

December 14, 2009

**THE BOARD OF
BENTON COUNTY
COMMISSIONERS
AGENDA PACKET**

a

AGENDA/WORKSHOP ITEM		TYPE OF ACTION NEEDED	
Meeting Date:	14-December-2009	Execute Contract	<u> X </u>
Subject:	Contract for Digitizing Archival Records	Pass Resolution	<u> X </u>
		Pass Ordinance	<u> </u>
Prepared By:	J. Randall Reid	Pass Motion	<u> </u>
Reviewed By:	Loretta SmithKelty	Other	<u> </u>
		Consent Agenda	<u> X </u>
		Public Hearing	<u> </u>
		1 st Discussion	<u> </u>
		2 nd Discussion	<u> </u>
		Other	<u> </u>

BACKGROUND INFORMATION

On 25-September-2009, a Request for Proposal (RFP) was published for Digitizing Archival Case Records for the Benton County Clerk. Copies of the RFP were sent to 77 vendors and it was published in the Tri-City Herald on 27-September-2009. The RFP closed 12-October-2009. There were three respondents: Data Abstract Solutions, Imagenet, Technical Imaging Systems. The responses were evaluated on the basis technical compatibility with the Liberty Imaging system used by the Clerk, quality assurance guarantees and procedures, and the availability of the documents to the Clerk once they have been passed onto the vendor for digitizing. While Imagenet was the most expensive proposal, it included a system that made the documents available 24/7 at no additional cost and provided detail quality control information. This ended up the criteria that tipped the decision in favor of Imagenet.

SUMMARY

Attached is a resolution authorizing the Chairman of the Board to sign a contract with Imagenet, LLC., of Kent WA, for digitizing archival records.

RECOMMENDATION

1st Pass resolution.

2nd

FISCAL IMPACT

Included in 2009 and 2010 budgets.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A CONTRACT BETWEEN IMAGENET, LLC., AND BENTON COUNTY FOR DIGITIZING OF ARCHIVAL RECORDS.

WHEREAS, a Request for Proposal for Digitizing Archival Records was published on 25-September-2009 in accordance with the provisions of RCW 39.04.270; and

WHEREAS, five (5) vendors were sent a copy of the Request for Proposal in addition to the publication in a newspaper of general circulation and posting on the Benton County website; and

WHEREAS, three vendors responded with proposals as follows:

Data Abstract Solutions	12209 NE Fourth Plain Road, Suite DD Vancouver WA 98682	\$0.070 per page
Imagenet	6411 South 216 th Street Kent WA 98032	\$0.090 per page
Technical Imaging Solutions	610 East 40 th Street Vancouver WA 98663	\$0.075 per page

of which the proposal from Imagenet was determined to be the most advantageous to the County when all factors were considered including price, quality controls, and accessibility to documents sent to the vendor; NOW THEREFORE,

BE IT RESOLVED, by the Board of Benton County Commissioners, that the Chairman of the Board of Benton County Commissioners is authorized to sign the contract with Imagenet, LLC., for digitizing archival records; and

BE IT FURTHER RESOLVED, by the Board of Benton County Commissioners, that the Central Services Manager is authorized to sign any subsequent documents relating to the final scope of work, implementation, and verification that the work has been completed.

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

REID

b

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE EQUIPMENT LEASE AGREEMENT WITH MAIL FINANCE INC. (dba HASLER FINANCIAL SERVICES) FOR POSTAGE METER AND SCALE AND AUTHORIZING THE BENTON COUNTY CLERK TO SIGN AS "ELIGIBLE ENTITY" WHEN THE ITEMS ARE RECEIVED.

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners, is hereby authorized to sign the Equipment Lease Agreement providing for a Postage meter and scale for Benton County Superior Court Clerk, as attached, and authorizing the Benton County Clerk to sign as "Eligible Entity" when said items are received.

Dated this _____ day of _____, 2009

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

cc: Clerk (orig), M. Dolven, R. Ozuna Auditor



**OFF22 Multi-State Postage and Mail Processing Equipment, Accessories, Services and Supplies
Equipment Confirmation Form**

This form must be used and attached to each equipment lease, purchase, service or rental encumbrance document to confirm the selection of equipment covered under the Statewide Contract Number OFF22 on file at OSD. All of the terms and conditions of the Statewide Contract, OFF22 are incorporated herein and made a part hereof. Conflicting or additional terms, conditions or agreements included in or attached to this form, which conflict with the terms of the OFF22 Statewide Contract shall be considered to be superseded and void. Eligible Entities are only required to sign this confirmation form. This form is optional for all supply purchases.

Participating Washington State Contract Number: 06907 (the Participating Addendum between Washington State and Contractor is also incorporated herein by reference).

Purchase Order/Encumbrance Number: _____ **Fiscal Year:** _____

Eligible Entity: Benton County Clerk and Executive Office		Contractor Lease Name: MailFinance Inc. dba Hasler Financial Services	
Contact Person: Josie Delvin Phone: (509) 736-8388		Contractor Purchase, Service or Meter Head Name: Hasler Inc.	
E-Mail: FAX:		Contact Person: Jean Torre Phone: (203) 301-3653	
Entity Billing Address: 7122 W Okanogan Pl Kennewick WA 99336		E-Mail: jtorre@haslerinc.com Fax: (203) 301-2602	Contractor Lease Remit Address: PO Box 46860 San Francisco CA 94145
Contact: _____ Phone: _____		Contractor Purchase, Service or Meter Head Remit Address: 478 Wheeler's Farm Rd Milford CT 06461	Lease FEIN/Vendor Code Number # 94-2984524.
Delivery address: (if different from Billing Address Above) (Multiple Address and Contact Information Entity must attached the appropriate information to the form)		Purchase, Service or Meter Head FEIN/Vendor Code Number # 06-0798198	<input checked="" type="checkbox"/> Term Lease # Months <u>60</u>
Contact: _____ Phone: _____		<input type="checkbox"/> Meter Head Term Lease # Months _____	<input type="checkbox"/> Rental (Not to exceed 6 months)
Check off the applicable box for equipment type and Maintenance Plan and number of years after warranty period:		Check off the applicable box for equipment sub-category:	
<input checked="" type="checkbox"/> New Equipment Service Term after Warranty Period; <input checked="" type="checkbox"/> Warranty <input checked="" type="checkbox"/> 2 nd Year <input checked="" type="checkbox"/> 3 rd Year <input checked="" type="checkbox"/> 4 th Year <input checked="" type="checkbox"/> 5 th Year		<input checked="" type="checkbox"/> Category 1 <input type="checkbox"/> 2A <input type="checkbox"/> 2B <input type="checkbox"/> 2C <input type="checkbox"/> 2D <input type="checkbox"/> 2E <input type="checkbox"/> 2F <input type="checkbox"/> 2G <input type="checkbox"/> 2H	
<input checked="" type="checkbox"/> 4 Hour <input type="checkbox"/> 8 Hour <input type="checkbox"/> 12 Hour <input type="checkbox"/> 24 Hour <input type="checkbox"/> Plan A Yearly Service with applicable response time <input type="checkbox"/> 4 Hour <input type="checkbox"/> 8 Hour <input type="checkbox"/> 12 Hour <input type="checkbox"/> 24 Hour <input type="checkbox"/> New B Time and Material with applicable response time <input type="checkbox"/> 4 Hour <input type="checkbox"/> 8 Hour <input type="checkbox"/> 12 Hour <input type="checkbox"/> 24 Hour		Purchase, Lease and Service Billing Options: <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Yearly	

For complete copy of contract contact the Benton County Commissioners Office.

NOTE: Contractors are required to include one (1) month worth of complete supplies necessary to operate each piece of equipment based upon the monthly volumes indicated within the OFF22 terms and conditions upon installation and training.

