreement. Though the PDMs 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 with the PDMs (and their designees), and to promptly comply with reasonable requests from the PDMs (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under 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.

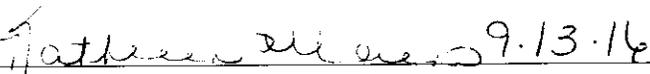
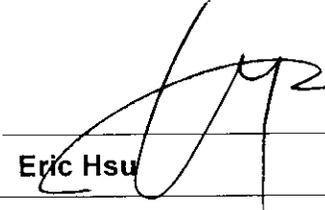
Attorney	Benton County Office Of Public Defense
 Kathleen L. Moreno	 Eric Hsu
Date	Date
9.13.16	9/13/16
BENTON COUNTY APPROVAL By: _____ Name: _____ Title: <u>Chairman, Board of Commissioners</u> Date: _____ Attest: Clerk of the Board: _____	

EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County (“Counties”) are obligated by law to provide indigent defense services (“Services”) in Benton and Franklin County Juvenile Court to affected children in dependency cases (“Cases”); 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, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders (“Defenders”) to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of \$2,858.38 (for 30 case contracts) and \$5,777.12 (for 60 case contracts) total per month (“Total Compensation”), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center (“JJC”) accurately reflects the proportional caseload of Cases for each County; and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of \$2,858.38 for 30 case contracts and \$5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton-Franklin Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this day of , 20

Chairman of the Board

Chairman of the Board

Chairman Pro-Tem

Chairman Pro-Tem

Member
Constituting the Board of County
Commissioners, Benton County
Washington

Member
Constituting the Board of County
Commissioners, Franklin County
Washington

Attest:

Attest:

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

<u>Type of Action Requested</u>	<u>Classification</u>
<input type="checkbox"/> Execute contract <input checked="" type="checkbox"/> Pass resolution <input type="checkbox"/> Pass ordinance <input type="checkbox"/> Pass motion <input type="checkbox"/> Other (describe)	<input checked="" 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: Oct 4, 2016 Presentation length: Presenting elected office/department: OPD Prepared by: Eric Hsu Reviewed by: Loretta Smith-Kelty	

BACKGROUND INFORMATION

Benton and Franklin Counties no longer jointly provide public defense services. However, it is apparent that, because of the nature of the caseload involved (and the numerous opportunities for conflicts of interest) in providing public defense services on dependency and termination of parental rights cases it is in the best interests of both counties to separately contract with the same group of attorneys for public defense services on these types of cases. The proposed resolution establishes a mechanism to share the costs of these contracts by allocating them to each county based on actual case appointments.

SUMMARY

Proposed resolution establishes a mechanism to allocate costs to each of Benton and Franklin Counties for cost of dependency and termination of parental rights contracts that the Counties separately have with the same group of attorneys.

RECOMMENDATION

Approve resolution as presented.

ANTICIPATED FISCAL IMPACT

None beyond budgeted

BI-COUNTY RESOLUTION
BENTON COUNTY RESOLUTION NO.
FRANKLIN COUNTY RESOLUTION NO. 2016-355

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON & FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County ("Counties") are obligated by law to provide indigent defense services ("Services") in Benton and Franklin County Juvenile Court to affected children in dependency cases ("Cases"); 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, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders ("Defenders") to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of \$2,858.38 (for 30 case contracts) and \$5,777.12 (for 60 case contracts) total per month ("Total Compensation"), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center ("JJC") accurately reflects the proportional caseload of Cases for each County; and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the JJC; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of \$2,858.38 for 30 case contracts and \$5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the

Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton-Franklin Superior Court's Juvenile Division where a public defender is appointed to represent a child.

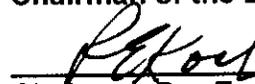
Dated this day of , 20 Dated this ²¹ day of September, 20 16.

Chairman of the Board



Chairman of the Board

Chairman Pro-Tem



Chairman Pro-Tem

Member
Constituting the Board of County
Commissioners, Benton County
Washington

Brad Peck - Absent

Member
Constituting the Board of County
Commissioners, Franklin County
Washington

Attest:
Clerk of the Board

Attest: 
Clerk of the Board

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

<u>Type of Action Requested</u>	<u>Classification</u>
<input 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: Oct 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, will be presented for execution contemporaneously so that there is continuity of services and compensation to the contract attorneys.

SUMMARY

Proposed resolutions terminate the public defense contracts with the above listed attorneys for services in dependency and termination of parental rights cases involving the need to represent children. Replacement contracts will be proposed contemporaneously.

RECOMMENDATION

Approve resolutions as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION
BENTON COUNTY RESOLUTION NO.
FRANKLIN COUNTY RESOLUTION NO. 2016-358

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND OF FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF TERMINATING THE PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY JENNIFER AZURE FOR PUBLIC DEFENSE SERVICES IN JUVENILE DEPENDENCY MATTERS.

WHEREAS per Benton County resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but 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, Benton and Franklin Counties ("Counties") presently jointly contract with attorney Jennifer Azure ("Attorney") to provide legally mandated public defense services to children involved in juvenile dependency matters ("Services"); and

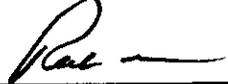
WHEREAS, Counties no longer jointly provide public defense services and therefore do not wish to jointly contract for Services and will, instead, separately contract with the same attorneys (including attorney Azure) for Services, splitting the cost for Services by way of a cost-sharing resolution that will be approved contemporaneously with this resolution; and

WHEREAS; in order for the Counties to separately contract with Attorney for Services it is first necessary to terminate the existing bi-county contract with Attorney and Attorney has agreed in writing to this termination with an expedited effective date of September 30, 2016 (waiving the otherwise applicable 90 day notice period) to allow for an effective date of the new, separate contract of October 1, 2016;

NOW THEREFORE, BE IT RESOLVED THAT the agreement with attorney Jennifer Azure, designated BFJC1617JMA001, effective January 1, 2016 to December 31, 2017, executed by and through Benton County Resolution 2016-024 and Franklin County Resolution 2015-462, be terminated effective September 30, 2016 as agreed to by attorney Azure.

Dated this day of, 20 Dated this 21 day of September, 2016.

 Chairman of the Board



 Chairman of the Board

 Chairman Pro-Tem



 Chairman Pro-Tem

 Member

Brad Peck - Absent

 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

To: Benton County Board of County Commissioners
Franklin County Board of County Commissioners

I currently hold a bi-county contract to provide public defense services on juvenile dependency cases in Benton & Franklin Counties Juvenile Court to children. My contract is signed by both Benton & Franklin Counties, expires on December 31, 2017, and provides that it can be terminated on 90 days' notice without cause by the counties or by me.

I understand that Benton & Franklin Counties no longer jointly provide public defense services in Juvenile Court but have nevertheless agree to separately contract with the same attorneys, me being one of them. **Therefore, I agree to waive the otherwise applicable requirement of 90 days' notice of contract termination and, instead, agree that my contract may be terminated effective September 30, 2016 by joint resolution of Benton & Franklin Counties.** This agreement is contingent upon the approval, by both Benton & Franklin Counties, of separate contracts (that I have signed and provided back to each county) for the same public defense services with me. I have been assured that the essential terms of those contracts, including caseload and compensation (of the two contracts combined) will represent no change from the terms of my current contract.


Attorney name: JENNIFER M AZURE
WSBA # 300974

September 6, 2016
Date

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

<u>Type of Action Requested</u>	<u>Classification</u>
<input 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: Oct 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, will be presented for execution contemporaneously so that there is continuity of services and compensation to the contract attorneys.

SUMMARY

Proposed resolutions terminate the public defense contracts with the above listed attorneys for services in dependency and termination of parental rights cases involving the need to represent children. Replacement contracts will be proposed contemporaneously.

RECOMMENDATION

Approve resolutions as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION
BENTON COUNTY RESOLUTION NO.
FRANKLIN COUNTY RESOLUTION NO. 2016-359

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND OF FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF TERMINATING THE PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY KATHLEEN MORENO FOR PUBLIC DEFENSE SERVICES IN JUVENILE DEPENDENCY MATTERS.

WHEREAS per Benton County resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but 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, Benton and Franklin Counties ("Counties") presently jointly contract with attorney Kathleen Moreno ("Attorney") to provide legally mandated public defense services to children involved in juvenile dependency matters ("Services"); and

WHEREAS, Counties no longer jointly provide public defense services and therefore do not wish to jointly contract for Services and will, instead, separately contract with the same attorneys (including attorney Moreno) for Services, splitting the cost for Services by way of a cost-sharing resolution that will be approved contemporaneously with this resolution; and

WHEREAS; in order for the Counties to separately contract with Attorney for Services it is first necessary to terminate the existing bi-county contract with Attorney and Attorney has agreed in writing to this termination with an expedited effective date of September 30, 2016 (waiving the otherwise applicable 90 day notice period) to allow for an effective date of the new, separate contract of October 1, 2016;

NOW THEREFORE, BE IT RESOLVED THAT the agreement with attorney Kathleen Moreno, designated BFJC1617KLM001, effective January 1, 2016 to December 31, 2017 and executed by and through Benton County Resolution 2016-026 and Franklin County Resolution 2015-453, be terminated effective September 30, 2016 as agreed to by attorney Moreno.

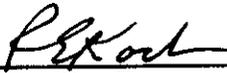
Dated this day of, 20 Dated this 21 day of September, 20 16

Chairman of the Board



Chairman of the Board

Chairman Pro-Tem



Chairman Pro-Tem

Member

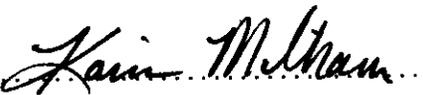
Brad Peck - Absent

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

To: Benton County Board of County Commissioners
Franklin County Board of County Commissioners

I currently hold a bi-county contract to provide public defense services on juvenile dependency cases in Benton & Franklin Counties Juvenile Court to children. My contract is signed by both Benton & Franklin Counties, expires on December 31, 2017, and provides that it can be terminated on 90 days' notice without cause by the counties or by me.

I understand that Benton & Franklin Counties no longer jointly provide public defense services in Juvenile Court but have nevertheless agree to separately contract with the same attorneys, me being one of them. **Therefore, I agree to waive the otherwise applicable requirement of 90 days' notice of contract termination and, instead, agree that my contract may be terminated effective September 30, 2016 by joint resolution of Benton & Franklin Counties.** This agreement is contingent upon the approval, by both Benton & Franklin Counties, of separate contracts (that I have signed and provided back to each county) for the same public defense services with me. I have been assured that the essential terms of those contracts, including caseload and compensation (of the two contracts combined) will represent no change from the terms of my current contract.


Attorney name: Kathleen L. Morem
WSBA # 15725

9.7.14
Date

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

<u>Type of Action Requested</u>	<u>Classification</u>
<input 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: Oct 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, will be presented for execution contemporaneously so that there is continuity of services and compensation to the contract attorneys.

SUMMARY

Proposed resolutions terminate the public defense contracts with the above listed attorneys for services in dependency and termination of parental rights cases involving the need to represent children. Replacement contracts will be proposed contemporaneously.

RECOMMENDATION

Approve resolutions as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. 2016-357

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND OF FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF TERMINATING THE PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DIANA ANDERSON FOR PUBLIC DEFENSE SERVICES IN JUVENILE DEPENDENCY MATTERS.

WHEREAS per Benton County resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but 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, Benton and Franklin Counties ("Counties") presently jointly contract with attorney Diana Anderson ("Attorney") to provide legally mandated public defense services to children involved in juvenile dependency matters ("Services"); and

WHEREAS, Counties no longer jointly provide public defense services and therefore do not wish to jointly contract for Services and will, instead, separately contract with the same attorneys (including attorney Anderson) for Services, splitting the cost for Services by way of a cost-sharing resolution that will be approved contemporaneously with this resolution; and

WHEREAS; in order for the Counties to separately contract with Attorney for Services it is first necessary to terminate the existing bi-county contract with Attorney and Attorney has agreed in writing to this termination with an expedited effective date of September 30, 2016 (waiving the otherwise applicable 90 day notice period) to allow for an effective date of the new, separate contract of October 1, 2016;

NOW THEREFORE, BE IT RESOLVED THAT the agreement with attorney Diana Anderson, designated BFJC1617DLA001, effective January 1, 2016 to December 31, 2017, executed by and through Benton County resolution 2016-027 and Franklin County resolution 2015-464, be terminated effective September 30, 2016 as agreed to by attorney Anderson.

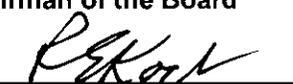
Dated this day of, 20.... Dated this 21 day of September, 2016

Chairman of the Board



Chairman of the Board

Chairman Pro-Tem



Chairman Pro-Tem

Brad Peck - Absent

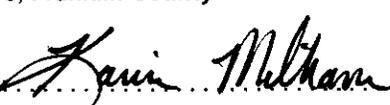
Member

Member

Constituting the Board of County Commissioners, Benton County Washington

Constituting the Board of County Commissioners, Franklin County Washington

Attest:

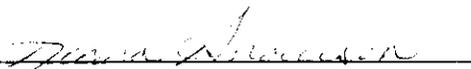
Attest: 

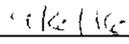
Clerk of the Board

To: Benton County Board of County Commissioners
Franklin County Board of County Commissioners

I currently hold a bi-county contract to provide public defense services on juvenile dependency cases in Benton & Franklin Counties Juvenile Court to children. My contract is signed by both Benton & Franklin Counties, expires on December 31, 2017, and provides that it can be terminated on 90 days' notice without cause by the counties or by me.

I understand that Benton & Franklin Counties no longer jointly provide public defense services in Juvenile Court but have nevertheless agree to separately contract with the same attorneys, me being one of them. **Therefore, I agree to waive the otherwise applicable requirement of 90 days' notice of contract termination and, instead, agree that my contract may be terminated effective September 30, 2016 by joint resolution of Benton & Franklin Counties.** This agreement is contingent upon the approval, by both Benton & Franklin Counties, of separate contracts (that I have signed and provided back to each county) for the same public defense services with me. I have been assured that the essential terms of those contracts, including caseload and compensation (of the two contracts combined) will represent no change from the terms of my current contract.


Attorney name: Dana Anderson
WSBA # 15247


Date

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

<u>Type of Action Requested</u>	<u>Classification</u>
<input 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: Oct 4, 2016
 Presentation length:
 Presenting elected office/department: OPD
 Prepared by: Eric Hsu
 Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, will be presented for execution contemporaneously so that there is continuity of services and compensation to the contract attorneys.

SUMMARY

Proposed resolutions terminate the public defense contracts with the above listed attorneys for services in dependency and termination of parental rights cases involving the need to represent children. Replacement contracts will be proposed contemporaneously.

RECOMMENDATION

Approve resolutions as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION
BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. 2016-356

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND OF FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF TERMINATING THE PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY SUSAN HENWOOD FOR PUBLIC DEFENSE SERVICES IN JUVENILE DEPENDENCY MATTERS.

WHEREAS per Benton County resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but 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, Benton and Franklin Counties ("Counties") presently jointly contract with attorney Susan Henwood ("Attorney") to provide legally mandated public defense services to children involved in juvenile dependency matters ("Services"); and

WHEREAS, Counties no longer jointly provide public defense services and therefore do not wish to jointly contract for Services and will, instead, separately contract with the same attorneys (including attorney Henwood) for Services, splitting the cost for Services by way of a cost-sharing resolution that will be approved contemporaneously with this resolution; and

WHEREAS; in order for the Counties to separately contract with Attorney for Services it is first necessary to terminate the existing bi-county contract with Attorney and Attorney has agreed in writing to this termination with an expedited effective date of September 30, 2016 (waiving the otherwise applicable 90 day notice period) to allow for an effective date of the new, separate contract of October 1, 2016;

NOW THEREFORE, BE IT RESOLVED THAT the agreement with attorney Susan Henwood, designated BFJC1617SDH001, effective January 1, 2016 to December 31, 2017, executed by and through Benton County Resolution 2016-022 and Franklin County Resolution 2015-463, be terminated effective September 30, 2016 as agreed to by attorney Henwood.

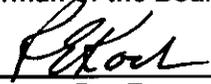
Dated this day of, 20 Dated this 21 day of September, 20 16.

Chairman of the Board



Chairman of the Board

Chairman Pro-Tem



Chairman Pro-Tem

Member

Brad Peck - Absent

Member

Constituting the Board of County Commissioners, Benton County Washington

Constituting the Board of County Commissioners, Franklin County Washington

Attest:

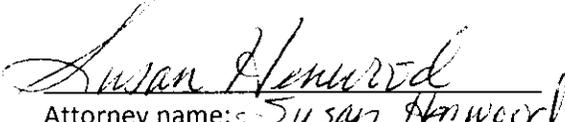
Attest: 

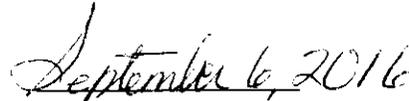
Clerk of the Board

To: Benton County Board of County Commissioners
Franklin County Board of County Commissioners

I currently hold a bi-county contract to provide public defense services on juvenile dependency cases in Benton & Franklin Counties Juvenile Court to children. My contract is signed by both Benton & Franklin Counties, expires on December 31, 2017, and provides that it can be terminated on 90 days' notice without cause by the counties or by me.

I understand that Benton & Franklin Counties no longer jointly provide public defense services in Juvenile Court but have nevertheless agree to separately contract with the same attorneys, me being one of them. **Therefore, I agree to waive the otherwise applicable requirement of 90 days' notice of contract termination and, instead, agree that my contract may be terminated effective September 30, 2016 by joint resolution of Benton & Franklin Counties.** This agreement is contingent upon the approval, by both Benton & Franklin Counties, of separate contracts (that I have signed and provided back to each county) for the same public defense services with me. I have been assured that the essential terms of those contracts, including caseload and compensation (of the two contracts combined) will represent no change from the terms of my current contract.


Attorney name: Susan Henwood
WSBA # 33843


Date

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

<u>Type of Action Requested</u>	<u>Classification</u>
<input 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: Oct 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, will be presented for execution contemporaneously so that there is continuity of services and compensation to the contract attorneys.

SUMMARY

Proposed resolutions terminate the public defense contracts with the above listed attorneys for services in dependency and termination of parental rights cases involving the need to represent children. Replacement contracts will be proposed contemporaneously.

RECOMMENDATION

Approve resolutions as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. 2016-361

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND OF FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF TERMINATING THE PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DARIN CAMPBELL FOR PUBLIC DEFENSE SERVICES IN JUVENILE DEPENDENCY MATTERS.

WHEREAS per Benton County resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but 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, Benton and Franklin Counties ("Counties") presently jointly contract with attorney Darin Campbell ("Attorney") to provide legally mandated public defense services to children involved in juvenile dependency matters ("Services"); and

WHEREAS, Counties no longer jointly provide public defense services and therefore do not wish to jointly contract for Services and will, instead, separately contract with the same attorneys (including attorney Campbell) for Services, splitting the cost for Services by way of a cost-sharing resolution that will be approved contemporaneously with this resolution; and

WHEREAS; in order for the Counties to separately contract with Attorney for Services it is first necessary to terminate the existing bi-county contract with Attorney and Attorney has agreed in writing to this termination with an expedited effective date of September 30, 2016 (waiving the otherwise applicable 90 day notice period) to allow for an effective date of the new, separate contract of October 1, 2016;

NOW THEREFORE, BE IT RESOLVED THAT the agreement with attorney Darin Campbell, designated BFJC1617DRC001, effective January 1, 2016 to December 31, 2017, executed by and through Benton County Resolution 2016-023 and Franklin County Resolution 2015-465, be terminated effective September 30, 2016 as agreed to by attorney Campbell.

Dated this day of, 20 Dated this 21 day of September, 2016.

Chairman of the Board

Chairman of the Board

Chairman Pro-Tem

Chairman Pro-Tem

Member

Member

Constituting the Board of County Commissioners, Benton County Washington

Constituting the Board of County Commissioners, Franklin County Washington

Attest:

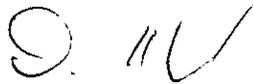
Attest: Kevin Millham

Clerk of the Board

To: Benton County Board of County Commissioners
Franklin County Board of County Commissioners

I currently hold a bi-county contract to provide public defense services on juvenile dependency cases in Benton & Franklin Counties Juvenile Court to children. My contract is signed by both Benton & Franklin Counties, expires on December 31, 2017, and provides that it can be terminated on 90 days' notice without cause by the counties or by me.

I understand that Benton & Franklin Counties no longer jointly provide public defense services in Juvenile Court but have nevertheless agree to separately contract with the same attorneys, me being one of them. **Therefore, I agree to waive the otherwise applicable requirement of 90 days' notice of contract termination and, instead, agree that my contract may be terminated effective September 30, 2016 by joint resolution of Benton & Franklin Counties.** This agreement is contingent upon the approval, by both Benton & Franklin Counties, of separate contracts ^{and separate BFC&F Juvenile Court} (that I have signed and provided back to each county) for the same public defense services with me. I have been assured that the essential terms of those contracts, including caseload and compensation (of the two contracts combined) will represent no change from the terms of my current contract.



Attorney name: Dawn R. Campbell
WSBA # 21301

9-6-16
Date

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

<u>Type of Action Requested</u>	<u>Classification</u>
<input 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: Oct 4, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

Benton County presently contracts with the following attorneys (jointly with Franklin County) for public defense services in dependency and termination of parental rights cases where children need representation:

- Darin Campbell
- Jennifer Azure
- Diana Anderson
- Michelle Trombley
- Susan Henwood
- Kathleen Moreno

Since Benton and Franklin Counties no longer jointly operate an office of public defense it is therefore appropriate to terminate these joint public defense contracts. Separate, Benton County-only public defense contracts for the same services, with the same attorneys, will be presented for execution contemporaneously so that there is continuity of services and compensation to the contract attorneys.

SUMMARY

Proposed resolutions terminate the public defense contracts with the above listed attorneys for services in dependency and termination of parental rights cases involving the need to represent children. Replacement contracts will be proposed contemporaneously.

RECOMMENDATION

Approve resolutions as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION
BENTON COUNTY RESOLUTION NO.
FRANKLIN COUNTY RESOLUTION NO. 2016-360

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND OF FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF TERMINATING THE PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY MICHELLE TROMBLEY FOR PUBLIC DEFENSE SERVICES IN JUVENILE DEPENDENCY MATTERS.

WHEREAS per Benton County resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but 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, Benton and Franklin Counties ("Counties") presently jointly contract with attorney Michelle Trombley ("Attorney") to provide legally mandated public defense services to children involved in juvenile dependency matters ("Services"); and

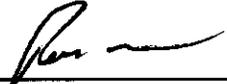
WHEREAS, Counties no longer jointly provide public defense services and therefore do not wish to jointly contract for Services and will, instead, separately contract with the same attorneys (including attorney Trombley) for Services, splitting the cost for Services by way of a cost-sharing resolution that will be approved contemporaneously with this resolution; and

WHEREAS; in order for the Counties to separately contract with Attorney for Services it is first necessary to terminate the existing bi-county contract with Attorney and Attorney has agreed in writing to this termination with an expedited effective date of September 30, 2016 (waiving the otherwise applicable 90 day notice period) to allow for an effective date of the new, separate contract of October 1, 2016;

NOW THEREFORE, BE IT RESOLVED THAT the agreement with attorney Michelle Trombley, designated BFJC1617MTT001, effective July 18, 2016 to December 31, 2017, executed by and through Benton County resolution 2016-647 and Franklin County resolution 2016-298, be terminated effective September 30, 2016 as agreed to by attorney Trombley.

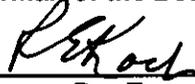
Dated this day of, 20.... Dated this 14 day of September, 2016

Chairman of the Board



Chairman of the Board

Chairman Pro-Tem



Chairman Pro-Tem

Member

Brad Peck - Absent

Member

Constituting the Board of County Commissioners, Benton County Washington

Constituting the Board of County Commissioners, Franklin County Washington

Attest:

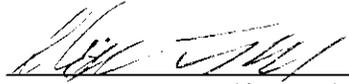
Attest: 

Clerk of the Board

To: Benton County Board of County Commissioners
Franklin County Board of County Commissioners

I currently hold a bi-county contract to provide public defense services on juvenile dependency cases in Benton & Franklin Counties Juvenile Court to children. My contract is signed by both Benton & Franklin Counties, expires on December 31, 2017, and provides that it can be terminated on 90 days' notice without cause by the counties or by me.

I understand that Benton & Franklin Counties no longer jointly provide public defense services in Juvenile Court but have nevertheless agree to separately contract with the same attorneys, me being one of them. **Therefore, I agree to waive the otherwise applicable requirement of 90 days' notice of contract termination and, instead, agree that my contract may be terminated effective September 30, 2016 by joint resolution of Benton & Franklin Counties.** This agreement is contingent upon the approval, by both Benton & Franklin Counties, of separate contracts (that I have signed and provided back to each county) for the same public defense services with me. I have been assured that the essential terms of those contracts, including caseload and compensation (of the two contracts combined) will represent no change from the terms of my current contract.



Attorney name: Michelle Tromblay
WSBA # 42912

9-7-16

Date

BENTON COUNTY
BOARD OF COUNTY COMMISSIONERS
Agenda Request Summary

<u>Type of Action Requested</u>	<u>Classification</u>
<input 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: Oct 11, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

OPD recently hired a Staff Defender to replace one who left earlier in the year. Proposed line item transfer is necessary to transfer funds from a now defunct line item associated with an existing Staff Defender (who has been transferred from the District Court Defense Unit to the Superior Court Defense Unit) to the line item that will be use to pay this new Staff Defender.

SUMMARY

Line item transfer proposed to allow for newly hired Staff Defender to be paid using District Court line item.

RECOMMENDATION

Approve line item transfer as proposed.

ANTICIPATED FISCAL IMPACT

None

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
FUND NUMBER 0000101, DEPARTMENT NUMBER 136

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by:

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM: Dept 136

TRANSFER TO: Dept 136

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
515.911	1566	Public Defense Attorney	\$14,104	515.911	1928	Public Defense Attorney	\$14,104
TOTAL			\$14,104	TOTAL			\$14,104

Explanation:

Need to fund line item for newly hired Staff Defender using funds from now defunct line item.

Prepared by:

Date:

Approved

Denied

Date: _____

Chairman

Member

Member

t. Appointment & Designations for Member
County w/WA Counties Risk Pool

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: 10/4/2016	Execute Contract _____	Consent Agenda <u> X </u>
Subject: Risk Pool	Pass Resolution <u> X </u>	Public Hearing _____
Appointments	Pass Ordinance _____	1st Discussion _____
Prepared by: L Wingfield	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

The Washington Counties Risk Pool’s Interlocal Agreement and Bylaws, and policies of its Board of Directors requires appointees and/or designees from each member county. Benton County has recently hired a new Safety & Training Coordinator. By way of this Resolution, Benton County may update our appointments and designations to the Risk Pool.

SUMMARY :

See above.

RECOMMENDATION:

Approve a resolution authorizing the Chairman of the Board to sign the Resolution appointing and designating individuals to the Risk Pool.

FISCAL IMPACT:

None.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF CONTINUING RELATIONSHIPS WITH THE WASHINGTON COUNTIES RISK POOL AND THE RELATED APPOINTMENTS AND DESIGNATIONS OF/FOR EACH MEMBER COUNTY.

WHEREAS, several Washington counties agreed to the creation of the Washington Counties Risk Pool ("Pool"), organized and operating under Chapters 48.62 and 39.34 RCW, to provide to its member counties programs of joint self-insurance, joint purchasing of insurance, and joint contracting for or hiring of personnel to provide risk management, claims handling, and administrative services; and

WHEREAS, the Pool's Interlocal Agreement and Bylaws, and policies of its Board of Directors require appointees and/or designees from each member county; that is:

- a. **Director / Alternate Director** (Article 8 of the Interlocal Agreement and Article 2 of the Bylaws) - officers or employees of each Pool member county that are appointed by and serve at the pleasure of the respective county's legislative authority;
- b. **County Risk Manager** (Article 11(b) of the Interlocal Agreement) - an employee of each Pool member county appointed to serve as a liaison between the County and the Pool as to risk management and who is responsible for the risk management function within the County;
- c. **County Safety Officer** (Article 11(c) of the Interlocal Agreement) - an active employee designated by each Pool member county who, along with a related committee, are maintained to consider all recommendations concerning the development and implementation of a loss control policy to prevent unsafe practices; and
- d. **County Claims Administrator** (sections B.6, C and E.1.b of the Pool Board of Directors' Claims Handling Policies and Procedures) - each Pool member county must designate someone to administer civil claims, with whom incidents should be immediately reported to, who is responsible for sending all claims and lawsuits and reporting various known incidents to the Pool, and with whom the Pool will coordinate the County's claims administration; **NOW, THEREFORE**

BE IT RESOLVED, that Benton County hereby confirms the appointment or designation of the following individuals for the applicable and required relationships with the Washington Counties Risk Pool:

Director:	Lexi Wingfield, Personnel Manager
Alternate Director:	Ryan Lukson, Deputy Prosecuting Attorney
Risk Manager:	Lexi Wingfield, Personnel Manager
Safety Officer:	Dan Meyer, Safety & Training Coordinator
Claims Administrator:	Lexi Wingfield, Personnel Manager; and

BE IT FURTHER RESOLVED, that this resolution shall become effective immediately upon its passage and shall supersede any prior conflicting action(s), rescinding resolution 2015-726; and

BE IT FURTHER RESOLVED, that a copy of this resolution, once completed, shall be forwarded to the attention of the Executive Director at the Washington Counties Risk Pool, 2558 RW Johnson Road S.W., Suite 106, Tumwater, WA 98512-6103.

Dated this _____ day of _____, 20_____.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....
Clerk of the Board

u. Removing G Dorsett from
Mosquito Control Board; Rescinding
Resolution 2015-043

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>			
Meeting Date:	October 4, 2016	Execute Contract	_____	Consent Agenda	XXX
Subject:	Mosquito Removal	Pass Resolution	XXX	Public Hearing	_____
Prepared by:	Whitney Hottell	Pass Ordinance	_____	1st Discussion	_____
Reviewed by:	Lexi Wingfield	Pass Motion	_____	2nd Discussion	_____
		Other	_____	Other	_____

BACKGROUND INFORMATION

The Commissioners' Office was notified that Gregory Dorsett does not live in the District he represents. Therefore, Mr. Dorsett will need to be removed as a Benton County Mosquito Control Board Member. Personnel will work with Benton County Mosquito Control on appointing a new board member.