Equipment Model Number	Equipment/Accessory Description (E.G. Digital Postage Equipment)	Quantity	Purchase Price Or Monthly Lease Or Rental Equipment Cost	Number Of Lease Or Rental Months	Trade-In Value	Net Total Lease, Purchase Or Rental Equipment Costs	Service Plan Selected With Applicable Net Rate Per Unit/Each	Net Total Cost For Service
IM440	Automatic Mailing Machine	1	\$ 164.09	60	\$	\$	\$	\$
	Includes 5# weight platform		\$		\$	\$	\$	\$
			\$		\$	\$	\$	\$
			\$		\$	\$	\$	\$
			\$		\$	\$	\$	\$
GRAND TOTAL							\$	

Special Instructions/Additional Information (e.g. equipment model traded, software license information, lease document information for contractor tracking purposes only, supplies exchanged):

Eligible Entity and Contractor signatures below acknowledge ONLY that the equipment order has been placed pending delivery, installation, start-up supplies and training.

ELIGIBLE ENTITY:

X: _____
 (Signature)

NAME: _____
 (Print)

TITLE: _____

DATE: _____

CONTRACTOR:

X _____
 (Signature)

NAME: _____
 (Print)

TITLE: _____

DATE: _____

Approved as to form: Kyrle Brown, DPA

Eligible Entity and Contractor signatures below acknowledge completion of the four (4) items below to the Eligible Entity's satisfaction, in addition to the payment start and termination dates.

Eligible Entity must check off all four (4) items below acknowledging completion prior to final approval.

- 1) Equipment delivered undamaged from the Contractor.
- 2) Received one (1) complete set of supplies based upon the monthly volumes within the OFF22 terms and conditions.
- 3) Equipment is installed and operational.
- 4) Received initial satisfactory training from the Contractor.

Lease, Rental or Purchase payment terms do not begin until the appropriate items above have been approved by the Eligible Entity.

Payment Start Date of this Lease, Purchase or Rental Agreement:

Month _____ Day _____ Year _____

Payment Termination Date of this Lease, Purchase or Rental Agreement

Month _____ Day _____ Year _____

ELIGIBLE ENTITY:

X: _____
 (Signature)

NAME: _____
 (Print)

TITLE: _____

DATE: _____

CONTRACTOR:

X: _____
 (Signature)

NAME: _____
 (Print)

TITLE: _____

DATE: _____

ALTC Aging & Long Term Care
 Southeast Washington

C

RECEIVED
 DEC 08 2009
 BENTON COUNTY COMMISSIONERS

Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Jim	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	<i>Agenda</i>

12/14/09

December 4, 2009

Benton County Commissioners
 P.O. Box 190
 Prosser, WA 99350

Dear Commissioners:

Please consider this our formal request asking you reappoint Joyce Dosch and Shawn Richman to another term on the ALTC Benton County Advisory Board as their current term expires 12/31/09. Ms. Dosch' term is a three (3) year term which will then expire on 12/31/12 and Mr. Richman is a two (2) year term which will then expire on 12/31/11.

Thank you for your consideration and prompt attention and we would appreciate receiving formal confirmation of these reappointments. Please see the compilation of the board as we know it to be on January 1, 2010.

Sincerely,

Kathleen Coffey

Kathleen Coffey
 Administrative Assistant

REAPPOINTMENTS	CONTINUING MEMBERS	CONTINUING MEMBERS
Joyce Dosch	Evelyn Chaney	Lee Parsons
Term Expires: 12/31/09	Term Expires: 12/31/10	Term Expires: 12/31/11
Shawn Richman	Lucille Krebs	
Term Expires: 12/31/09	Term Expires: 12/31/10	

P.O. Box 8349 • Yakima, WA 98908
 (509) 965-0105 (Voice/TDD) • Fax (509) 965-0221 • 1-800-572-7354
 Web Page: www.co.yakima.wa.us/altc

Southeast Washington Counties:
 Asotin • Benton • Columbia • Franklin • Garfield • Kittitas • Walla Walla • Yakima

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF REAPPOINTMENT TO THE BENTON COUNTY
ADVISORY COUNCIL FOR THE OFFICE OF AGING & LONG TERM CARE**

WHEREAS, the term for Joyce Dosch will expire on December 31, 2009; and

WHEREAS, Ms. Dosch has expressed an interest to be reappointed for an additional term; and

WHEREAS, the Advisory Council desires to have Ms. Dosch be appointed for a three-year term; **NOW, THEREFORE**,

BE IT RESOLVED that Joyce Dosch, _____ is hereby reappointed to the Benton County Advisory Council for the Office of Aging & Long Term Care, said term expiring on December 31, 2012.

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

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BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF REAPPOINTMENT TO THE BENTON COUNTY
ADVISORY COUNCIL FOR THE OFFICE OF AGING & LONG TERM CARE**

WHEREAS, the term for Shawn Richman will expire on December 31, 2009; and

WHEREAS, Mr. Richman has expressed an interest to be reappointed for an additional term; and

WHEREAS, the Advisory Council desires to have Mr. Richman be appointed for a two-year term; **NOW, THEREFORE,**

BE IT RESOLVED that Shawn Richman, _____ is hereby reappointed to the Benton County Advisory Council for the Office of Aging & Long Term Care, said term expiring on December 31, 2011.

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

ALTC Aging & Long Term Care
 Southeast Washington

RECEIVED

DEC 08 2009

BENTON COUNTY COMMISSIONERS

Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Jim	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	<i>Agenda</i>

12/14/09

December 4, 2009

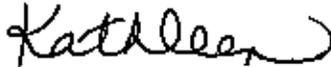
Benton County Commissioners
 P.O. Box 190
 Prosser, WA 99350

Dear Commissioners:

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Thank you for your consideration and prompt attention and we would appreciate receiving formal confirmation of these reappointments. Please see the compilation of the board as we know it to be on January 1, 2010.

Sincerely,



Kathleen Coffey
 Administrative Assistant

REAPPOINTMENTS	CONTINUING MEMBERS	CONTINUING MEMBERS
Joyce Dosch	Evelyn Chaney	Lee Parsons
Term Expires: 12/31/09	Term Expires: 12/31/10	Term Expires: 12/31/11
Shawn Richman	Lucille Krebs	
Term Expires: 12/31/09	Term Expires: 12/31/10	

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Southeast Washington Counties:
 Asotin • Benton • Columbia • Franklin • Garfield • Kittitas • Walla Walla • Yakima

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RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ENTERING INTO A METRO INTERLOCAL AGREEMENT AUTHORIZING THE ADOPTION OF THE LOCAL NARCOTICS CONTROL PROGRAM AND METROPOLITAN CONTROLLED SUBSTANCE ENFORCEMENT GROUP INTERLOCAL AGREEMENT

WHEREAS, it is Benton County's desire to enter into an interlocal agreement with the following entities of City of Richland, City of Kennewick, City of Pasco and Franklin County to establish an organized effort to combat violations of controlled substance laws within the contracting jurisdictions and to take advantage of Department of Commerce and any other available grants; **NOW, THEREFORE**,

BE IT RESOLVED, the Board of County Commissioners hereby agrees to execute the Metro Interlocal Agreement authorizing the adoption of the Local Narcotics Control Program and Metropolitan Controlled Substance Enforcement Group Interlocal Agreement.