SUMMARY

See above

RECOMMENDATION

Recommend approving and signing the attached resolution to remove Mr. Dorsett as a Benton County Mosquito Control Board Member and rescind Resolution 2015-043.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REMOVING A BENTON COUNTY MOSQUITO CONTROL BOARD MEMBER; RESCINDING RESOLUTION 2015-043

WHEREAS, Gregory Dorsett currently serves on the Benton County Mosquito Control Board representing Benton County Commissioner District No. 3; and

WHEREAS, Mr. Dorsett was reappointed to the Benton County Mosquito Control Board on January 1, 2015 for a two-year term per Resolution 2015-043; and

WHEREAS, the Board of County Commissioners received notice from the Benton County Mosquito Control District requesting Mr. Dorsett's removal from the Board as he does not live within the district he represents; and

WHEREAS, the Board of Benton County Commissioners desires to remove Mr. Dorsett from the Benton County Mosquito Control Board; **NOW, THEREFORE**,

BE IT RESOLVED, that Gregory Dorsett is hereby removed from the Benton County Mosquito Control Board, said term due to expire on December 31, 2016; and

BE IT FURTHER RESOLVED, Benton County Resolution 2015-043 is hereby rescinded.

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

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: October 4, 2016 Subject: First Amendment to Personal Service Agreement between Benton County and Benton-Franklin Health District Prepared by: Shyanne Faulconer Reviewed by: Cami McKenzie	Execute Contract X Pass Resolution X Pass Ordinance Pass Motion None	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY

Benton County would like to amend the service agreement with Benton-Franklin Health District (“Contractor”) for Nurse Family Partnership Program, per Resolution 2016-436. Both parties agreed, upon original Contract, that Contractor would submit a biennial budget by September 2016 to correspond with the Benton County 2017-2018 biennium budget cycle in the amounts set forth below as well as in “Exhibit C: NFP Budget.”

BACKGROUND INFORMATION

For the time period of January 1, 2017, through December 31, 2017, Contractor shall be compensated in the amount of three hundred nine thousand five hundred fifty six dollars and seventy four cents (\$309,556.74) (2016 year base expenses of \$303, 487.00 plus 2% increase). For the time period of January 1, 2018, through December 31, 2018, Contractor shall be compensated in the amount of three hundred fifteen thousand seven hundred forty seven dollars and eighty seven cents (\$315,747.87) (2017 year base expenses of \$309,556.74 plus 2% increase). Contractor has submitted a biennial budget to correspond with the Benton County 2017-2018 biennium budget cycle in the amounts set forth above.

RECOMMENDATION

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

FISCAL IMPACT

Funding for the additional services as outlined in this amendment are 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 0148-101.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE FIRST PERSONAL SERVICES AGREEMENT AMENDMENT BETWEEN BENTON COUNTY (“COUNTY”), WASHINGTON AND BENTON-FRANKLIN HEALTH DISTRICT (“CONTRACTOR”) FOR NURSE FAMILY PARTNERSHIP PROGRAM

WHEREAS, COUNTY and CONTRACTOR entered into a Personal Services Contract per Resolution 2016-436 dated May 24, 2016 (the “Contract”) whereby the CONTRACTOR has agreed to perform crime prevention services as set forth in the Contract, with a 2016 budget not to exceed one-hundred seventy seven thousand thirty four dollars and eight cents (\$177,034.08) (year base expenses of \$309, 556.74, prorated monthly for remainder of 2016); and

WHEREAS, COUNTY and CONTRACTOR agreed pursuant to the Contract that CONTRACTOR would submit a biennial budget by September 2016 to correspond with the Benton County 2017-2018 biennium budget cycle in the amounts set forth in the Contract; and

WHEREAS, this First Amendment to the Contract is necessary to provide a detailed budget for the CONTRACTOR’S 2017-2018 services; and

WHEREAS, for the time period of January 1, 2017, through December 31, 2017, CONTRACTOR shall be compensated in the amount of three hundred nine thousand five hundred fifty six dollars and seventy four cents (\$309,556.74) (2016 year base expenses of \$303, 487.00 plus 2% increase). For the time period of January 1, 2018 through December 31, 2018, CONTRACTOR shall be compensated in the amount of three hundred fifteen thousand seven hundred forty seven dollars and eighty seven cents (\$315,747.87) (2017 year base expenses of \$309,556.74 plus 2% increase); **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with the first amendment updating the Contract to include the submitted biennial budget, to correspond with the Benton County 2017-2018 biennium budget cycle in the amounts set forth above and as listed in “Exhibit C: 2016 – 2018 NFP Budget”; and

BE IT FURTHER RESOLVED the Board authorizes the Chairman of the Board to sign the first contract amendment attached hereto.

Dated this _____ day of _____, 20____

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

**FIRST AMENDMENT TO
PERSONAL SERVICES CONTRACT**

BETWEEN

BENTON COUNTY AND BENTON-FRANKLIN HEALTH DISTRICT

This First Contract Amendment, made and entered into this _____ day of _____, 2016 by and between **BENTON COUNTY**, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **BENTON-FRANKLIN HEALTH DISTRICT**, with its principal offices at 7102 W. Okanogan Place, Kennewick, WA 99336, (hereinafter "CONTRACTOR").

Recitals

WHEREAS, COUNTY and CONTRACTOR entered into a Personal Services Contract per Resolution 2016-436 dated May 24, 2016 (the "Contract") whereby the CONTRACTOR has agreed to perform crime prevention services as set forth in the Contract, with a 2016 budget not to exceed one-hundred seventy seven thousand thirty four dollars and eight cents (\$177,034.08); and

WHEREAS, COUNTY and CONTRACTOR agreed pursuant to the Contract that CONTRACTOR would submit a biennial budget by September 2016 to correspond with the Benton County 2017-2018 biennium budget cycle in the amounts set forth in the Contract; and

WHEREAS, this First Amendment to the Contract is necessary to provide a detailed budget for the CONTRACTOR'S 2017-2018 services.

NOW, THEREFORE in consideration of the provisions and agreements set forth herein, the parties agree that all provisions of the Contract shall remain in effect except the below section which is amended as follows:

- a) Section 1. **CONTRACT DOCUMENTS** - Exhibit C referenced in Section 1 is hereby deleted and replaced with the following document attached hereto:
 - i) Exhibit C, 2016 - 2018 NFP Budget

IN WITNESS WHEREOF, the parties to this First Contract Amendment have executed this Amendment to take effect upon the signature of both parties.

Dated: _____

Dated: 9-20-16

**Benton County Board of
Commissioners**

**Benton-Franklin Health
District**

Chairman

Jason Zaccaria
Signature

Public Health District
Administrator

Title

Jason Zaccaria, M.H.A.

Printed Name

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

Attest: _____
Clerk of the Board

Approved as to Form

[Signature]
Civil Deputy Prosecuting Attorney

Exhibit C: 2016-2018 NFP Budget

Nurse Family Partnership Program - Benton County Annual Budget

	2016 Budget	2017 Budget	2018 Budget	Total Budget
562.2203.11010 Salaries & Wages				
Public Health Nurse I, Step D, 1.00 FTE	\$ 50,800.00	\$ 52,505.00	\$ 56,675.00	\$ 159,980.00
Public Health Nurse I, Step A, 1.00 FTE	45,192.00	47,630.00	51,414.00	144,236.00
Public Health Nurse IV, Step H (Supervisor) 0.25 FTE	18,090.00	-	-	18,090.00
Public Health Nurse III (Supervisor), 0.20 FTE	-	15,052.00	15,350.00	30,402.00
Social Worker II, 0.25 FTE	-	16,811.00	17,146.00	33,957.00
Clerk, 0.75 FTE	19,890.00	21,391.00	23,090.00	64,371.00
Total Salaries & Wages	\$ 133,972.00	\$ 153,389.00	\$ 163,675.00	\$ 451,036.00
562.2203.21 Benefits - 37% (2016), 35% (2017-2018)	\$ 49,570.00	\$ 53,686.15	\$ 57,286.25	\$ 160,542.40
532.2203.31 Supplies & Equipment				
Office Supplies	\$ 2,500.00	\$ 1,500.00	\$ 1,500.00	\$ 5,500.00
Program Supplies	8,000.00	5,500.00	5,500.00	19,000.00
Operating Equipment	7,770.00	1,500.00	1,500.00	10,770.00
Total Supplies & Equipment	\$ 18,270.00	\$ 8,500.00	\$ 8,500.00	\$ 35,270.00
562.2203.43010 Travel & Mileage				
Mileage	\$ 6,055.00	\$ 6,055.00	\$ 6,358.00	\$ 18,468.00
Travel	-	3,800.00	1,800.00	5,600.00
Agency to Unit 2 Education	3,875.00	-	-	3,875.00
Total Travel & Mileage	\$ 9,930.00	\$ 9,855.00	\$ 8,158.00	\$ 27,943.00
562.2203.45000 Occupancy Costs				
Rent & Utilities/M&O	\$ 6,466.00	\$ 8,200.00	\$ 8,364.00	\$ 23,030.00
Communications	\$ 2,999.00	\$ 2,780.00	\$ 2,919.00	\$ 8,698.00
Total Occupancy Costs	\$ 9,465.00	\$ 10,980.00	\$ 11,283.00	\$ 31,728.00
562.2203.49 Training				
Professional Development	\$ 1,219.00	\$ 1,250.00	\$ 1,275.00	\$ 3,744.00
Initial DANCE Training (Dyadic Assessment)	\$ 9,918.00	\$ 1,400.00	\$ -	\$ 11,318.00
DANCE re-reliability fee (Dyadic Assessment)	\$ -	\$ -	\$ 140.00	\$ 140.00
Total Training Costs	\$ 11,137.00	\$ 2,650.00	\$ 1,415.00	\$ 15,202.00
Total Direct Costs	\$ 232,344.00	\$ 239,060.15	\$ 250,317.25	\$ 721,721.40
Indirect Costs	\$ 71,144.00	\$ 70,496.59	\$ 65,430.62	\$ 207,071.21
Total Program Costs	\$ 303,487.00	\$ 309,556.74	\$ 315,747.87	\$ 928,792.61

w. Amending Resolution 2016-580
w/Safe Harbor Crisis Nursery for
My Friends Place Youth Shelter
Proposal

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: October 4, 2016 Subject: Amending Resolution 2016-580 Prepared by: Shyanne Faulconer Reviewed by: Loretta SmithKelty	Execute Contract Pass Resolution X Pass Ordinance Pass Motion None	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY

Benton County would like to amend Resolution 2016-580, an agreement with Safe Harbor Crisis Nursery for My Friends Place Overnight Emergency Youth Center, to provide a detailed budget for the 2017-2018 biennium.

BACKGROUND INFORMATION

Safe Harbor/My Friends Place will use funds to provide homeless youth ages 13-17 with support services such as case management, food, clothing, laundry access, and access to technology and communications (such as computers). My Friends Place seeks to help homeless youth to avoid the streets, find a safe home, teach self-sufficiency, and offer support. My Friends' Place also seeks to provide access to youth for education, counseling, and job opportunities. Services include funding a case manager as well as drop-in services such as food and clothing.

RECOMMENDATION

Sign the Resolution to amend Resolution 2016-580 to provide a detailed 2017-2018 budget.

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.

- 2017 Budget:** \$51,000.00, prorated monthly
- Period:** January 1, 2017 through December 31, 2017
- 2018 Budget:** \$52,020.00, prorated monthly
- Period:** January 1, 2018 through December 31, 2018

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AMENDING RESOLUTION 2016-580 BETWEEN BENTON COUNTY, WASHINGTON AND SAFE HARBOR CRISIS NURSERY FOR MY FRIENDS PLACE OVERNIGHT EMERGENCY YOUTH SHELTER PROPOSAL

WHEREAS, per Resolution 2016-580 dated July 26, 2016, the Benton County Board of Commissioners approved a personal services agreement with Safe Harbor Crisis Nursery (herein after "CONTRACTOR") to provide crime prevention services under the Benton County Gang and Crime Prevention Initiative; and

WHEREAS, this amendment is necessary to provide a detailed budget for CONTRACTOR'S services for the 2017-2018 biennium; and

WHEREAS, for the time period of January 1, 2017, through December 31, 2017, CONTRACTOR shall be compensated in the amount of fifty-one thousand dollars (\$51,000.00) (2016 year base expenses of \$50,000.00 plus 2% increase). For the time period of January 1, 2018, through December 31, 2018, CONTRACTOR shall be compensated in the amount of fifty-two thousand twenty dollars (\$52,020.00) (2017 year base expenses of \$51,000.00 plus 2% increase); **NOW, THEREFORE**

BE IT RESOLVED, that the Benton County Board of Commissioners hereby amends Resolution 2016-580 and approves of the Safe Harbor Crisis Nursery 2017-2018 budget for My Friends Place Overnight Emergency Youth Shelter in the 2017 annual amount of \$51,000.00 and the 2018 annual amount of \$52,020.00; and

BE IT FURTHER RESOLVED, this Resolution will take effect January 1, 2017.

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

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE PAYMENT OF INVOICES FOR FREIGHT CHARGES FROM JOHNNY B TRANSPORT ON THE PURCHASE OF APPROXIMATELY 60 TONS OF HF-150 OIL FROM IDAHO ASPHALT SUPPLY, INC.

WHEREAS, Resolution 2016-651 authorized the purchase of approximately 60 tons of HF-150 oil from Idaho Asphalt Supply, Inc. for use by the Benton County Road Department in an amount not to exceed \$24,999.99; and

WHEREAS, the quote from Idaho Asphalt Supply, Inc. included freight charges at \$39.00 per ton; and

WHEREAS, the freight charges have now been invoiced from Idaho Asphalt Supply, Inc.'s trucking firm, Johnny B Transport, which was not named in Resolution 2016-651; **NOW, THEREFORE**,

BE IT RESOLVED the Board of Benton County Commissioners hereby approves the payment of the freight invoices, for freight on the oil purchased from Idaho Asphalt Supply, Inc., to Johnny B Transport in a total amount of \$2,471.04.