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

Please return recorded document to:

Kennewick City Clerk
P. O. Box 6108
Kennewick, WA 99336

**METRO INTERLOCAL AGREEMENT
LOCAL NARCOTICS CONTROL PROGRAM
AND
METROPOLITAN CONTROLLED SUBSTANCE ENFORCEMENT GROUP
INTER-LOCAL AGREEMENT**

This Interlocal Agreement is made and entered into pursuant to the provisions of Chapter 39.34 RCW, by and among the following parties:

City of Pasco
City of Kennewick
City of Richland
Benton County
Franklin County

RECITALS

1. Prior to 1987, the Cities of Kennewick, Pasco, Richland, and West Richland, and the Counties of Benton and Franklin, through their law enforcement agencies, maintained a working agreement for the purpose of combating controlled substances trafficking within the Tri-Cities community. This quasi-organized effort was known as the Metropolitan Enforcement Group ("Metro").
2. The original parties entered into an Interlocal Agreement in 1987 which provided a more formal organization in order to centralize supervision and to qualify for federal funds dispensed by Washington State's Department of Community Trade and Economic Development ("CTED"). In November of 1990, the Cities of Connell and Prosser desired to also participate in the group, and the original parties desired to include them. In October of 1991 and January of 1994, respectively, the cities of Prosser and Connell decided to no longer participate. In December 2004 the City of West Richland also decided to no longer participate. This Agreement is to formalize the agreement between the remaining parties.

METRO INTERLOCAL AGREEMENT

Page 1 of 12

3. The financial officer of Kennewick initially administered a Metro Drug Forfeiture Fund consisting of the proceeds of forfeitures, federal grants and court ordered contributions. In January 1990, the City of Pasco took over administration of the Metro Drug Forfeiture Fund. In January of 2009 the City of Kennewick took over all administrative functions except for financial administration. Effective July 1, 2009, the City of Kennewick took over the financial administrative function and control of the Metro Drug Forfeiture Fund.
4. The federal government has appropriated monies to the State of Washington to fund a coordinated state-wide narcotics control program. These funds were administered by DCD until the Spring of 1993, at which time DCD became the State of Washington Department of Community, Trade, and Economic Development ("CTED"). The Department of Commerce or a successor state agency will continue to administer these funds.
5. Based upon established criteria, the parties are eligible to apply for a grant to assist them in their efforts to combat controlled substances trafficking. Department of Commerce desires to enter into a contract with one participating jurisdiction, to be named in the grant application as the applicant jurisdiction, and which shall have the duty of administering the grant on behalf of the participating jurisdictions.
6. The parties desire to enter into an Agreement to enable the applicant jurisdiction to receive the grant, to administer the grant, and to be responsible for compliance with its terms on behalf of the participating jurisdictions.
7. The City of Kennewick has consented to act as the applicant jurisdiction with regard to future applications to Department of Commerce and any funds supplied by a Department of Commerce grant.
8. Chapter 39.34 RCW provides that local jurisdictions may enter into cooperative agreements in order to best serve the needs of their local communities.

Now, therefore, the parties hereto, through their governing bodies, do hereby agree as follows:

SECTION 1 – DEFINITIONS

- a. "Application" means an application submitted to Department of Commerce for a controlled substance law task force grant.
- b. "Agency" and "Agencies" shall mean the member agencies of Metro, that being the Police Departments of the Cities of Kennewick, Pasco, Richland and the Sheriff's Departments of Benton and Franklin Counties.
- c. "Department of Commerce" means the Washington State Department of Commerce.

- d. "Executive Board" means the oversight committee consisting of one city manager from each of the cities of Pasco, Kennewick and Richland, or the designee from among the members of each City Council and one County Commissioner from each of the Counties of Benton and Franklin, or their designee from among non-judicial elected officials of their County or a county administrator working for the County Commissioners. The Chairperson of the Operations Board or his/her designee from among its members and the Support Services Executive Director of the City of Kennewick shall be non-voting members of the Executive Board. The Executive Board shall be the chief administrative officer for the purpose of budget transfers within each fund.
- e. "Jurisdictions" mean the cities of Kennewick, Pasco, Richland, the counties of Benton and Franklin.
- f. "Local Narcotics Control Program Fund" ("LNCPF") means the fund to be administered by the City of Kennewick for purposes of grant administration and the receipt and disbursement of grant funds.
- g. "Metro" means the Metropolitan Controlled Substance Enforcement Group which is a multi-jurisdictional investigative group consisting of the law enforcement officers and the support personnel of the member jurisdictions and any Washington State Patrol investigator agreed to by the Operations Board.
- h. "Metro Drug Forfeiture Fund" means the existing Metro fund of that name, which was transferred to and administered by the City of Kennewick effective July 1, 2009. This fund may receive the proceeds of forfeiture, federal grants, and court ordered or other contributions for the purpose of enforcement of the controlled substance laws of the State of Washington.
- i. "Metro Operations" means any controlled substance law enforcement activity in which an officer assigned to Metro takes an active part, either as part of a surveillance team, raid team, or an arresting officer. Metro operations may also include controlled substance law enforcement activity in which Metro's sole participation was to supply intelligence information to the arresting agency. The Operations Board, in accordance with the provisions of Section 8.h, shall determine whether the providing of information in any given case has been substantial enough to constitute making that activity a Metro operation.
- j. "Operations Board" shall mean the law enforcement policy body for Metro and will consist of the Chiefs of Police of Kennewick, Pasco, Richland, and the Sheriffs and Prosecuting Attorneys of Benton and Franklin Counties. It shall recommend the budget for the grant funds and their disbursement and be responsible for preparing applications for any additional grants or renewal of the CTED grant. The Support Services Executive Director of the City of Kennewick shall be a non-voting member of the Operations Board for purposes of advisement on financial and fund administrative matters. Prosecuting

Attorneys shall refrain from voting on purely investigative issues. The Kennewick Police Chief shall serve as chairperson.

- k. "Paid Vouchers" means all purchase orders, invoices, payroll, records, etc., to back up expenditures by participating jurisdictions.

SECTION 2 – PURPOSE

The purpose of this Agreement is to establish an organized effort to combat violations of controlled substance laws within the contracting jurisdictions and to take advantage of Department of Commerce and any other available grants.

SECTION 3 – GENERAL DUTIES OF THE PARTIES

The parties have or shall:

- a. Authorize their respective representative to execute any and all necessary documents to obtain grant funds available pursuant to State and Federal Law for the purpose of establishing a regional, multi-jurisdictional Task Force;
- b. Authorize their officials and employees to participate in the activities of Metro according to this Agreement, the work plan established in the application, and as determined by the appropriate administrative body;
- c. Authorize their law enforcement officials to enter into operating agreements, such as the one in existence pursuant to 10.93 RCW to enable these agencies to participate in Metro.

SECTION 4 – DURATION/WITHDRAWAL/TERMINATION

- a. This Agreement shall commence immediately upon its execution by all of the parties and filing with the auditors for Benton and Franklin counties and shall continue until terminated by the jurisdictions.
- b. The grant from Department of Commerce is made for one year at a time, beginning July 1st of each year. Any party may withdraw from Metro effective the beginning of the next grant year by giving written notice by April 1st of that year to the parties subject to this Agreement. A party that withdraws from Metro before termination of Metro as defined in Section 4.c shall forfeit 100% of their share of the Metro Forfeiture Fund equity and assets.
- c. Termination of this Agreement shall only occur upon written mutual agreement of all the parties that are at the time of termination participants in Metro and subject to this Agreement. The written agreement for termination shall be executed by April 1st of any given year to be effective July 1st of that year.

SECTION 5 – TASK FORCE

- a. Each party has committed to providing, as long as their respective budgets allow, the following personnel with their assigned equipment to Metro:

City of Kennewick	-	2 investigators
City of Pasco	-	2 investigators
City of Richland	-	1 investigator
Benton County	-	1 investigator
Franklin County	-	1 investigator

Each party has the option of amending the number of personnel assigned to Metro. Notice of any change in the number of personnel committed to Metro shall be given to the Executive Board by January 1st of that year to take effect within 30 days of that year.

- b. The City of Kennewick shall supply a supervisory person of the grade of Captain or above to act as a part-time administrator. That person shall serve approximately one-fourth of his time administering Metro. The City of Kennewick shall be reimbursed by Metro for one-fourth of the administrator's salary and benefits. The administrator may be delegated such administrative duties as the Operations Board shall see fit.