Dated this 4th day of October 2016.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

Johnny B Transport

P.O. Box 50538
Idaho Falls, ID 83405
FEIN 82-0524627

Invoice

Order # 0310430
Invoice # 0310430
Bill Date: 09/22/2016

Customer :

BC16
Benton County
PO Box 1001
Prosser, WA 99350

H23393
BENTON COUNTY
2016 ROAD OIL
PROSSER, WA 99350

Shipper:

H1
Hauser Plant
Hauser Plant
POST FALLS, ID 83854

09/22/2016
Bill of Lading: 4-310430
PO Number:
150
49
182A

Anthony J. Turner

<u>Product:</u>	<u>Pounds:</u>	<u>Tons:</u>	<u>Rate:</u>	
Customer Ship.	66720.0	33.3600	39.0000	1301.04
	Min. weight: 0.0		Per ton	

TOTAL AMOUNT DUE : \$1,301.04

Johnny B Transport

P.O. Box 50538
Idaho Falls, ID 83405
FEIN 82-0524627

Invoice

Order # 0310431
Invoice # 0310431
Bill Date: 09/22/2016

Customer :

BC16
Benton County
PO Box 1001
Prosser, WA 99350

H23393
BENTON COUNTY
2016 ROAD OIL
PROSSER, WA 99350

Shipper:

H1
Hauser Plant
Hauser Plant
POST FALLS, ID 83854

09/22/2016
Bill of Lading: 4-310431
PO Number: 30 Ton min
80
T58
167A

Mark S. Bunch

<u>Product:</u>	<u>Pounds:</u>	<u>Tons:</u>	<u>Rate:</u>	
Customer Ship.	60000.0	30.0000	39.0000	1170.00
	Min. weight: 0.0		Per ton	

TOTAL AMOUNT DUE : \$1,170.00

y. Change Order No. 1 w/D & D
Tri-Rivers Excavating, Inc. for
Annex Parking Lot Project

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>October 4, 2016</u>	Execute Agreement	<u>X</u>
Subject: <u>Kennewick Annex</u>	Pass Resolution	<u>X</u>
<u>Parking Lot Change Order #1</u>	Pass Ordinance	_____
Prepared by: <u>slc</u>	Pass Motion	_____
Reviewed by: <u>MSR</u>	Other	_____
	Consent Agenda	<u>X</u>
	Public Hearing	_____
	1st Discussion	_____
	2nd Discussion	_____
	Other	_____

BACKGROUND INFORMATION

On September 13, 2016 the Board of County Commissioners entered into a contract with D & D Tri-Rivers Excavating, Inc. for the Kennewick Annex Parking Lot project in the amount of \$53,998.75 plus WSST.

The contractor has found an unlocated 2.5” PVC water line that will need to be lowered so it is out of the way of the project. To cut and lower the pipe is \$500.00.

Additionally, more asphalt and curb & gutter need to be removed than was originally planned. After the asphalt and curb & gutter are removed there will be additional new asphalt and curb & gutter placed. The removal is \$454.50 lump sum. The new asphalt is 2.5 tons at \$487.50 and the new curb & gutter is 2 linear feet at \$58.00. The total for the asphalt and curb & gutter is \$1,000.00.

The County Engineer and contractor, D & D Tri-Rivers Excavating, Inc. are in agreement and have signed the change order in the amount of \$1,500.00 plus WSST. One (1) working day will be added to the contract. The contract now shall be completed in its entirety within twenty-six working days.

The total contract amount including Change Order No. 1 is \$55,498.75 plus WSST.

SUMMARY

Change Order No. 1 has been prepared for the Kennewick Annex Parking Lot project in the amount of \$1,500.00. One (1) working day has been added to the contract.

RECOMMENDATION

Approve the Chairman to sign Change Order No. 1.

FISCAL IMPACT

The total contract amount will increase \$1,500.00 plus WSST for a new contract amount not to exceed \$55,498.75 plus WSST.

MOTION

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A CHANGE ORDER WITH D & D TRI-RIVERS EXCAVATING, INC. FOR SR 000786 - KENNEWICK ANNEX PARKING LOT PROJECT AND AUTHORIZING THE CHAIRMAN TO SIGN CHANGE ORDER NO. 1

WHEREAS, by Resolution 2016-688 dated September 13, 2016 the Board of County Commissioners approved a contract with D & D Tri-Rivers Excavating, Inc. for the Kennewick Annex Parking Lot project in the amount of \$53,998.75 plus WSST; and

WHEREAS, an unlocated waterline needs to be lowered and additional asphalt and curb & gutter need to be replaced that changes the scope of work; and

WHEREAS, the County Engineer and the contractor have negotiated a fair and reasonable price for Change Order No. 1 in the amount of \$1,500.00 plus WSST and have agreed that one (1) working day will be added to the contract; and

WHEREAS, the Benton County Procurement, Leasing and Contracting Policy (Resolution 2012-677) requires Board of County Commissioners approval for change orders on public works projects other than road construction; and

WHEREAS, the County Engineer recommends that these changes be approved; **NOW, THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners hereby approves Change Order No. 1 in the amount of \$1,500.00 plus WSST, and authorizes the Chairman of the Board to sign Change Order No. 1 attached hereto; and

BE IT FURTHER RESOLVED, the working days will increase by one (1), therefore the contract shall now be completed in its entirety within twenty-six working days; and

BE IT FURTHER RESOLVED, the total contract amount will increase \$1,500.00 plus WSST, for a new contract amount not to exceed \$55,498.75 plus WSST.

Dated this 4th day of October, 2016.

Chairman.

Chairman Pro-Tem.

Attest: _____
Clerk of the Board

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



Change Order

Contract Number SR # 000786	Contract Title KENNEWICK ANNEX PARKING LOT	Federal Aid Number N/A
Change Order Number # 1	Change Description Lower Existing Waterline Additional Sawcut and Pavement Removal	Date Sept 23, 2016
Prime Contractor/Design-Builder D&D Tri-Rivers Excavating, Inc.		

Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

Change proposed by Contractor/Design-Builder

LOWER EXISTING 2.5" WATER LINE

Cut and lower previously undetected 2.5" PVC water line @ \$500 Lump Sum

ADDITIONAL SAWCUT, ASPHALT & CURBING REMOVAL & HMA

Remove 185 S.F. of Asphalt and 2 L.F. of Curb & Gutter @ \$454.50 Lump Sum
 New Curb & Gutter – 2 L.F. @ \$58.00
 New HMA – 2.5 tons @ \$487.50

TOTAL = \$1,500 + WASHINGTON STATE SALES TAX

Verbal Approval Date 9-20-16	Working Days +/- +1 day		
Original Contract Amount \$53,998.75	Current Contract Amount \$53,998.75	Est. Net Change This C.O. \$1,500.00	Est. Contract Amount \$55,498.75

<input checked="" type="checkbox"/> Approval Recommended	<input type="checkbox"/> Approved
<i>Ryan McClain</i> Project Manager 9/23/16 Date	Chairman of the Board Date
<input checked="" type="checkbox"/> Approval Recommended	<input checked="" type="checkbox"/> Approval Recommended
<i>Ben [Signature]</i> By Prime Contractor 9-23-16 Date	<i>[Signature]</i> County Engineer 9-26-16 Date

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Oct. 4, 2016</u>	Execute Contract	<u> X </u>
Subject: <u>Agreement w/ Saul Castillo dba/ The Interpreter</u>	Pass Resolution	<u> X </u>
Prepared by: <u>L. Small</u>	Pass Ordinance	_____
Reviewed by: <u>Ryan Lukson</u>	Pass Motion	_____
	Other	_____
	Consent Agenda	<u> X </u>
	Public Hearing	_____
	1st Discussion	_____
	2nd Discussion	_____
	Other	_____

BACKGROUND INFORMATION/ SUMMARY

The Benton County Sheriff’s Office occasionally has the need to seek transcriptional services for criminal cases. Per Resolution 2014-848 dated November 4, 2014, the Board of Benton County Commissioners approved the contract between Benton County and Saul C. Castillo dba/The Interpreter for “as needed” court certified transcription and translation services from Spanish to English with a termination date December 31, 2016.

The Benton County Sheriff’s Office recommends entering into a another personal service contract with Saul C. Castillo dba/ The Interpreter for “as needed” court certified transcription and translation services from Spanish to English, produced from tapes, discs, or any other form of material provided by the County for investigations in criminal cases for a contract amount not to exceed \$8,000; with a termination date of December 31, 2018.

APPROVED AS TO FORM

Ryan Lukson, DPA

RECOMMENDATION

Approve the attached Resolution and Personal Service Contract between Benton County and Saul C. Castillo dba/ The Interpreter for “as needed” court certified transcription and translation services from Spanish to English, produced from tapes, discs, or any other form of material provided by the County for investigations in criminal cases.

FISCAL IMPACT

Said services shall be paid from Dept 121 and is included in the 2017/2018 budget process.

MOTION

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PERSONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND SAUL C. CASTILLO DBA/THE INTERPRETER FOR AS NEEDED TRANSCRIPTION AND TRANSLATION SERVICES FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, per Resolution 2014-848 dated November 4, 2014, the Board of Benton County Commissioners approved the contract between Benton County and Saul C. Castillo dba/The Interpreter for "as needed" court certified transcription and translation services from Spanish to English with a termination date December 31, 2016; and

WHEREAS, the Benton County Sheriff's Office recommends entering into another personal service contract with Saul C. Castillo dba/ The Interpreter for "as needed" court certified transcription and translation services from Spanish to English, produced from tapes, discs, or any other form of material provided by the County for investigations in criminal cases; and

WHEREAS, The Interpreter shall provide the translation and transcriptions services as outline above on a per job basis at the time of service in the form of a written proposal, with the bid taking into consideration the quality of the material provided, as well as time requirements for an overall contract amount not to exceed \$8,000; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners, Benton County, Washington, hereby approves the attached contract between Benton County and Saul C. Castillo dba/The Interpreter for "as needed" court certified transcription and translation services from Spanish to English for a contract amount not to exceed \$8,000; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board to sign the attached contract between Benton County and Saul C. Castillo dba/The Interpreter; and

BE IT FURTHER RESOLVED, said contract shall commence January 1, 2017 and shall terminate December 31, 2018.

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

**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 **SAUL C. CASTILLO dba/THE INTERPRETER**, a Washington State Bilingual (Spanish/English) Court Certified Interpreter, with its principal offices at 224 16TH Ave. SW, Ephrata, WA 98823, (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)

2. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2017 and shall terminate on December 31, 2018. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. CONTRACTOR shall provide "as needed" court certified transcription and translation services from Spanish to English, produced from tapes, discs, or any other form of material provided by the COUNTY for investigations in criminal cases. The COUNTY and the CONTRACTOR agree that the workload shall be handled by CONTRACTOR or his employees who are all licensed and court certified to perform the services provided herein.
- 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 perform the work specified in this Contract according to standard industry practice. The CONTRACTOR shall notify the COUNTY immediately if a conflict of interest arises from the COUNTY's request for services

hereunder.

- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- e. The COUNTY does not guarantee utilization of this Contract. The COUNTY may award contracts to other vendors for similar services. Actual utilization will be based on availability, pricing, or any other factors deemed important to the COUNTY.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR: Saul Castillo
PO Box 32
Quincy, WA 98848
Tel: (509) 754-4393
Email: theinterpreter_agency@yahoo.com

- b. For COUNTY: Lisa Small, Contract Coordinator
7122 W. Okanogan Place, Bldg. B
Kennewick, WA 99350
Tel: (509) 735-6555 Ext. 3880
Fax: (509) 736-3895
Email: Lisa.Small@co.benton.wa.us

5. COMPENSATION

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

- a. The CONTRACTOR shall be compensated for the services provided in Section 3 above on a per job basis at the time of service in the form of a written proposal. The bid will take into consideration the quality of the material provided as well as time requirements.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed **\$8,000** including Washington State Sales Tax.
- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this

Contract.

- d. The CONTRACTOR may submit invoices to the COUNTY not more than once per month. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.
- e. 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.
- f. 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.
- g. 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 AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

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 death 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 work 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 work 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. **Professional Liability Insurance:** Prior to the start of work under this Contract, the CONTRACTOR shall secure and maintain at its own expense Professional Liability Insurance appropriate to the CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR'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. CONTRACTOR 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. CONTRACTOR shall annually provide COUNTY with proof of all such insurance.

- b. **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.

- c. **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

- d. **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.
- e. **Cyber Liability:** The CONTRACTOR shall maintain cyber liability insurance for not less than \$1,000,000 per occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to COUNTY and for claims involving any professional services for which the CONTRACTOR is engaged with COUNTY for such length of time as necessary to cover any and all claims.
- f. **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. CONTRACTOR 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. All liability insurance required under this Contract, except for professional liability under Section 8(a), 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.

g. **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 Professional Liability, 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 accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

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); extended reporting period requirements for professional liability insurance (Section 8(a)); 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.

28. LICENSING ACCREDITATION AND REGISTRATION

The CONTRACTOR shall comply with applicable local, state, and federal licensing, accreditation and registration/standards, necessary for the performance of the services set forth hereunder. The CONTRACTOR shall assure that the CONTRACTOR and all of the CONTRACTORS' employees are fully licensed for translation services in the state of Washington.

29. SAFEGUARDING OF INFORMATION

The use of disclosure by any party of any information concerning the COUNTY for any purpose not directly connected with the administration of the COUNTY'S or the CONTRACTOR'S responsibilities with respect to services(s) provided under this Contract is prohibited except by prior written consent of the COUNTY.

The parties to this Contract have executed this Contract to take effect January 1, 2017.

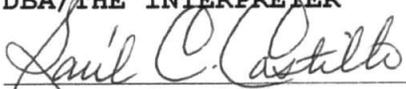
Date: _____

Date: 9/15/2016

BENTON COUNTY

**SAUL C. CASTILLO,
DBA/ THE INTERPRETER**

Shon Small, Chairman
Benton County Commissioner



Saul C. Castillo

Approved as to Form



Ryan Lukson
Civil Deputy Prosecuting Attorney

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Oct. 4, 2016</u>	Execute Contract	<u> X </u>
Subject: <u>Contract Amendment w/ Tower Plaza Cleaners</u>	Pass Resolution	<u> </u>
	Pass Ordinance	<u> </u>
Prepared by: <u>L. Small</u>	Pass Motion	<u> </u>
Reviewed by: <u>Ryan Lukson</u>	Other	<u> </u>
	Consent Agenda	<u> X </u>
	Public Hearing	<u> </u>
	1st Discussion	<u> </u>
	2nd Discussion	<u> </u>
	Other	<u> </u>

BACKGROUND INFORMATION/ SUMMARY

Benton County Sheriff’s Office (BCSO) currently has a contract with Kim, LLC, dba/Tower Plaza Cleaners & Laundromat, LLC for “as needed” dry cleaning and laundry services, with a contract amount not to exceed \$23,000 including WSST that terminates December 31, 2016.

The attached First Amendment is necessary as both parties wish to extend the original terms and conditions of the Contract to December 31, 2018 and increase the overall contract amount to \$36,000 including WSST.

RECOMMENDATION

Approve the attached Resolution and First Amendment to the Personal Service Contract between Benton County and Kim, LLC, dba/Tower Plaza Cleaners & Laundromat, LLC for as needed dry cleaning and laundry services for the Benton County Sheriff’s Office, with a contract amount not to exceed \$36,000 including WSST. The term of the contract shall commence January 1, 2016 and shall terminating December 31, 2018.

APPROVED AS TO FORM

Ryan Lukson

FISCAL IMPACT

Said funds will be paid from the BCSO’s budget from the appropriate departments and are included in the 2017/2018 budget process.

MOTION

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE FIRST AMENDMENT TO THE PERSONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND KIM, LLC DBA/TOWER PLAZA CLEANERS & LAUNDROMAT, LLC FOR "AS NEEDED" DRY CLEANING AND LAUNDRY SERVICES FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, per Resolution 2015-927 dated December 22, 2015, the Board of Benton County Commissioners entered into a personal service contract with Kim, LLC, dba/Tower Plaza Cleaners & Laundromat, LLC for "as needed" dry cleaning and laundry services with a contract amount not to exceed \$23,000 including WSST; and

WHEREAS, the Contract expires on December 31, 2016 and upon mutual agreement of both parties, the original terms and conditions of the Contract may be extended for (2) additional 12-month periods; and

WHEREAS, both parties wish to extend the term of the original Contract while maintaining the rest of the Contract in full force and effect; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby agrees to extend the Contract between Benton County and Kim, LLC, dba/Tower Plaza Cleaners & Laundromat, LLC for a contract amount not to exceed \$36,000, including Washington State Sales Tax; and

BE IT FURTHER RESOLVED, the term of the Contract shall begin January 1, 2016 and shall expire December 31, 2018; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman to sign the attached First Amendment to the Personal Service Contract between Benton County and Kim, LLC, dba/Tower Plaza Cleaners & Laundromat, LLC.

Dated this _____ day of _____, 2016

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

**First Amendment to
Personal Service Contract**

Between

Benton County and Tower Plaza Cleaners & Laundromat, LLC

This Contract Amendment, made and entered into this _____ day of _____, 2016 by and between **BENTON COUNTY**, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **KIM, LLC dba/TOWER PLAZA CLEANERS & LAUNDROMAT, LLC**, with its principal offices at 1208 20th Ave., Pasco, WA 99301 (hereinafter "CONTRACTOR").

Recitals

Whereas, COUNTY and CONTRACTOR entered into a Personal Service Contract dated December 22, 2015 (the "Contract") whereby the CONTRACTOR would perform all necessary dry cleaning and laundry services, to include any necessary repairs, for the employees of the Benton County Sheriff's Office, including pickup and delivery from the Benton County Sheriff's Office twice a week, as further described in the original Contract.

Whereas, the both parties wish to extend the term of the Contract, while maintaining the rest of the Contract in full force and effect.

Now, therefore, in consideration of the provisions and agreements set forth herein, the parties agree that all provisions of their original Contract shall remain in effect except the below sections which are amended as follows:

- a) Section 2. **DURATION OF CONTRACT** – is hereby deleted and replaced in its entirety with the following:

The term of this Contract shall begin January 1, 2016 and shall expire on December 31, 2018. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

- b) Section 5. **COMPENSATION** – Section 5.b. is hereby deleted and replaced in its entirety with the following:

The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed **\$36,000** including any applicable sale tax.

IN WITNESS WHEREOF, the Parties to this Contract Amendment have executed this Amendment to take effect upon the signature of both parties.

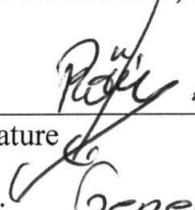
BENTON COUNTY

KIM, LLC dba/TOWER PLAZA CLEANERS & LAUNDROMAT, LLC

Shon Small, Chairman

Title: Benton County Commissioner

Date: _____



Signature

Title: GENERAL MANAGER

Print Name: RAYMUNDO GONZALEZ

Date: 09/16/2016

Approved as to form:



Ryan J. Lukson, Civil DPA

Tower Plaza
CLEANERS & LAUNDROMAT
1208 20th AVE.
PASCO, WA 99301

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>	
Meeting Date:	<u>10-04-2016</u>	Execute Contract	_____
Subject:	<u>FTN Financial</u>	Pass Resolution	_____x_____
	<u>Main Street</u>	Pass Ordinance	_____
	<u>Advisors, LLC</u>	Pass Motion	_____
Prepared by:	<u>Y Perez Castillo</u>	Other	_____
Reviewed by:	<u>Erhiza Rivera</u>		
		Consent Agenda	_____X_____
		Public Hearing	_____
		1st Discussion	_____
		2nd Discussion	_____
		Other	_____

BACKGROUND INFORMATION

The Board of Benton County Investment Policy states, in section XIX that the Treasurer may use an Investment Advisor to provide Services that directly relate to the oversight of the investment program.

The Benton County Finance Committee including Brenda Chilton, Duane A. Davidson and Shon Small, met on September 20th, 2016. The Committee set forth a motion to contract with FTN Financial Main Street Advisors to provide services listed in the attached “Exhibit A” Scope of Services for Benton County Washington.

The Benton County Finance Committee has deemed that is not reasonable to request three bids, being that the services provided by FTN Financial are specialized. FTN Financial possess the knowledge and familiarity with our Investment Portfolio from a prior engagement and this contract would be a continuation of those services.

FTN Financial Main Street Advisors is a registered investment advisor with the Securities and Exchange Commission. The firm provides discretionary and non-discretionary management for municipal operating and bond funds. They directly manage approximately \$5 billion for municipalities and provide non-discretionary management and consulting to municipalities totaling over \$14 billion under management.

SUMMARY

The Benton County Finance Committee has set forth a motion to contract with FTN Financial to provide the services listed in the attached (“ Exhibit A”).

RECOMMENDATION

Approve Resolution.

FISCAL IMPACT

The services provided by FTN Financial will be paid out of the Treasurer’s Investment Pool fund (0109-101) in an amount not to exceed \$18,000 annual cost, inclusive of sales tax. There will be no fiscal impact to Current Expense.

MOTION

N/A- Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE SERVICE AGREEMENT WITH FTN FINANCIAL MAIN STREET ADVISORS, LLC.

WHEREAS, the Board of Benton County Investment Policy states, in section XIX, that the Treasurer may use an Investment Advisor to provide services that directly relate to the oversight of the investment program; and

WHEREAS, the Benton County Finance Committee has deemed that it is not reasonable to request three bids, being that the services provided are specialized services; and

WHEREAS, FTN Financial has already provided a detail investment program review and Investment Advisor Services, this new contract would be a continuation of those services; and

WHEREAS, the professional service agreement is to be for a 24 month period, starting on September 1st, 2016 and ending on September 30th, 2018; and

WHEREAS, the Benton County Finance Committee has reviewed and approved the Proposal received from FTN Financial Main Street Advisors, LLC, and has set forth recommendations for funding the selected proposal described in the attachment memorandum ("Exhibit A") totaling \$18,000 annual cost; **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 \$18,000 annual cost inclusive of all sales tax applicable; 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 make such payments and execute any agreements necessary for the disbursement of the above-mentioned 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

**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 FTN FINANCIAL MAIN STREET ADVISORS, LLC, with its principal offices at 10655 Park Run Drive, Suite 120, Las Vegas, NV 89144, (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**
- b. **Exhibit A, "Proposed Scope of Services for Benton County Washington"**

2. DURATION OF CONTRACT

The term of this Contract shall begin September 1st, 2016 and end September 30, 2018. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Proposed Scope of Services for Benton County Washington", 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 perform the work specified in this Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- e. The CONTRACTOR shall confer with the COUNTY from time to

time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR: Rick Phillips, 10655 Park Run Drive, Suite 120, Las Vegas, NV 89144
- b. For COUNTY: Erhiza Rivera, 620 Market Street, Prosser, WA 99350

5. COMPENSATION

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

- a. A detailed description of the compensation to be paid by the COUNTY is set forth in Exhibit A, "Proposed Scope of Services for Benton County Washington", which is attached hereto and incorporated herein by reference.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$18,000 annually, inclusive of sales tax.
- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- d. The CONTRACTOR may, in accordance with Exhibit A, submit invoices to the COUNTY in a quarterly basis during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered within thirty (30) days from the date of receipt.
- e. 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.
- f. 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.

- g. 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 AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

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 death to persons or damage to property or business, arising in connection with the work performed under this Contract, or 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 work 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. **Professional Liability Insurance:** Prior to the start of work under this Contract, the CONTRACTOR shall secure and maintain at its own expense Professional Liability Insurance appropriate to the CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR'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. CONTRACTOR 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. CONTRACTOR shall annually provide COUNTY with proof of all such insurance.

- b. **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, employers liability, commercial liability or commercial umbrella liability insurance.

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.

- c. **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
\$1,000,000 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

d. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Commercial Automobile Liability Insurance (CA0001), or equivalent coverage, 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. Commercial Auto Liability Insurance shall include coverage for owned, non-owned and hire autos. Covered auto shall be designated as "Symbol 1" any auto. CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by Commercial Auto Liability Insurance.

e. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or

self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.

2. The 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.
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, except for professional liability under Section [8(a)], shall be written on an Occurrence Policy form.

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 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 Professional Liability, Auto Liability and Workmen's Compensation, shall specifically include the COUNTY as an "Additional Insured" 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 are to be provided to the County's Contract Representative referenced in Section 4.b.
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. b.
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 accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

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 all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

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]); extended reporting period requirements for professional liability insurance (Section [8(a)]); 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 actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTY by CONTRACTOR 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.

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED: _____

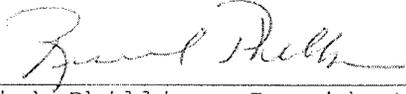
DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

CONTRACTOR

FTN FINANCIAL MAIN STREET ADVISORS, LLC

Chairman



Rick Phillips, President

Member

Member

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

Attest: _____
Clerk of the Board

Approved as to Form:



Deputy Prosecuting Attorney

FTN Financial Main Street Advisors

Proposed Scope of Services for Benton County Washington

Period: September 1, 2016 to September 30, 2018

1. Make specific recommendations for the investment portfolios and be available on a daily basis to analyze bond offerings.
2. Provide a weekly Portfolio Update for both the TIP and Non-Tip portfolios via email.
3. Provide bi-monthly updates of the economy and markets, and strategy via a conference call.
4. Provide a quarterly investment report for the TIP and Non-TIP portfolios.
5. Evaluate the Investment Policy annually.
6. Provide an investment program review onsite at the County annually.
7. Provide ongoing assistance with cash flow analysis.
8. Provide periodic credit strategies for possible commercial paper and corporate bond purchases.
9. Assist the County in analyzing and possibly implementing amortization and accretion of securities.
10. Provide periodic review of internal controls and reporting practices to ensure they are adequate and meet best practice standards.

Annual Cost: \$18,000, inclusive of sales tax, paid quarterly in arrears.

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>	
Meeting Date:	<u>10/04/2016</u>	Execute Contract	_____
Subject:	<u>Line Item</u>	Pass Resolution	_____x_____
	<u>Transfer</u>	Pass Ordinance	_____
Prepared by:	<u>Yuliana Perez</u>	Pass Motion	_____
Reviewed by:	<u>Erhiza Rivera</u>	Other	_____
		Consent Agenda	_____X_____
		Public Hearing	_____
		1st Discussion	_____
		2nd Discussion	_____
		Other	_____

BACKGROUND INFORMATION / SUMMARY

The 2015/2016 Call letter mandated \$0 budget related to Cost of Living Increases for salaries & benefits. As a result, our office would like to do a line item transfer from available resources in line item 4191 to line items listed in "Exhibit A"

RECOMMENDATION

Request approval of Resolution.

FISCAL IMPACT

Transfer of funds within current expense fund number 0000-101 department number 124.
Transferring funds from 514.220.4191 to various line items within salaries and benefits section.

MOTION

Move to approve the requested line item transfer.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 124

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by:
Yuliana Perez

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FR 101

TRANSFER TO 101

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
514.220.	4191	Information Technology	\$21,762	514.220.	1502	Accounting Asst. II	2,700.00
				514.220.	1503	Accountint Asst. III	503.00
				514.220.	1504	Accounting Asst. II	2,581.00
				514.220.	1506	Office Assistant III	1,332.00
				514.220.	1508	Office Assistant III	2,414.00
				514.220.	1514	Office Assistant III	2,668.00
				514.220.	2102	Social Security (FICA)	842.00
				514.220.	2103	Medical	5,828.00
				514.220.	2104	Retirement	2,894.00
	TOTAL		\$21,762		TOTAL		\$21,762

Explanation:

The 2015/2016 Call letter mandated \$0 budget related to Cost of Living Increases for Salaries & Benefits. As a result, our office would like to do a line item transfer from available resources in line item 4191 to line items listed above in order to cover these costs associated with salaries and benefits. (In April of 2015, our office was billed for the 2nd QTR of IT Assessments, during that period, the IT department provided us with a credit of \$21,885 for a percentage of the amount not spent during the 2013-14 budget.)

Prepared by:

Date:

Approved

Denied

Date: _____

Chairman

Member

Member

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Oct. 4, 2016</u>	Execute Contract	<u>X</u>
Subject: <u>Vehicle Purchase</u>	Pass Resolution	<u>X</u>
Prepared by: <u>L. Small</u>	Pass Ordinance	<u> </u>
Reviewed by: <u>Ryan Lukson</u>	Pass Motion	<u> </u>
	Other	<u> </u>
	Consent Agenda	<u> </u>
	Public Hearing	<u> </u>
	1st Discussion	<u>X</u>
	2nd Discussion	<u> </u>
	Other	<u> </u>

BACKGROUND INFORMATION/ SUMMARY

Per Resolution 2016-304 the Board of Benton County Commissioners approved the Budget Adjustments to the 2015-2016 Public Safety Tax Fund No. 0148-101, Dept. 121 to cover two additional Detectives for the Benton County Sheriff’s Office and all necessary supplies/equipment, to include vehicles.

Washington State Contract No. 03513 allows for the purchase of 2017 Ford Fusion “S” 4-Door Sedan vehicles from Columbia Ford Nissan, Longview, WA.

Columbia Ford Nissan provided the following quote all in accordance with the breakdown attached hereto as Exhibit B:

- One (1) 2017 Ford Fusion “S” 4-Door Sedan – State Contract No. 03513 from Columbia Ford Nissan for a total amount of \$22,892.45 including WSST.

BCSO received a proposed upfit cost of \$3,391.23 which includes emergency equipment from Day Wireless, which will make the overall cost of the vehicle approx. \$26,283.68

RECOMMENDATION

Approve the attached Resolution and Purchase Agreement, authorizing the Benton County Sheriff’s Office to move forward with the purchase of said vehicle from Columbia Ford Nissan utilizing State Contract No. 03513.

APPROVED AS TO FORM

Ryan Lukson

FISCAL IMPACT

Total of \$22,892.45 including WSST, plus the approx. upfit cost of \$3,391.23 (total \$26,283.68) to be paid from the Public Safety Tax Fund No. 0148-101, Dept. 121. NOTE: It is highly possible this vehicle may not be received until after January 1, 2017. Therefore, the funding for this vehicle has been requested in the 2017/2018 budget to be used in the event it is necessary.