Selection and retention of the administrator shall be done by the Kennewick Police Chief. If the majority of the Operations Board does not support selection or retention of the administrator, the City of Kennewick may either name a different administrator or choose to withdraw as the administering agency.

One of the two investigators assigned from the City of Kennewick shall be a Sergeant. That Sergeant will perform supervisory duties in the Metro. The City of Kennewick shall be reimbursed by Metro for the difference between the salary and benefits of a Sergeant and the salary of the other investigator assigned by the City of Kennewick to Metro.

- c. The offices of the Prosecuting Attorney for Benton and Franklin Counties may each assign lawyers from their respective staffs for the purpose of handling cases generated by the Task Force and this assignment may be contingent upon funding.

Secretarial staff may be assigned or employed by one or more of the parties in the support of the investigation and prosecution of cases arising as a result of Task Force operations and this may be contingent upon funding.

- d. The Executive Board, by majority vote may, in the event that any party to this Agreement fails at any time during the term of this Agreement to provide or maintain the commitment of personnel to Metro as set forth above, impose the following penalties on the party in breach of this Agreement.

- (1) The forfeiture of all (100%) of the party's share of forfeiture fund (see section 8.) equity and assets; and
- (2) The immediate payment upon determination of amount to the Metro Drug Forfeiture Fund of an amount equal to any loss of federal and/or state grant funds for the operating year arising from or caused by the party's failure to provide or maintain their commitment of personnel to Metro.

SECTION 6 – ADMINISTRATION

- a. The City of Kennewick shall be the applicant jurisdiction for Department of Commerce grants. It shall provide the necessary documentation to receive grant funds and ensure that the provisions of the application are met. Kennewick shall maintain budgetary control of grant funds and maintain records as required by applicable laws and regulations. Participating jurisdictions shall incur, and pay individually, those expenses accruing to activities or employees of their jurisdictions. Paid vouchers for reimbursable expenses are to be transmitted to the Support Services Executive Director of the City of Kennewick immediately after payment. The City of Kennewick shall request funds for grant reimbursement on a monthly basis and distribute grant proceeds accordingly upon receipt of said funds. The City of Kennewick shall set up and administer the LNCPF for the purposes of accounting for grant fund receipts and disbursements and to prevent the commingling of grant funds and drug forfeiture and other funds recovered pursuant to this Agreement with any other funds. The LNCPF shall be subject to the same audit and fiscal controls as the public treasury of the City of Kennewick.
- b. The City of Kennewick assumes the responsibilities of the applicant jurisdiction on behalf of, and for the benefit of, all the jurisdictions that are parties to this Agreement. All the jurisdictions shall share, on a pro-rata basis as set forth in Section 7.b, any loss other than a loss covered by Section 10 of the Agreement suffered by any jurisdiction arising solely and directly as the result of the City of Kennewick's role as the applicant jurisdiction.

In the event that there is any recapture of grant funds by the Department of Commerce pursuant to the provisions of the City of Kennewick contract with it, the jurisdictions shall share responsibility on the pro-rata basis as set forth in Section 7.b of this Agreement. However, in the event that there is a recapture of grant funds originally disbursed due to an identifiable discretionary expenditure of any jurisdiction or agency, that jurisdiction or agency shall bear the sole responsibility for payment and indemnify the City of Kennewick for any loss of funds it may suffer due to any such recapture.

If any loss of funds, other than a loss covered by Section 10 of the Agreement, is covered by a fidelity bond or other insurance, covering one of the jurisdictions employees, that jurisdiction shall be responsible for said loss to the extent of the coverage provided by said bond or insurance and any remaining loss shall be shared as set forth above.

- c. The City of Kennewick shall administer the Metro Drug Forfeiture Fund, and it shall be subject to the same audit and fiscal controls as the public treasury of the City of Kennewick.
- d. The Executive Board shall be responsible for the budget and all other administrative duties of the LNCPF and of Metro. The Executive Board may delegate any or all of these duties to the Operations Board. The Executive Board shall be responsible for submitting both the LNCPF budget and the Metro Drug Forfeiture Fund budget to the City Council of the City of Kennewick for approval as provided by law. The Executive Board shall elect a chairperson and vice-chairperson, meet at least twice a year, and adopt such procedural rules to govern its meetings as it deems necessary.
- e. The Operations Board shall meet at least quarterly, adopt such procedural rules to govern its meetings as it deems necessary, and provide policy recommendations to the Executive Committee regarding the LNCPF, Metro Drug Forfeiture Fund, Metro, and related Task Force expenditures and operations, and may delegate any administrative duties delegated to it.
- f. Nothing in this Agreement shall be construed as authorizing any party or official of said party to direct the Prosecuting Attorney or any Deputy Prosecuting Attorney in the performance of his or her duties.

SECTION 7 – ACQUISITION AND USE OF EQUIPMENT

- a. In the event that any equipment is acquired with grant funds received from Department of Commerce, the parties agree to use the equipment only for specified program purposes during the life of the grant. All equipment purchased by Kennewick on behalf of Metro using grant funds shall be owned by the applicant jurisdiction, the City of Kennewick. After the grant period ends, the parties agree to use the equipment only for controlled substance enforcement purposes and to dispose of said property as set forth in Section 7.b unless federal and state requirements provide for a different disposition.
- b. Upon termination of this Agreement, all equipment contributed by the jurisdictions shall be returned to the contributing agency. All property and equipment purchased with monies from the LNCPF or with monies from the Metro Drug Forfeiture Fund shall be distributed so as not to violate Section 7.a above, and on a pro-rata basis as set forth below, and this property shall be used by the receiving party only for controlled substance enforcement purposes unless federal and state requirements provide for a different disposition. The Operations Board shall see to it that a separate inventory for property and equipment purchased from each fund shall be kept and, if money from the LNCPF is used to reimburse any other fund for any property and equipment purchased, the property or equipment shall be transferred to the LNCPF inventory. This inventory shall go back to at least January, 1988, and continue for the duration of this Agreement. Upon termination of this Agreement, the items purchased with monies from the LNCPF fund or with monies

from the Metro Drug Forfeiture Fund shall be distributed to each participating jurisdiction under a formula that divides the cumulative number of investigators assigned to Metro by each jurisdiction starting with the fiscal year ended June 30, 2005, and continuing through the most recently completed fiscal year by the cumulative total of investigators assigned to Metro by all participating jurisdictions during this same period. Jurisdictions shall only receive credit in the calculation for those investigators that remain assigned to Metro for the entirety of a fiscal year. At such time that a jurisdiction removes all of the investigators that it had previously assigned to Metro, it shall also forfeit its right to any future distribution of accumulated assets under this section and be removed from the calculation. As of June 30, 2009, the result of the formula outlined in this section was as follows:

Agency	Fiscal Year Ended June 30,					Total	%
	2005	2006	2007	2008	2009		
City of Kennewick	2.00	2.00	2.00	2.00	2.00	10.00	28.57%
City of Pasco	2.00	2.00	2.00	2.00	2.00	10.00	28.57%
City of Richland	1.00	1.00	1.00	1.00	1.00	5.00	14.29%
Benton County	1.00	1.00	1.00	1.00	1.00	5.00	14.29%
Franklin County	1.00	1.00	1.00	1.00	1.00	5.00	14.29%
Total Investigators	7.00	7.00	7.00	7.00	7.00	35.00	100.00%

SECTION 8 – FUND ADMINISTRATION AND FORFEITURES

- a. All property, proceeds from property, and cash forfeited pursuant to RCW 69.50.505 by Metro operations and all other contributions to the Metro Drug Forfeiture Fund shall be managed and disbursed as provided in this Section. On or before July 1, 2009, all such forfeited property, all proceeds in the Metro Drug Forfeiture Fund and/or LNCPF fund and all accounting records related to such were transferred from the City of Pasco to the City of Kennewick.
- b. The City of Kennewick shall administer the Metro Drug Forfeiture Fund and shall make expenditures from the fund only as appropriately directed. All interest attributed to investment of monies in the Metro Drug Forfeiture Fund shall be deposited into the fund. This fund shall be established so that it may accept court ordered contribution or other contributions as well as funds disbursed by the federal government or other agencies involving the enforcement of controlled substance laws. Disbursements from this fund shall be for controlled substance enforcement purposes.
- c. To the extent that RCW 69.50.505 requires that the forfeiture funds be deposited in the current expense fund of the jurisdiction in which the forfeiture takes place, that requirement shall be met by depositing said funds in the Metro Drug Forfeiture Fund. Forfeitures shall be in accordance with RCW 69.50.505 or other applicable law and all funds which may be retained by the local jurisdiction as a result of said forfeiture shall be deposited into the Metro Drug Forfeiture Fund.