MOTION

Board of Benton County Commissioners hereby approves the Purchase Agreement between Benton County and Columbia Ford Nissan for the purchase of one (1) 2017 Ford Fusion “S” 4-Door Sedan, utilizing State Contract No. 03513 in the amount of \$22,892.45 including WSST, with a total amount not to exceed \$25,000 including WSST, for any unanticipated expenditures.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF ONE (1) VEHICLE FROM COLUMBIA FORD NISSAN UTILIZING WASHINGTON STATE CONTRACT NO. 03513 FOR THE BENTON COUNTY SHERIFF'S OFFICE, KENNEWICK, WA

WHEREAS, per Resolution 2016-304 the Board of Benton County Commissioners approved the Budget Adjustments to the 2015-2016 Public Safety Tax Fund No. 0148-101, Dept. 121 to cover two additional Detectives and all necessary supplies/equipment; and

WHEREAS, Washington State Contract No. 03513 allows for the purchase of 2017 Ford Fusion "S" 4-Door Sedan vehicles from Columbia Ford Nissan, Longview, WA; and

WHEREAS, said vehicle is to be used by the Benton County Sheriff's Office for the Detective position as a responder vehicle; and

WHEREAS, the following is the total amount of the purchase price including WSST, all in accordance with the breakdown attached hereto as Exhibit B:

- One (1) 2017 Ford Fusion "S" 4-Door Sedan – State Contract No. 03513 from Columbia Ford for a total amount of \$22,892.45 including WSST; and

WHEREAS, the Benton County Sheriff's Office recommends purchasing the above mentioned vehicle as part of the supplies and equipment needed for the additional Detective to be paid out of the Public Safety Tax Fund No. 0148-101, Dept. 121; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, concurs with the recommendation and hereby is authorized to sign the attached Purchase Agreement between Benton County and Columbia Ford for the purchase of one (1) 2017 Ford Fusion "S" 4-Door Sedan, utilizing State Contract No. 03513 in the amount of \$22,892.45 including WSST with a total amount not to exceed \$25,000.00 including WSST.

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

By signing in the space provided, the parties hereby acknowledge the following:

- 1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
- 2) The person executing this Agreement is authorized to do so by his/her party;
- 3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreements(s) for all purposes

Vendor Name (Print): MARIE TELLINGHUIS Title: GOVT CONTRACTS Date: 09/22/16

Vendor Signature: Marie Tellinghuisen

Chairman
Benton County
Board of Commissioners: _____ Date: _____
Shon Small, Chairman

Member
Benton County
Board of Commissioners: _____ Date: _____

Member
Benton County
Board of Commissioners: _____ Date: _____

Exhibit A

03513 Automobiles
Compact, Midsize, Fullsize,
Electric, Hybrid, Alternative Fuel

Current Contract Information (CCI)

Effective Date: January 02, 2014

State Vehicle contracts can be utilized by authorized Master Contract Use Agreement (MCUA) Purchasers. To get pricing, availability, a quote, or to submit a purchase request use the Contract Automobile Request System (CARS) below.

CARS

[Click here to start the process](#)

Executed Contract	Manufacturer	Awarded Vendor	Payment Details
 03513 Executed Bud Clary.pdf		Bud Clary Chevrolet 1030 Commerce Ave. Longview, WA 98632 Contact: Becky Davis (800) 899-1926	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03513 Executed Columbia Ford Nissan.		Columbia Ford 700 7 th Ave Longview, WA 98632 Contact: Marie Tellinghiusen (360) 423-4321 ext. 187	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03513 Executed Dwyane Lane.pdf		Dwayne Lane 10515 Evergreen Way Everett, WA 98204 Contact: Mike O'Donnell (425) 551-4905 (425) 754-5006	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03513 Executed Karmart.pdf		Karmart's contract was terminated by mutual consent. Volkswagens no longer available on state contract	
 03513 Executed Columbia Ford Nissan.		Nissan's contract was terminated by mutual consent with Columbia Ford. Nissan's are no longer available on state contract	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03513 Executed Toyota of Yakima.pdf		Toyota of Yakima 2230 Longfibre Rd. Union Gap, WA 98909 Contact: Brandon Pittman 509-654-7731	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03513 Executed Honda.pdf	 HONDA	Honda Auto Center 13291 SE 36 th St Bellevue, WA 98006 Contact: Mick Hanlon (425) 643-3770 (425) 766-6526	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days

For Pricing and ordering please visit

<https://fortress.wa.gov/ga/apps/CARS/ContractVehicleMenu.aspx>

[Click Here For Special Conditions](#)

DES Contact Information

Contracts Specialist:	Steve Hatfield	Alternate Contact:	Customer Service
Phone Number:	(360) 407-9276	Phone Number:	(360)407-2210
Fax Number:	(360) 586-2426	Fax Number:	(360) 586-2426
Email:	Steve.Hatfield@des.wa.gov	Email:	contractingandpurchasing@des.wa.gov

CONTRACT ACTION HISTORY:

Date	Action	Amendments
12/4/15	<p>Contract Extension: Period of performance has been extended with all five (5) vendors until 12/31/2016. All other terms, conditions and pricing remain unchanged.</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;">  Bud Clary Auto 03513.pdf </div> <div style="text-align: center;">  Columbia Ford Auto 03513.pdf </div> <div style="text-align: center;">  Dodge Auto 03513.pdf </div> <div style="text-align: center;">  Honda Auto 03513.pdf </div> </div> <div style="margin-top: 10px; text-align: center;">  Toyota Auto 03513.pdf </div>	See Left
01-02-14	CONTRACT ACTION: Contract start date	n/a
07-21-14	<p>CONTRACT UPDATE: CARS is the exclusive way to purchase vehicles. For pricing and ordering please visit https://fortress.wa.gov/ga/apps/CARS/ContractVehicleMenu.aspx</p>	n/a
10/28/2014	<p>CONTRACT CHANGE: Contract 03513 between Karmart and the state of Washington is terminated. The last date of performance is 10-28-14. No further orders will be processed or authorized under this contract. This termination by mutual agreement is not reflective of Karmarts performance and the state of Washington is appreciative of Karmarts partnership in supplying world class products and customer service.</p>	<div style="border: 1px solid black; padding: 5px; text-align: center;">  03513a06 - Karmart - Executed.pdf </div>
02/12/2015	<p>CONTRACT CHANGE: Incorporation of new model year (MY) vehicles and addition/deletion/pricing of options is now an administrative action</p> <p>Vehicle Sales is a very dynamic industry. Models, options, availability, specifications and pricing are not static and require frequent adjustments. Vehicle Dealer is required to submit new model years in Excel format (document provided by DES). Once evaluated and approved by DES it will be</p>	

	<p>loaded into DES's Contract Automobile Request System (CARS). Requests to edit options (removing, adding, editing, pricing) shall be entered by the dealer into the CARS system.</p> <p>CARS retains a record of all vehicles and their associated options complete with date of change and/or adoption and version number. CARS will be the official record of contracted vehicles and options. All MY Vehicles and Options approved and posted on CARS are incorporated by reference into the contract.</p> <p>All other pricing, terms, and conditions remain unchanged</p>	
--	--	--

SPECIAL CONDITIONS:

All current vehicle contracts may be viewed using the "Contract Search Tool" located at: <http://des.wa.gov/services/ContractingPurchasing/CurrentContracts/Pages/default.aspx>

1) Passenger Vehicle Approval **(ONLY REQUIRED BY STATE AGENCIES)**

The operating budget that Governor Chris Gregoire signed May 2, 2012 includes a proviso that orders the director of the Department of Enterprise Services to give written approval before any agency can make a passenger vehicle purchase.

Please note: Fleet Operations will handle this process for agencies with fleets managed by DES.

When purchasing passenger vehicles through state contracts, agencies should take into careful consideration the business need. Before signing off on vehicle purchase requests, DES Director will review the following criteria:

- Vehicle(s) are included in agency's biennial vehicle purchase plan.
- Written approval from the director of the agency making the request.
- Type of vehicle being requested.
- Expected use and location of the vehicle.
- If this is a new vehicle, what is the business need?
- If it is a replacement vehicle, what is it replacing?
- Current mileage of the vehicle being replaced. Current retirement mileage is a minimum of:
 - 100,000 miles for gas-powered sedans and station wagons.
 - 115,000 miles for hybrid sedans and SUVs.
 - 115,000 miles for small to mid-size SUVs and trucks.
 - 130,000 miles for full-size trucks and vans.
- Annual usage.
- Fuel efficiency. Executive Order 05-01 directs agencies to give preference to hybrid vehicles.

The [Passenger Vehicle Request Form](#) is available online. The signature of the agency director is required prior to any review. An electronic version of the signed form should be emailed to vehicleapproval@des.wa.gov

2) Titles and Licensing

Customer is to pay all title and licensing fees directly to the Department of Licensing (DOL) or their local sub agent. Dealer will not invoice customer for such fees, including the trauma care fee which will be paid to DOL per RCW 46.12.042 (2). Dealer check previously made out to DOL for a portion of the Licensing Fees will not be provided.

For information regarding the sale or purchase of surplus vehicles contact the Surplus Operations at (360) 753-3508.

3) Ordering Process –

For pricing and ordering please visit

<https://fortress.wa.gov/ga/apps/CARS/ContractVehicleMenu.aspx>

Please take into consideration the following factors when making your vehicle purchase:

- Total overall cost of vehicle, and/or
- Dealer location (region), and/or
- Local preferences, and/or
- Fleet consistency, and/or
- Vehicle availability, and /or
- Legislative mandates, etc.

Contract Vehicle Pricing:

In the past vehicle contracts were awarded annually based on the manufacturers' build cycle. This contract uses a multi-year award process. The initial term will be two years with the option to extend for an additional one-year term. New Model Year vehicles will be incorporated into the contract to allow for a smooth transition and uninterrupted vehicle availability; eliminating the "seasonal" cutoff periods. If orders are received after a model-year final order due date, manufacturer's new model year prices (increases or decreases) will be applied to contract pricing via contract amendment. Dealer will notify DES and customers of any model year price increases as soon as pricing is released by manufacturer. If not published on the Current Contract information (CCI), customer may contact dealer directly to obtain final order due dates for current model year.

1) Financing Option –

DES does not offer financing options however the Washington State Treasurers office does have a program that may be able to help.

Excerpt from Treasurers website: <http://www.tre.wa.gov/LOCAL/index.shtml>

You have likely heard about this innovative financing option for local government agencies of all types. The LOCAL program has been developed with an eye toward making it easy to understand and easy to use.

The LOCAL program is an expanded version of the successful state agency lease/purchase program. The program was originally created by the Legislature in 1989 ([RCW 39.94](#)) to provide the lowest cost financing for state agency purchases by pooling funding needs into larger offerings of securities. Thanks to support and assistance from many friends of local government, the Legislature passed legislation in 1998 to provide local governments access to the program. Local government agencies of all types can finance equipment or real estate needs through the State Treasurer's office subject to existing debt limitations and financial considerations.

The major benefits of LOCAL are (1) simplicity and (2) low cost financing. Participants will benefit from the current program rating of Moody's Aa2, low fees and expenses, and access to the public bond markets. Please click on the following links to see the program's most current rates:

- [Recent LOCAL Lease/Purchase Interest Rates - Real Estate](#)
- [Recent LOCAL Lease/Purchase Interest Rates - Equipment](#)

An advisory body was convened to guide the program. Representatives of local governments were appointed by associations representing various types of entities to provide direction and feedback on proposed program features, guidelines, and procedures. We are committed to offering a program that will benefit local government and be simple to use.

The LOCAL program is an excellent example of state and local governments working together to deliver the most cost effective and highest quality product possible. As partners, we have created a program that delivers for you and your constituents.

Lisa Small

Subject: FW: Vehicle Quote - 2016-9-90 - BENTON COUNTY - 10300

From: NOREPLY@des.wa.gov [<mailto:NOREPLY@des.wa.gov>]

Sent: Thursday, September 08, 2016 14:59

To: Brian White <Brian.White@co.benton.wa.us>

Cc: Steve.Hatfield@des.wa.gov

Subject: Vehicle Quote - 2016-9-90 - BENTON COUNTY - 10300

Vehicle Quote Number: 2016-9-90 [Create Purchase Request](#) [View organization purchase requests](#)

This is a **quote** only. You must create a purchase request to order this vehicle(s)

Contract #: 03513	Dealer Contact: Marie Tellinghiusen
Dealer: Columbia Ford (W403)	Dealer Phone: (360) 423-4321 Ext: 187
700 7th Avenue	Dealer Email: mariet@colford.com
Longview WA 98632	

Organization Information

Organization: BENTON COUNTY - 10300
Email: Brian.White@co.benton.wa.us

Color Options

Magnetic - 1
Tax Exempt: N

Vehicle Options

Order Code	Option Description	Qty	Unit Price	Ext. Price
2017-104-001	2017 Ford Fusion "S" 4-Door Sedan (POG/100A)	1	\$17,019.00	\$17,019.00
2017-104-005	2.0L EcoBoost Engine with Automatic Transmission (22 city/33 hwy) (Includes 18" premium painted wheels, EcoCloth, fog lamps, rear spoiler, leather-wrapped steering wheel, charcoal interior color) (Must also order SE Trim Level Upgrade) (POH/999/44W/201A)	1	\$2,750.00	\$2,750.00
2017-104-007	SE Trim Upgrade (includes 10-way power driver seat with power lumbar, 6-way power passenger seat, P235/50R17 tires, 17" premium painted luster nickel wheels, compass, outside temperature display, rear A/C ducts, rear seat center armrest with cupholders, rear carpeted floor mats, keyless entry keypad, satellite radio) (POH/200A)	1	\$1,331.00	\$1,331.00
2017-104-203	Fire Extinguisher, 2.5# Dry Chemical ABC Rated w/ Mounting Bracket (DLR)	1	\$38.00	\$38.00

Quote Totals

Total Vehicles:	1
Sub Total:	\$21,138.00
8.3 % Sales Tax:	\$1,754.45
Quote Total:	\$22,892.45

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Oct. 4, 2016</u>	Execute Contract	<u>X</u>
Subject: <u>Vehicle Purchase</u>	Pass Resolution	<u>X</u>
Prepared by: <u>L. Small</u>	Pass Ordinance	_____
Reviewed by: <u>Ryan Lukson</u>	Pass Motion	_____
	Other	_____
	Consent Agenda	_____
	Public Hearing	_____
	1st Discussion	_____
	2nd Discussion	<u>X</u>
	Other	_____

BACKGROUND INFORMATION/ SUMMARY

Per Resolution 2016-304 the Board of Benton County Commissioners approved the Budget Adjustments to the 2015-2016 Public Safety Tax Fund No. 0148-101, Dept. 121 to cover two additional Detectives for the Benton County Sheriff’s Office and all necessary supplies/equipment, to include vehicles.

Washington State Contract No. 03713 allows for the purchase of 2017 Ford Police Interceptor Utility/SUV AWD vehicles from Columbia Ford Nissan, Longview, WA.

Columbia Ford Nissan provided the following quote all in accordance with the breakdown attached hereto as Exhibit B:

- One (1) Ford Police Interceptor Utility/SUV AWD – State Contract No. 03713 from Columbia Ford Nissan for a total amount of \$30,895.82 including WSST.

BCSO received a proposed upfit cost of \$11,283.63, which includes emergency equipment from Day Wireless, making the overall cost of the vehicle approx. \$42,179.45.

RECOMMENDATION

Approve the attached Resolution and Purchase Agreement, authorizing the Benton County Sheriff’s Office to move forward with the purchase of said vehicle from Columbia Ford Nissan utilizing State Contract No. 03713.

APPROVED AS TO FORM

Ryan Lukson

FISCAL IMPACT

Total of \$30,895.82 including WSST, plus the approx. upfit cost of \$11,283.63 (total \$42,179.45) to be paid from the Public Safety Tax Fund No. 0148-101, Dept. 121. NOTE: It is highly possible this vehicle may not be received until after January 1, 2017. Therefore, the funding for this vehicle has been requested in the 2017/2018 budget to be used in the event it is necessary.