- d. All property forfeited pursuant to Metro operations shall be immediately delivered to Metro for use in Metro operations, unless use of such property is declined by the Operations Board, in which case the jurisdiction in which the forfeiture took place may use the property in accordance with RCW 69.50.505. The City of Kennewick shall see to it that a proper inventory is kept of all the property seized, whether or not it has yet been forfeited, and of its sale or other disposition.
- e. The Operations Board may authorize the transfer of forfeited property of any law enforcement agency in this state upon application for the exclusive use of enforcing the provisions of Chapter 69.50.505 RCW as now or hereafter amended.
- f. Firearms confiscated as a result of Metro operations will be placed into Metro evidence and the disposal of the firearms will occur after adjudication of the case in court and at the direction of the Operations Board.
- g. Upon termination, the Executive Director of Support Services of the City of Kennewick, or his or her designee, using established governmental accounting standards, shall determine the balance of the LNCPF and the Metro Drug Forfeiture Fund available for distribution as of the termination date. All jurisdictions shall share in the amount available for distribution on a pro-rata basis as set forth in section 7.b. Any balances that become available for distribution within the LNCPF and the Metro Drug Forfeiture Fund after the date of termination, including but not limited to, the net proceeds derived from any property that was seized or forfeited prior to the termination date, shall be distributed in the same manner. Funds distributed may be used for the expansion of controlled substance enforcement purposes and may not supplant pre-existing funding services unless otherwise authorized by applicable law.
- h. In order to ensure compliance with this Agreement, the parties agree that all forfeitures made pursuant to RCW 69.50.505 by each party shall be disclosed to the Operations Board. The Operations Board shall review each case to determine if the action was a Metro operation. The decision of the Operations Board shall be binding upon all parties. However, Metro operations shall expressly not include drug arrests and forfeitures which are incidental to an unrelated activity, e.g., a routine traffic stop, arrests and forfeitures from operations which were made after consultation with and agreement of the Metro supervisor that Metro would not participate; and cases which are not considered a Metro case for prosecution purposes.

SECTION 9 – ARBITRATION

The parties agree that any dispute arising from this Agreement relating to the distribution of monies and of property or penalty provisions shall be submitted to an arbitrator for a binding decision pursuant to Chapter 7.04 RCW unless the parties agree to another manner of arbitration. If the parties cannot agree on an arbitrator(s), the court shall appoint an arbitrator from a list

compiled as follows: each party shall submit a list of three persons not associated with any of the parties who have agreed to act as an arbitrator and each party may strike up to two names from the total list thereby compiled. The court shall select an arbitrator from among the names remaining unless there be none, in which case the court shall select an arbitrator not associated with any of the parties.

SECTION 10 – LIABILITY

Each party shall be responsible for the wrongful or negligent actions of its employees while assigned to the Metro Team as their respective liability shall appear under the laws of the State of Washington and/or Federal Law and this Agreement is not intended to diminish or expand such liability.

To that end, each party promises to hold harmless and release all the other participating parties from any loss, claim or liability arising from or out of the negligent tortious actions or inactions of its employees, officers and officials. Such liability shall be apportioned among the parties or other at-fault persons or entities in accordance with the laws of the State of Washington.

Nothing herein shall be interpreted to:

- a. Waive any defense arising out of RCW Title 51.
- b. Limit the ability of a participant to exercise any right, defense, or remedy which a party may have with respect to third parties or the officer(s) whose action or inaction give rise to loss, claim or liability, including, but not limited to, an assertion that the officer(s) was acting beyond the scope of his or her employment.
- c. Cover or require indemnification or payment of any judgment against any individual or Agency for intentionally wrongful conduct outside the scope of employment of any individual or for judgment for punitive damages against any individual or Agency. Payment of punitive damage awards, fines or sanctions shall be the sole responsibility of the individual against whom said judgment is rendered and/or his or her Agency employer, should that employer elect to make said payment voluntarily. This Agreement does not require indemnification of any punitive damage awards or for any order imposing fines or sanctions.

SECTION 11 – AMENDMENT

This Agreement may be amended from time-to-time as deemed appropriate by the parties, provided that such amendment shall become effective only after it has been adopted in writing by authorized representatives of each of the parties.

SECTION 12 – INTEGRATION

This Agreement and the application contain all the terms and conditions agreed upon by the parties, except necessary operational agreements between the law enforcement agencies of the

METRO INTERLOCAL AGREEMENT

Page 10 of 12

respective jurisdictions pursuant to Chapter 10.93 RCW. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties. This Agreement shall expressly supercede all prior Agreements among the jurisdictions regarding Metro creation, operation, and administration.

Dated this ____ day of December, 2009

CITY OF KENNEWICK

CITY OF RICHLAND

THOMAS C. MOAK, Mayor

JOHN FOX, Mayor

Attest:

Attest:

VALERIE J. LOFFLER, City Clerk

DEBRA BARHAM, Deputy City Clerk

Approved As To Form:

Approved As To Form:

LISA BEATON, City Attorney

THOMAS O. LAMPSON, City Attorney

CITY OF PASCO

JOYCE OLSON, Mayor

Attest:

DEBRA CLARK, City Clerk

Approved As To Form:

LELAND B. KERR, City Attorney

BENTON COUNTY

MAX E. BENITZ, JR, Chairman

LEO BOWMAN, Commissioner

JAMES BEAVER, Commissioner

Attest:

CAMI MCKENZIE, Clerk of the Board

Approved As To Form:

Ryan K Brown DPA, for

ANDREW MILLER,
Benton County Prosecutor

FRANKLIN COUNTY

RICK MILLER, Chairman

ROBERT E. KOCH, Commissioner

BRAD PECK, Commissioner

Attest:

MARY WITHERS, Clerk of the Board

Approved As To Form:

STEVE LOWE
Franklin County Prosecutor

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

Board of County Commissioners
BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

December 14, 2009

Ms. Ginny Waltman, AAM
Washington State Auditor's Office
100 N. Morain, Suite 216
Kennewick, WA 99336

Dear Ms. Waltman:

We are providing this letter in connection with your audit of Benton County for the period January 1, 2008 through December 31, 2008 for the purpose of reporting accountability for public resources and compliance with applicable laws, regulations and contract requirements.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve a weakness in internal control, omission or misstatement of information that, in the light of surrounding circumstances, make it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the weakness in internal control, omission or misstatement.

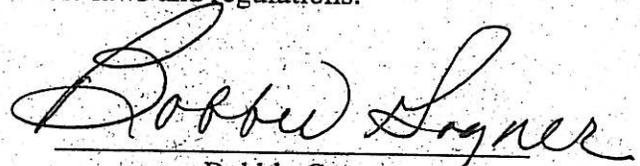
We confirm, to the best of our knowledge and belief, having made appropriate inquiries to be able to provide our representations, the following representations made to you during your audit.

1. We acknowledge and understand our responsibility for complying with applicable state and local laws and regulations.
2. We acknowledge and understand our responsibility for compliance with requirements related to confidentiality of certain information, such as HIPAA requirements. Further, we have notified you that records or data containing information subject to confidentiality requirements have been made available to you.
3. We have complied with all applicable state and local laws and regulations.
4. We have followed applicable laws in adopting, approving, and amending budgets.

5. We have made available to you all:
 - a. Financial records and related data.
 - b. Minutes of the meetings of the Board of Commissioners or summaries of actions of recent meetings for which minutes have not yet been prepared.
6. There are no material transactions that have not been properly recorded in the accounting records.
7. Except as disclosed to the auditor in accordance with RCW 43.09.185, we have no knowledge of any fraud or suspected fraud affecting the entity involving management, employees or others.
8. Except as disclosed to the auditor in accordance with RCW 43.09.185, we have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators or others.
9. The following have been properly recorded or disclosed in the accounting records:
 - a. Transactions between funds.
 - b. Arrangements involving restrictions on cash.
 - c. Related-party transactions, including sales, purchases, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties.
 - d. Guarantees, whether written or oral, under which Benton County is contingently liable.
10. The County of Benton has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets, nor has any asset been pledged.
11. We have complied with all aspects of contractual agreements that would have a material effect on the financial affairs of Benton County in the event of noncompliance. The attached letters regarding claims and litigation would describe any allegations to the contrary, of which we are aware, made by third parties since our June 22, 2009, letter to you.
12. We have received no communication from the Internal Revenue Service (IRS) adversely affecting the tax-exempt status of our outstanding debt or noncompliance with arbitrage rules.

13. We acknowledge and understand our responsibility for the design and implementation of programs and controls to safeguard public resources and ensure compliance with applicable laws and regulations, including controls to prevent and detect fraud.
14. We have established adequate procedures and controls to safeguard public resources and ensure compliance with applicable laws and regulations.

Max E. Benitz, Jr.
Chairperson,
Board of County Commissioners



Bobbie Gagner
Benton County Auditor

Duane A. Davidson
Benton County Treasurer

cc: Board of County Commissioners
Bobbie Gagner, Benton County Auditor
Duane A. Davidson, Benton County Treasurer

Attachments:

1. Letter dated December 14, 2009 to the Board of County Commissioners from Ryan Brown, Chief Civil Deputy: RE: Letter of Representation and Pending Litigation.
2. Letter dated December 14, 2009 to the Board of County Commissioners from Melina Wenner, Risk Manager. RE: Letter of Representation and Claims Update.

**PROSECUTING ATTORNEY
BENTON COUNTY, WASHINGTON**

ANDY MILLER
PROSECUTING ATTORNEY

RYAN K. BROWN
CHIEF DEPUTY, CIVIL

TERRY J. BLOOR
CHIEF CRIMINAL DEPUTY

MARGARET AULT
ADMINISTRATOR

7122 West Okanogan Place, Bldg. A
Kennewick, Washington 99336

(509) 735-3591

786-5608 736-3066
Prosser Fax

DEPUTIES

JULIE D. LONG
TIMOTHY A. SAEELS
ADRIENNE H. PARABBS
ANITA PETRA
JENNIFER L. JOHNSON
SARAH H. PERAY
KATHLEEN S. GARLITO
RONALD D. BOY
MIGAN A. BRASCHER
ARTHUR J. BIEKER
KRISTIN H. MCROBERTS
JENNY L. JOHNSON
JONATHAN J. YOUNG
CHRISTINE H. BENNETT
BRENDAN H. SIEPKEN
MEGAN E. CARPER
EMILY K. SULLIVAN
JULIA S. EISENTRON
LAUREL J. WHITTEA
MEGAN A. WHITZAK

December 14, 2009

Board of Benton County Commissioners
620 Market Street
Prosser, WA 99350

Re: Accountability Audit

Dear Commissioners:

I have reviewed as to form the enclosed draft letter to the SAO related to its accountability audit of Benton County. This letter serves as one of the attachments referenced in paragraph 11 thereof and should be attached to your executed letter. The second attachment to your letter should be a similar letter from the County's Risk Manager that identifies claims filed after June 22, 2009, that have not yet resulted in lawsuits. You will need to obtain that directly from her.

To my knowledge, the following lawsuits have been filed against Benton County or its officials acting in their capacity as such since June 22, 2009, and that are unresolved as of the date of this letter:

1. Chacon v. Benton Co., No. 09-2-50830-8, Franklin Co. Sup. Court. Complaint for damages due to personal injury. Complaint dismissed pursuant to motion by County, but appeal period pending.
2. Kilgore v. Delvin, No. 09-2-02438-1, Benton County Superior Court. Complaint for damages. Matter settled but dismissal order pending.
3. Knippling V. Sgt. Magnuson, No. CV-08-402-CI, US Dist. Ct., Eastern District of Washington. Complaint for alleged civil rights violation.

Board of Benton County Commissioners
December 14, 2009
Page 2

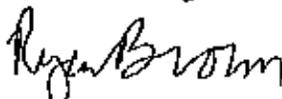
4. Rehak v. Benton Co., No. 09-2-01135-1, Benton County Superior Court. Complaint for damages to personal property.

In addition, the following lawsuits filed prior to June 22, 2009, against the County or its officials in their capacity as such were resolved, between June 22, 2009, and the date of this letter:

1. Staples v. Benton Co., et al., No. 09-2-00713-3, Benton Co. Superior Ct. Complaint for Declaratory Judgment.

Very truly yours,

ANDY MILLER
Prosecuting Attorney



RYAN K. BROWN, Chief Deputy
Prosecuting Attorney (Civil)

RKB:ss

Enclosure

cc: David Sparks
Van Pettey
Melina Wenner (w/o encl.)
Andy Miller (w/o encl.)

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

**Board of County Commissioners
BENTON COUNTY**

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

December 14, 2009

Ms. Ginny Waltman, AAM
Washington State Auditor's Office
100 N. Morain, Suite 216
Kennewick, WA 99336

Dear Ms. Waltman:

We are providing this letter in connection with your audit of Benton County for the period January 1, 2008 through December 31, 2008 for the purpose of reporting accountability for public resources and compliance with applicable laws, regulations and contract requirements.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve a weakness in internal control, omission or misstatement of information that, in the light of surrounding circumstances, make it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the weakness in internal control, omission or misstatement.

We confirm, to the best of our knowledge and belief, having made appropriate inquiries to be able to provide our representations, the following representations made to you during your audit.

1. We acknowledge and understand our responsibility for complying with applicable state and local laws and regulations.
2. We acknowledge and understand our responsibility for compliance with requirements related to confidentiality of certain information, such as HIPAA requirements. Further, we have notified you that records or data containing information subject to confidentiality requirements have been made available to you.
3. We have complied with all applicable state and local laws and regulations.
4. We have followed applicable laws in adopting, approving, and amending budgets.

Ms. Ginny Waltman, Assistant Audit Manager
December 14, 2009
Page 2 of 3

5. We have made available to you all:
 - a. Financial records and related data.
 - b. Minutes of the meetings of the Board of Commissioners or summaries of actions of recent meetings for which minutes have not yet been prepared.
6. There are no material transactions that have not been properly recorded in the accounting records.
7. Except as disclosed to the auditor in accordance with RCW 43.09.185, we have no knowledge of any fraud or suspected fraud affecting the entity involving management, employees or others.
8. Except as disclosed to the auditor in accordance with RCW 43.09.185, we have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators or others.
9. The following have been properly recorded or disclosed in the accounting records:
 - a. Transactions between funds.
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11. We have complied with all aspects of contractual agreements that would have a material effect on the financial affairs of Benton County in the event of noncompliance. The attached letters regarding claims and litigation would describe any allegations to the contrary, of which we are aware, made by third parties since our June 22, 2009, letter to you.
12. We have received no communication from the Internal Revenue Service (IRS) adversely affecting the tax-exempt status of our outstanding debt or noncompliance with arbitrage rules.