MOTION

Board of Benton County Commissioners hereby approves the Purchase Agreement between Benton County and Columbia Ford Nissan for the purchase of one (1) Ford Police Interceptor Utility/SUV AWD, utilizing State Contract No. 03713 in the amount of \$30,895.82 including WSST, with a total amount not to exceed \$33,000 for any unanticipated expenditures.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF ONE (1) VEHICLE FROM COLUMBIA FORD NISSAN UTILIZING WASHINGTON STATE CONTRACT NO. 03713 FOR THE BENTON COUNTY SHERIFF'S OFFICE, KENNEWICK, WA

WHEREAS, per Resolution 2016-304 the Board of Benton County Commissioners approved the Budget Adjustments to the 2015-2016 Public Safety Tax Fund No. 0148-101, Dept. 121 to cover two additional Detectives and all necessary supplies/equipment; and

WHEREAS, Washington State Contract No. 03713 allows for the purchase of 2017 Ford Police Interceptor Utility/SUV AWD vehicles from Columbia Ford Nissan, Longview, WA; and

WHEREAS, said vehicle is to be used by the Benton County Sheriff's Office Detective for patrol and as a responder vehicle; and

WHEREAS, the following is the total amount of the purchase price including WSST, all in accordance with the breakdown attached hereto as Exhibit B:

- One (1) Ford Police Interceptor Utility/SUV AWD – State Contract No. 03713 from Columbia Ford Nissan for a total amount of \$30,895.82 including WSST; and

WHEREAS, the Benton County Sheriff's Office recommends purchasing the above mentioned vehicle as part of the supplies and equipment needed for the additional Detective to be paid out of the Public Safety Tax Fund No. 0148-101, Dept. 121; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, concurs with the recommendation and hereby is authorized to sign the attached Purchase Agreement between Benton County and Columbia Ford Nissan for the purchase of one (1) Ford Police Interceptor Utility/SUV AWD, utilizing State Contract No. 03713 in the amount of \$30,895.82 including WSST, with a total amount not to exceed \$33,000.00 including WSST.

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

By signing in the space provided, the parties hereby acknowledge the following:

- 1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
- 2) The person executing this Agreement is authorized to do so by his/her party;
- 3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreements(s) for all purposes

Vendor Name (Print): MARIE TELLINGHAUSEN Title: GOVT CONTRACTS Date: 09/22/16

Vendor Signature: Marie Tellinghausen

Chairman
Benton County
Board of Commissioners: _____ Date: _____
Shon Small, Chairman

Member
Benton County
Board of Commissioners: _____ Date: _____

Member
Benton County
Board of Commissioners: _____ Date: _____

Exhibit A

03713 Police Vehicles

Full Size Sedan, Utility/SUV, Motorcycles

Current Contract Information (CCI)

Effective Date: January 02, 2014

State Vehicle contracts can be utilized by authorized Master Contract Use Agreement (MCUA) Purchasers. To get pricing, availability, a quote, or to submit a purchase request use the Contract Automobile Request System (CARS) below.

CARS

[Click here to start the process](#)

Executed Contract	Manufacturer	Awarded Vendor	Payment Details
 03713 Executed Bud Clary.pdf	 CHEVROLET	Bud Clary Chevrolet 1030 Commerce Ave. Longview, WA 98632 Contact: Becky Davis (800) 899-1926	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03713 Executed Columbia Ford Nissan.		Columbia Ford 700 7 th Ave Longview, WA 98632 Contact: Marie Tellinghisen (360) 423-4321 ext. 187	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03713 Executed Dwyane Lane.pdf	CHRYSLER  	Dwayne Lane 10515 Evergreen Way Everett, WA 98204 Contact: Mike O'Donnell (425) 551-4905 (425) 754-5006	<u>Credit Card Acceptance</u> NO <u>Prompt Payment Discount</u> YES \$200/20 Days
 03713 Executed Powersports Northwes	 HONDA Motorcycles	Powersports Northwest 300 South Tower Centralia, WA 98531 Contact: David Lipinski (360) 736-0166	<u>Credit Card Acceptance</u> Yes + 2.0% <u>Prompt Payment Discount</u> YES \$90/20 Days

For Pricing and ordering please visit

<https://fortress.wa.gov/ga/apps/CARS/ContractVehicleMenu.aspx>

[Click Here For Special Conditions](#)

DES Contact Information

Contracts Specialist:	Steve Hatfield	Alternate Contact:	Customer Service
Phone Number:	(360) 407-9276	Phone Number:	(360)407-2210
Fax Number:	(360) 586-2426	Fax Number:	(360) 586-2426
Email:	Steve.Hatfield@des.wa.gov	Email:	contractingandpurchasing@des.wa.gov

CONTRACT ACTION HISTORY:

Date	Action	Amendments
01-02-14	Contract start date	n/a
7-21-14	CARS is the exclusive way to purchase vehicles. For pricing and ordering please visit https://fortress.wa.gov/ga/apps/CARS/ContractVehicleMenu.aspx	n/a
03/12/2013	Incorporation of new model year (MY) vehicles and addition/deletion/pricing of options is now an administrative action Vehicle Sales is a very dynamic industry. Models, options, availability, specifications and pricing are not static and require frequent adjustments. Vehicle Dealer is required to submit new model years in Excel format (document provided by DES). Once evaluated and approved by DES it will be loaded into DES's Contract Automobile Request System (CARS). Requests to edit options (removing, adding, editing, pricing) shall be entered by the dealer into the CARS system. CARS retains a record of all vehicles and their associated options complete with date of change and/or adoption and version number. CARS will be the official record of contracted vehicles and options. All MY Vehicles and Options approved and posted on CARS are incorporated by reference into the contract. All other pricing, terms, and conditions remain unchanged	
12/7/2015	Contract Extension: Period of performance has been extended with all four (4) vendors until 012/31/2016. All other terms, conditions and pricing remain unchanged.	See Left

	 Bud Clary Police 03713.pdf	 Dodge Police 03713.pdf	 Ford Police 03713.pdf	 Police Vehicles Powersport NW 0371	
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SPECIAL CONDITIONS:

All current vehicle contracts may be viewed using the “Contract Search Tool” located at:
<http://des.wa.gov/services/ContractingPurchasing/CurrentContracts/Pages/default.aspx>

1) Passenger Vehicle Approval **(ONLY REQUIRED BY STATE AGENCIES)**

The operating budget that Governor Chris Gregoire signed May 2, 2012 includes a proviso that orders the director of the Department of Enterprise Services to give written approval before any agency can make a passenger vehicle purchase.

Please note: Fleet Operations will handle this process for agencies with fleets managed by DES.

When purchasing passenger vehicles through state contracts, agencies should take into careful consideration the business need. Before signing off on vehicle purchase requests, DES Director will review the following criteria:

- Vehicle(s) are included in agency’s biennial vehicle purchase plan.
- Written approval from the director of the agency making the request.
- Type of vehicle being requested.
- Expected use and location of the vehicle.
- If this is a new vehicle, what is the business need?
- If it is a replacement vehicle, what is it replacing?
- Current mileage of the vehicle being replaced. Current retirement mileage is a minimum of:
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 - 115,000 miles for hybrid sedans and SUVs.
 - 115,000 miles for small to mid-size SUVs and trucks.
 - 130,000 miles for full-size trucks and vans.
- Annual usage.
- Fuel efficiency. Executive Order 05-01 directs agencies to give preference to hybrid vehicles.

The [Passenger Vehicle Request Form](#) is available online. The signature of the agency director is required prior to any review. An electronic version of the signed form should be emailed to vehicleapproval@des.wa.gov

2) Titles and Licensing

Customer is to pay all title and licensing fees directly to the Department of Licensing (DOL) or their local sub agent. Dealer will not invoice customer for such fees, including the trauma care fee which will be paid to DOL per RCW 46.12.042 (2). Dealer check previously made out to DOL for a portion of the Licensing Fees will not be provided.

For information regarding the sale or purchase of surplus vehicles contact the Surplus Operations at (360) 753-3508.

3) Ordering Process –

For pricing and ordering please visit

<https://fortress.wa.gov/ga/apps/CARS/ContractVehicleMenu.aspx>

Please take into consideration the following factors when making your vehicle purchase:

- Total overall cost of vehicle, and/or
- Dealer location (region), and/or
- Local preferences, and/or
- Fleet consistency, and/or
- Vehicle availability, and /or
- Legislative mandates, etc.

Contract Vehicle Pricing:

In the past vehicle contracts were awarded annually based on the manufacturers' build cycle. This contract uses a multi-year award process. The initial term will be two years with the option to extend for an additional one-year term. New Model Year vehicles will be incorporated into the contract to allow for a smooth transition and uninterrupted vehicle availability; eliminating the "seasonal" cutoff periods. If orders are received after a model-year final order due date, manufacturer's new model year prices (increases or decreases) will be applied to contract pricing via contract amendment. Dealer will notify DES and customers of any model year price increases as soon as pricing is released by manufacturer. If not published on the Current Contract information (CCI), customer may contact dealer directly to obtain final order due dates for current model year.

4) Financing Option –

DES does not offer financing options however the Washington State Treasurers office does have a program that may be able to help.

Excerpt from Treasurers website:

You have likely heard about this innovative financing option for local government agencies of all types. The LOCAL program has been developed with an eye toward making it easy to understand and easy to use.

The LOCAL program is an expanded version of the successful state agency lease/purchase program. The program was originally created by the Legislature in 1989 ([RCW 39.94](#)) to provide the lowest cost financing for state agency purchases by pooling funding needs into larger offerings of securities. Thanks to support and assistance from many friends of local government, the Legislature passed legislation in 1998 to provide local governments access to the program. Local government agencies of all types can finance equipment or real estate needs through the State Treasurer's office subject to existing debt limitations and financial considerations.

The major benefits of LOCAL are (1) simplicity and (2) low cost financing. Participants will benefit from the current program rating of Moody's Aa2, low fees and expenses, and access to the public bond markets. Please click on the following links to see the program's most current rates:

- [Recent LOCAL Lease/Purchase Interest Rates - Real Estate](#)
- [Recent LOCAL Lease/Purchase Interest Rates - Equipment](#)

An advisory body was convened to guide the program. Representatives of local governments were appointed by associations representing various types of entities to provide direction and feedback on proposed program features, guidelines, and procedures. We are committed to offering a program that will benefit local government and be simple to use.

The LOCAL program is an excellent example of state and local governments working together to deliver the most cost effective and highest quality product possible. As partners, we have created a program that delivers for you and your constituents.

Lisa Small

Subject: FW: Vehicle Quote - 2016-9-72 - BENTON COUNTY - 10300

From: NOREPLY@des.wa.gov [<mailto:NOREPLY@des.wa.gov>]
Sent: Wednesday, September 07, 2016 15:06
To: Brian White <Brian.White@co.benton.wa.us>
Cc: Steve.Hatfield@des.wa.gov
Subject: Vehicle Quote - 2016-9-72 - BENTON COUNTY - 10300

Vehicle Quote Number: 2016-9-72 [Create Purchase Request](#) [View organization purchase requests](#)

This is a **quote** only. You must create a purchase request to order this vehicle(s)

Contract & Dealer Information

Contract #: 03713	Dealer Contact: Marie Tellinghiusen
Dealer: Columbia Ford (W403)	Dealer Phone: (360) 423-4321 Ext: 187
700 7th Avenue	Dealer Email: mariet@colford.com
Longview WA 98632	

Organization Information

Organization: BENTON COUNTY - 10300
Email: Brian.White@co.benton.wa.us

Color Options

Dark Blue - 1
Tax Exempt: N

Vehicle Options

Order Code	Option Description	Qty	Unit Price	Ext. Price
2017-502-001	2017 Ford Police Interceptor Utility/SUV AWD (K8A/500A)	1	\$27,433.00	\$27,433.00
2017-502-010	Front Headlamp Housing Only (includes pre-drilled hole for side marker police use and pre-molded side warning LED holes with standard sealed capability)(does not include LED installed lights)(Not available with Ready for the Road Package #67H)(86P)	1	\$119.00	\$119.00
2017-502-023	Pre-Wiring for grille lamp, siren and speaker (60A)	1	\$49.00	\$49.00
2017-502-025	Noise Suppression Bonds (Ground Straps)(60R)	1	\$95.00	\$95.00
2017-502-038	Dark Car Feature (courtesy lamp disable when any door is opened) (43D)	1	\$20.00	\$20.00
2017-502-040	Dome Lamp – Red/White in Cargo Area(17T)	1	\$49.00	\$49.00

2017-502-044 Doors/Locks: Hidden Door Lock Plunger with Rear Door Handles Inoperable (included with Ready for the Road Package #67H)(52P)	1	\$153.00	\$153.00
2017-502-045 Fleet Keyed Alike (Call dealer for available key codes)(N/A with Remote Keyless Entry #595) (KEY)	1	\$49.00	\$49.00
2017-502-048 Power Windows, Driver Control (deletes rear window power controls) (18W)	1	\$24.00	\$24.00
2017-502-051 Reverse Sensing System (76R)	1	\$261.00	\$261.00
2017-502-053 Remappable (4) switches on steering wheel (if ordered with SYNC, includes Voice Button) (61R/61S)	1	\$148.00	\$148.00
2017-502-083 NEW - Global Lock / Unlock Feature (door-panel switches will lock/unlock all doors and rear liftgate. Eliminates the overhead console liftgate unlock switch) (No Charge) (18D)	1	\$0.00	\$0.00
2017-502-204 Fire Extinguisher, 2.5# Dry Chemical ABC Rated w/ Mounting Bracket, uninstalled(DLR)	1	\$38.00	\$38.00
2017-502-208 Mud Flaps, HD Plastic (Set of 4) (DLR)	1	\$90.00	\$90.00

Quote Totals

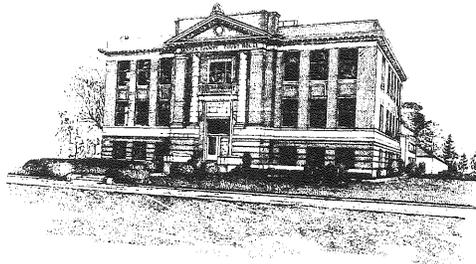
Total Vehicles:	1
Sub Total:	\$28,528.00
8.3 % Sales Tax:	\$2,367.82
Quote Total:	\$30,895.82

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



Letter to City of Kennewick re
Boys and Girls Club ~ A Fyall

October 4, 2016

Marie Mosley, City Manager
City of Kennewick
Post Office Box 6108
Kennewick, Washington 99336

Re: Infrastructure costs associated with construction of a Boys & Girls Club in Kennewick

Dear Ms. Mosley,

Thank you for reaching out to Benton County regarding the City's infrastructure improvements intended to support a new Boys & Girls Club facility in Kennewick (*see attachment*). This new center will be of great benefit for the youth of Kennewick.

Per our administrative review, and as corroborated by counsel, we regret to inform you that we are unable to participate in this project as presented.

As you are aware, the County has constitutional limitations on the ways it can use funds that are often different and sometimes more restrictive than what cities and special purpose governments face. Regarding your specific request, we cannot participate in the arrangement as presented primarily because there is not substantive consideration given to the County in return for its expenditure of funds.