Ms. Ginny Waltman, Assistant Audit Manager
December 14, 2009
Page 3 of 3

13. We acknowledge and understand our responsibility for the design and implementation of programs and controls to safeguard public resources and ensure compliance with applicable laws and regulations, including controls to prevent and detect fraud.
14. We have established adequate procedures and controls to safeguard public resources and ensure compliance with applicable laws and regulations.

Max E. Benitz, Jr.
Chairperson,
Board of County Commissioners

Bobbie Gagner
Benton County Auditor

Duane A. Davidson
Benton County Treasurer

cc: Board of County Commissioners
Bobbie Gagner, Benton County Auditor
Duane A. Davidson, Benton County Treasurer

Attachments:

1. Letter dated December 14, 2009 to the Board of County Commissioners from Ryan Brown, Chief Civil Deputy: RE: Letter of Representation and Pending Litigation.
2. Letter dated December 14, 2009 to the Board of County Commissioners from Melina Wennor, Risk Manager. RE: Letter of Representation and Claims Update.

Personnel Resources Department
BENTON COUNTY

7122 West Okanogan Place, Bldg. A • Kennewick, WA 99336
PHONE: (509) 737-2777 OR (509) 789-5628 • FAX: (509) 737-2778

December 14, 2009

Board of Benton County Commissioners
620 Market Street
Prosser, WA 99350

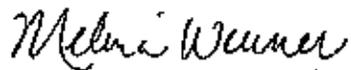
Dear Commissioners:

The following claims have been filed with Benton County or its officials acting in their capacity as of June 22, 2009, and have not yet been resolved. Benton County is insured for the alleged claims listed below through the Washington Counties Risk Pool and has a \$100,000 deductible.

1. James Hambleton, CC09-14, claim is for \$500,000 for damage allegedly caused by the Benton County Sheriff's Office.
2. Gerald Youngblood, CC09-15, claim is for \$300,000 for damages allegedly caused by the Benton County Public Works Department.
3. David Pesina, CC09-20, claim for an undisclosed amount for damages allegedly caused by the Benton County Sheriff's Office.
4. David Greening, CC09-21, claim for \$10,000 for damages allegedly caused by the Benton County Sheriff's Office.
5. John and Pat Storm, CC09-22, claim for an undisclosed amount for damages allegedly caused by the Benton County Sheriff's Office.
6. Shawn Hogle, CC09-23, claim is for \$738.85 for damages allegedly caused by the Benton County Facilities Department.

7. BNSF Railway, CC09-25, claim is for \$6,290.06 for damages allegedly caused by the Benton County Public Works Department.

Very truly yours,



MELINA WENNER
Personnel/Risk Manager

cc: David Sparks
Ryan Brown
Andy Miller
Van Pettey

9

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PROVIDING A NON-BARGAINING CONTRIBUTION TO EMPLOYEE BENEFITS FOR THE YEAR 2010

WHEREAS, the Board of Benton County Commissioners has determined that the non-bargaining contribution to employee benefits will be adjusted for calendar year 2010; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners has determined that the County's monthly contribution for regular non-bargaining employees and elected officials eligible for benefits will increase from \$760.00 per month to \$780.00 per month effective January 1, 2010; and,

BE IT FURTHER RESOLVED, that it is mandatory that benefited eligible employees and elected officials be enrolled in the County's medical, dental, vision and life (\$24,000.00) plans, to receive the monthly County contribution; and,

BE IT FURTHER RESOLVED, that any unused portion of the County contribution available above the mandated County's medical, dental, vision and life plan premiums may be applied, at the employee's option, to purchase of supplemental group insurance, dependent coverage or deposited into the employee's VEBA account; and,

BE IT FURTHER RESOLVED, that provisions in any prior resolution on this subject, are superseded by similar provisions in this resolution and this resolution may be rescinded or modified, at the sole discretion of the Board of Benton County Commissioners without notification; and,

BE IT FURTHER RESOLVED, that this resolution is not intended nor shall it be interpreted as limiting or compromising the County's "at will" employer status.

Dated this day of, 20

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest:
Clerk of the Board

h

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF DISPENSING WITH ADVERTISING AND COMPETITIVE BID PROCEDURES WITH RESPECT TO CERTAIN CONTRACTS FOR PUBLIC WORKS PROJECTS AND THE PURCHASE OR LEASE OF MATERIALS, EQUIPMENT OR SUPPLIES; RESCINDING RESOLUTION 08-131

WHEREAS, public bidding requirements under state law allow alternative procedures in lieu of formal competitive bidding; and

WHEREAS, different alternative procedures are required for public works contracts and for the purchase or lease of general materials, equipment and supplies for county use; and

WHEREAS, the Board of County Commissioners determined that it is in the public's best interest to take advantage of the state law allowing for more timely and cost effective procedures for entering into smaller contracts, and

WHEREAS, per Resolution 08-131 the Board of Benton County Commissioners authorized the letting of any contract for public works services or materials involving less than ten thousand dollars (\$10,000), advertisement and competitive bidding may be dispensed with, and such contracts may be entered into after direct negotiation; and

WHEREAS, per the Engrossed Substitute Bill 1847 effective July 26, 2009, the legislation amended the law to increase the bid limits for public works and purchases of materials, supplies, or equipment for counties with a population of 400,000 and under without a purchasing department from ten thousand dollars (\$10,000) to forty thousand dollars (\$40,000) regardless of the number of trades involved; and

WHEREAS, though Benton County falls under this category, the Board of Benton County Commissioners has determined that because of the large amount of dollars involved, it would be in the best interest of the public to limit any contracts for public works services or materials involving less than twenty-five thousand (\$25,000), advertisement and competitive bidding may be dispensed with, and such contracts may be entered into after direct negotiation and authorization by the Board of Commissioners, with such authorization being in the form of a resolution containing the bid quotations obtained and being available for public inspection; and

WHEREAS, as an alternative to the procedure outlined in this paragraph, the letting of contracts for public works involving less than twenty-five thousand dollars (\$25,000) may also be accomplished pursuant to the small works roster or limited public works processes set forth in RCW 39.04.155; **NOW, THEREFORE**

BE IT RESOLVED that for public works contracts with an estimated value of twenty-five thousand dollars (\$25,000) up to two hundred thousand dollars (\$200,000), the county shall follow either the advertisement and competitive bidding procedures set forth in RCW 36.32.250 or shall create and follow a small works roster process as set forth in RCW 39.04.155; and

BE IT FURTHER RESOLVED that in letting of any non-public works contract for the purchase or lease of materials, equipment or supplies in an amount of less than five thousand dollars (\$5,000), advertisement and competitive bidding may be dispensed with, and such purchases or leases may be completed based on direct negotiation; and

BE IT FURTHER RESOLVED that in letting of any non-public works contract for the purchase or lease of materials, equipment or supplies in an amount ranging from five thousand dollars (\$5,000) to twenty five thousand dollars (\$25,000), the advertisement and formal sealed bidding requirements set forth in RCW 36.32.245 may be dispensed with only if the uniform process set forth in RCW 39.04.190 and Benton County Resolution _____ is followed; and

BE IT FURTHER RESOLVED, that this resolution does not mandate procedures for i) intergovernmental property transfers; ii) purchases at an auction; iii) performance based contracts for the purchase of energy equipment negotiated under RCW 39.35A; or iv) contracts and purchases for the printing of election ballots, voting machine labels, or all other election material containing the names of candidates and ballot titles; and

BE IT FURTHER RESOLVED, resolution 08-131 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**