In our mutual efforts toward building a better community in the Tri-Cities area, we look forward to collaborating with you on other projects that are structured such that all parties receive adequate and measurable consideration for their investments. Thank you again, and good luck with this project.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Shon Small, Chairman

Jim Beaver

Jerome Delvin



CITY OF KENNEWICK
 P.O. BOX 6108
 KENNEWICK, WA 99336-0108
 (509) 585-4264
 (509) 585-4383 FAX
 http://www.ci.kennewick.wa.us

INVOICE

012466

Page 1 of 1

BENTON COUNTY
 JEROME DELVIN
 620 MARKET ST
 PROSSER, WA 99350

DATE	08/30/2016
ACCOUNT	5394
AMT DUE	130,000.00

AMOUNT PAID _____

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

CITY OF KENNEWICK

DESCRIPTION	AMOUNT
Miscellaneous City Services "Agreed upon reimbursement for infrastructure costs incurred to support construction of a Boys & Girls Club." Amount Due 130,000.00	130,000.00
Total Amount Due:	130,000.00
ACCOUNT NO. 5394	PAYABLE UPON RECEIPT 130,000.00

Please Remit to: CITY OF KENNEWICK
 P.O. BOX 6108
 KENNEWICK, WA 99336-0108
 (509) 585-4264

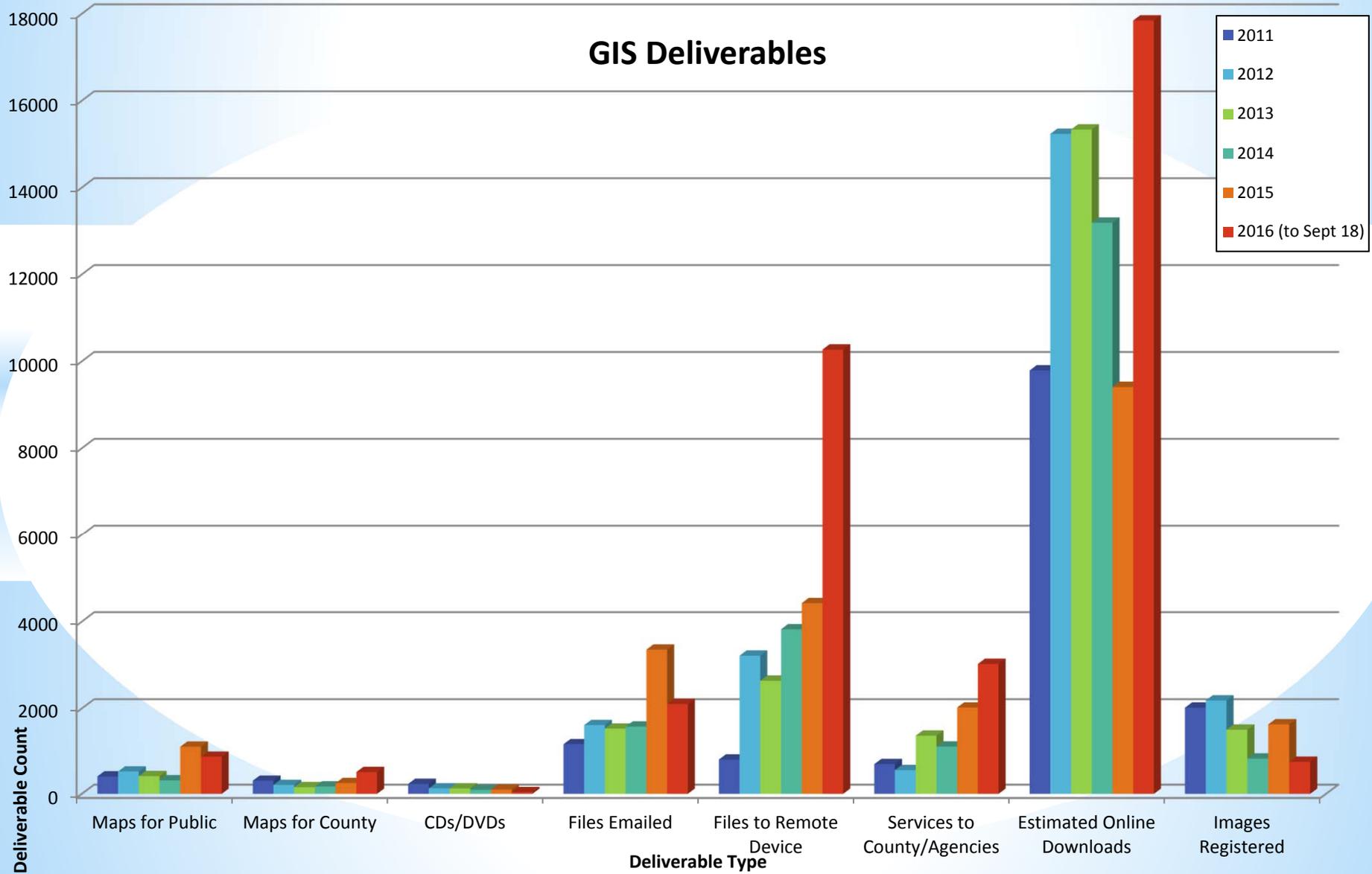
Benton County GIS



Department Update

Breakdown of Services

GIS Deliverables



Website Visits



Project Update

Road Department Custom Interactive Web Map

Features added per Road Department requests include:

- No Spray Zones
- Bridges
- Storm Systems
- Traffic Counts
- Culverts
- Work Zones
- Road Log Data
- Snow Removal Areas
- Curbs
- Approach Permits
- Snow Removal Routes
- Signs

The screenshot displays the Benton County Public Works Web Mapping application. It features a main map window and several smaller, overlapping windows showing detailed data for selected features. The interface includes a search bar, a map legend, and various data panels.

Benton County Public Works Web Mapping

BUNN RD
Multiple Features Selected (1/2)
Road Number: 24010
Road Name: BUNN RD
Milepost: 1.748
Location: 53 ft. North of 12 CMP CULVERT

MATA CT
Multiple Features Selected (1/5)
Road Number: 50570
Road Name: MATA CT
Milepost: 0.041
Location: 74 ft. South of MATA RD
Node Type: Dry Well
Side of Road: L
FFC: 19
CRAB ID: SS*1003141
X: 1950064.99112
Y: 318865.24285

PIONEER RD SVID BRIDGE
Multiple Features Selected (1/4)
County ID: 3
Agency ID: 2
Bridge No: 243,100,154
Bridge Name: PIONEER RD SVID BRIDGE
Feature In: SVID CANAL
Structure: 29
Last Inspected: 02-27-2012
Repair Description: Patch both approaches
Sufficiency: 88.94
Township: 9
Range: 25E
Section: 20
Latitude: 46.2509
Longitude: -119.7166

2016-312
Multiple Features Selected (1/3)
Parcel: 105682040000010
Permit: 2016-312
Applicant: LaPierre Enterprises
Type of Permit: Road Approach
Location: 173102 East Grand Bluff Ln.
Date Received: 7/13/2016
Permit Status: Existing
Date Issued: 8/1/2016
Date Returned:
Expiration:
SG Insp.:
Date Accepted:
Reissued:
Fee Paid: N/A
Fee Date:
Bonded:
Bond Exp.:
Notes:
[View PDF](#)

Map Legend

- Approach Permits
 - Accepted
 - Cancelled
 - Denied
 - Ending
 - Issued
 - Pending
 - Preliminary
- Bridges
- Culverts
 - Cast-in-place Concrete
 - Corrugated Aluminum
 - Corrugated Steel
 - Other
 - Precast Concrete
 - Structural Plate Steel
 - Timber
- Most Recent ADT Counts
- Historic ADT Numbers
- Sign Locations
- Snow Removal Area
 - Flow Area 1
 - Flow Area 2
 - Flow Area 3
 - Flow Area 4
 - Flow Area 5
 - Flow Area 6
 - Flow Area 7
 - Flow Area 8

1 km | 3000 ft | Lat: 46.254541 | Lon: -119.199772
CREATED WITH MANGO

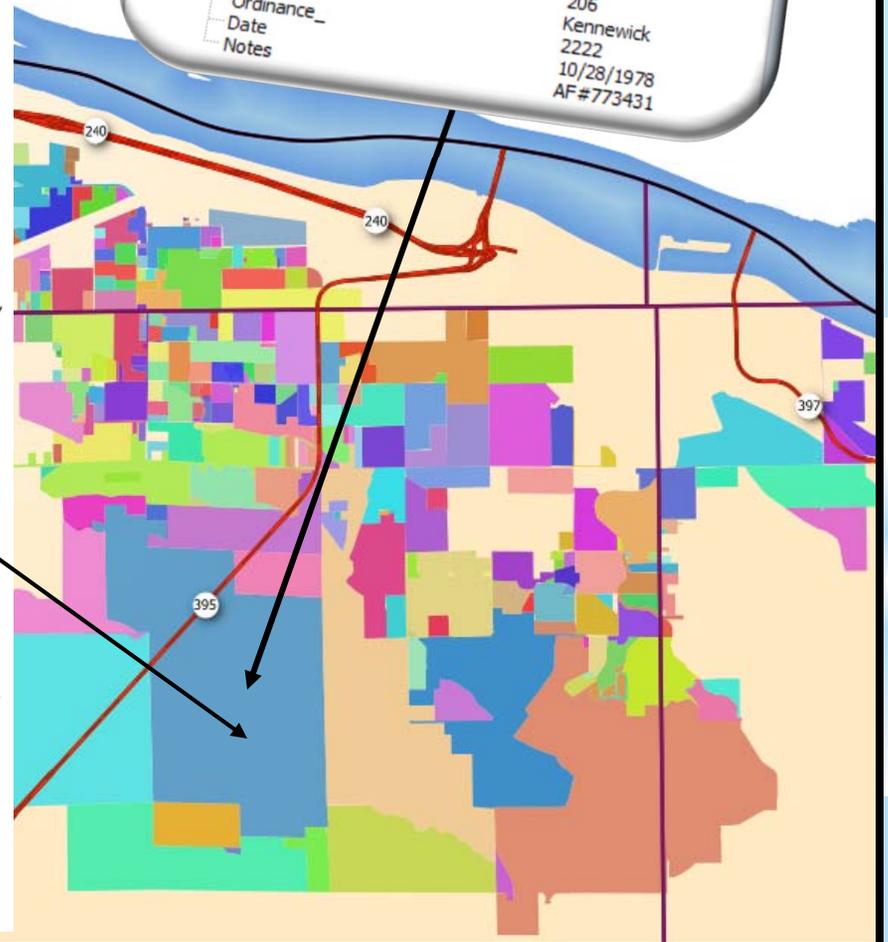
Featured Project

Annexations By Legal Description

Legal Description
Annexation 78-23 (Thompson)
EXHIBIT "A"

Beginning at the northeast corner of the south half of the southeast quarter of Section 10, Township 8 North, Range 29 E., W.M.; thence west along the north line of said south half of the southeast quarter of Section 10 to the northwest corner of said south half of the southeast quarter of Section 10; thence northerly along the west line of the southeast quarter of said Section 10 to the northwest corner thereof; thence westerly along the south line of the northwest quarter of said Section 10 to the southwest corner thereof; thence northerly along the west line of the northwest quarter of said Section 10 to the intersection with the north right-of-way line of USBR Lateral Canal; thence easterly along the north right-of-way line of said canal to the intersection of the west line of Cherry Blossom Heights, as recorded in Volume 9 of Plats, page 19, records of Benton County, Washington; thence northerly along the west line of said Plat of Cherry Blossom Heights to the southeast corner of Marilyn Estates, as recorded in Volume 9 of Plats, page 10, records of Benton County, Washington; thence westerly on the south line of said Plat of Marilyn Estates to the southwest corner thereof. Thence continuing westerly on the projected south line of said Marilyn Estates Plat to the west right-of-way line of South Union Street; thence northerly along the west right-of-way of South Union Street to the southeast corner of the north half of the northeast quarter of the southeast quarter of the northeast quarter of Section 9, Township 8 North, Range 29 E., W.M.; thence westerly along the south line of the said north half of the northeast quarter of the southeast quarter of the northeast quarter of said Section 9 to the southwest corner thereof. Thence northerly along the west line of the north half of the northeast quarter of the southeast quarter of the northeast quarter of said Section 9 to the northwest corner thereof. This also being a point on the south line of the Plat of Tumbleweed Terrace, as recorded in Volume 10 of Plats, page 11, records of Benton County, Washington; thence westerly along the south line of said Tumbleweed Terrace to the southwest corner thereof. Thence southerly along the east line of the plat of Green Acres, as recorded in Volume 12 of Plats, page 13, records of Benton County, Washington, to the southeast corner thereof; thence northwesterly along the south line of said Green Acres Plat to the northeast corner of Short Plat 137, Lot 1, as recorded in Volume 1 of Short Plats, page 137, records of Benton County, Washington. Thence southerly along the east line of said Short Plat 137, Lot 1 to the southeast corner thereof. Thence easterly along the north right-of-way line of the KID Canal District Lateral H.F. 3.3 to the east line of the southwest quarter of the northeast quarter of Section 9, Township 8 North, Range 29 E., W.M.; thence southerly along the east line of said southwest quarter of the northeast quarter of Section 9 and along the east line of the west half of the southeast quarter of Section 9, Township 8 North, Range 29 E., W.M. to a point on the north right-of-way line of the KID Main Canal Division 4; thence southeasterly along the north right-of-way line of said KID Canal to its intersection with the south line of Section 9, Township 8 North, Range 29 E., W.M.; thence east along the south line of said Section 9 to the southeast corner thereof; thence southerly along the west side of Section 15, Township 8 North, Range 29 E., W.M., to the southwest corner thereof; thence easterly along the south line of said Section 15 to the northwest corner of the Plat of Lakeview Ranchettes, as recorded in Volume 10 of Plats, page 32, records of Benton County, Washington; thence south along the west line of Lakeview Ranchettes Plat to the southwest corner thereof; thence easterly along the south line of said Plat to the southeast corner of Lot 5, Block 3; thence northerly along the east line of Lots 5 and 4, Block 3 to an intersecting point with the south line of said Lot 4; thence easterly along the south line of Lot 4 and the south line of Block 2 of said Lakeview Ranchettes to the southeast corner thereof. Thence continuing easterly along the projected south line of Block 2 of said Lakeview Ranchettes Plat to the intersection with the east right-of-way line of South Ely Street; thence north along the east right-of-way line of South Ely Street to the intersection with the projected north line of the south half of the southeast quarter of Section 10, Township 8 North, Range 29 E., W.M.; thence westerly along the projected north line of the south half of the Southeast Quarter of said Section 10, Township 8 North, Range 29 E., W.M. to the point of beginning.

Feature	Value
Annexation	
ID	
(Derived)	206
(clicked coordinate X)	
(clicked coordinate Y)	
Area	-119.1690
Closest vertex X	46.1767
Closest vertex Y	4.394 km ²
Closest vertex number	-119.1695
Perimeter	46.1700
Vertices	9
feature id	11.068 km
(ID)	762
City	142
Ordinance_	206
Date	Kennewick
Notes	2222
	10/28/1978
	AF#773431



Questions?