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF ESTABLISHING A UNIFORM PROCESS FOR
AWARDING CONTRACTS FOR MATERIALS, EQUIPMENT AND SUPPLIES
IN AMOUNTS OF MORE THAN \$5,000 AND LESS THAN \$25,000;
RESCINDING RESOLUTION 08-132**

WHEREAS, Benton County Resolution _____ and RCW 36.32.245 authorizes contracts for the purchase of materials, equipment and supplies valued between five thousand (\$5,000) and twenty-five thousand (\$25,000) without advertisement and formal sealed bidding if the county follows the uniform process for contract awards described in RCW 39.04.190; and

WHEREAS, the Board of Commissioners has determined it to be in the public's best interest to establish such uniform process; **NOW, THEREFORE**

BE IT RESOLVED the Benton County Administrator shall be responsible for ensuring that the county publish a notice of the existence of a Benton County vendors list for small purchases of materials, supplies and equipment and soliciting the names of vendors for such list and shall take such other reasonable steps to establish and maintain such a list, including but not limited to publishing such notice no later than the first Sunday in November and the first Sunday in May of each year; and

BE IT FURTHER RESOLVED that if any county department other than Public Works desires to purchase or lease from a vendor on Benton County's vendor list and not advertise and solicit formal sealed bids, it shall secure written quotes from at least three (3) different vendors on the vendor list, unless the product is such that it is not reasonable to obtain three price quotes, to assure that a competitive price is established and to award the contract to the lowest responsible bidder as determined under RCW 39.30.040 and RCW 43.19.1911; and

BE IT FURTHER RESOLVED, the award of any such purchase contract or lease with a vendor on the vendor list for the acquisition of materials, supplies or equipment valued between five thousand (\$5,000) and twenty-five thousand (\$25,000) shall be made by resolution signed by a majority of the Board of Commissioners. Said resolution shall list all quotations received to include a copy attached to said resolution of the quotations; and

BE IT FURTHER RESOLVED, copies of resolutions awarding said contracts shall be maintained in a separate file by the Board of Commissioners and be open to public inspection and available by telephone inquiry; and

BE IT FURTHER RESOLVED, resolution 08-132 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**

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS IN AMOUNTS LESS THAN \$200,000; RESCINDING RESOLUTION 08-133

WHEREAS, pursuant to Benton County Resolution _____ the Benton County Board of Commissioners has authorized the creation of a small works roster and the use of such through the small works roster and limited public works process pursuant to RCW 39.04.155 for public works contracts with an estimate value of less than two hundred thousand (\$200,000); and

WHEREAS, the Washington State Legislature recently amended the laws to the small works roster process regarding contracting for public works by counties and municipalities, by increasing the previous two hundred thousand (\$200,000) dollar bid limit for public works contracts to be awarded by a small works roster process to three hundred thousand (\$300,000) dollar bid limit; and

WHEREAS, the cost of projects for with a state agency or local government must notify all of the contractors on its small works roster that bids for work are being sought has been increased from one hundred thousand (\$100,000) to one hundred fifty thousand (\$150,000); and

WHEREAS, the Board of Benton County Commissioners has determined that because of the large amount of dollars involved, the use of the small works process established hereby shall be limited to public works contracts of less than two hundred thousand (\$200,000); and

WHEREAS, in order to be able to implement a small works roster process, Benton County is required by law to adopt a resolution establishing specific procedures; **NOW, THEREFORE,**

BE IT HEREBY RESOLVED that the following small works roster procedures are established for use by Benton County for public works projects pursuant to RCW 36.32.250, RCW 36.77.075 and RCW 39.04.155:

1. **Cost.** Benton County and its officials and officers need not comply with formal sealed bidding procedures for public works contracts for the construction, building, renovation, remodeling, alteration, repair, maintenance or improvement of county owned assets where the estimated cost is less than two hundred thousand (\$200,000), inclusive of the costs of labor, material, equipment and sales and/or use taxes as applicable. For such projects, the small works roster procedures as set forth herein may be used. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.
2. **Number of Rosters.** The Benton County Facilities Department, in cooperation with other county departments, may create a single general small works roster, or several small works rosters for different specialties or categories of anticipated work. Said small works roster(s) may make distinctions between contractors based upon different geographic areas served by the contractor.

3. **Contractors on Small Works Roster(s).** The small works roster(s) shall consist of all responsible contractors. In order to be placed on the small works roster or any of the small works rosters if there are more than one, interested contractors must prove that they are responsible and must, therefore, submit the following material:

- a. Proof of licensing or registration where required by law (ie contractor's license)
- b. The contractor's Uniform Business Identification Number
- c. If the contractor has employees, proof of industrial insurance coverage as provided by law, for each employee, and an employment security department number
- d. The contractor's state excite tax registration number
- e. Proof of commercial general liability insurance of the type, and with limits of liability as required by the Benton County Risk Manager
- f. Proof of the contractor's financial ability to obtain performance and payment bonds in an amount exceeding \$10,000

4. **Publication.** On the first Sunday of December of each year or as soon thereafter as possible, the Benton County Deputy Administrator shall cause to be published in a newspaper of general circulation within Benton County a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and the required information and records.

5. **Solicitation of Bids.** Benton County officers or officials seeking to utilize the small works roster shall use the following procedure in soliciting bids from contractors on the appropriate small works roster to assure that a competitive price is obtained:

- a) A contract awarded from a small works roster need not be advertised. Invitations for bids shall be written and include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.
- b) Bids being sought over \$150,000 shall be invited from all appropriate contractors on the appropriate small works roster. Bids less than \$150,000 may be invited from all appropriate contractors on the appropriate small works roster, or as an alternative, bids may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity to bid among the contractors on the appropriate roster. If there are less than five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, bids shall be invited from all contractors who have indicated the capability of performing such work.
- c) For purposes of this resolution, "equitably distribute" means that Benton County will not favor, by disproportionally seeking quotations from certain contractors to a

significant degree or otherwise, certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the County representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

- d) All bids shall be submitted in writing. The amount of each such bid and of any conditions imposed on the bid, as well as the contractor's name and registration number, shall be reflected in the resolution adopted to award the contract. After an award is made, a copy of the resolution awarding the contract shall be placed in a separate file for small works roster contracts by the Board of Commissioners and shall be open to public inspection, and available by telephone inquiry.
- e) Bids submitted pursuant to the small works roster process must include all items required of bidders in competitive bid situations, including but not limited to performance and payment bonds, bid bonds, specifications and retainage.
- f) The Benton County Board of Commissioners shall maintain a list of contractors contacted and contracts awarded during the previous twenty-four months pursuant to this resolution, including the name of the contractors, the contractors' registration numbers, the amounts of the contracts, a brief description of the type of work performed, and the date the contracts were awarded. Said list may be in the form of a compilation of all awarding resolutions if such resolutions include the requisite information.

6. **Limited Public Works Process.** If a work, construction, alteration, repair, or improvement is estimated to cost less than thirty-five thousand dollars (\$35,000), Benton County may award such contract using the limited public works process provided under RCW 39.04.155(3). For limited public works projects (those estimated to cost less than \$35,000), written invitations for bids will be solicited from a minimum of three contractors from the appropriate small works roster. All bids must be submitted in writing, and Benton County may award the contract to the lowest responsible bidder as defined under RCW 43.19.1911(9). Such bids, the contractor's names and their registration numbers shall be reflected in the resolution adopted to award the contract. After an award is made, the written bids shall be open to public inspection and available by electronic request.

7. **Determining Lowest Responsible Bidder.** Since all bidders on the small works roster are presumed to be responsible, the public works project must be awarded to the lowest bidder unless facts or circumstances arise which causes Benton County to believe the lowest bidder is not responsible. If facts or circumstances arise which causes Benton County to believe that any responding bidder is not responsible, then the County representative must notify the bidder writing of the fact that they are considered not responsible and include the specific reasons for that determination. After that notification, the bidder will then have a reasonable opportunity to submit supplementary material to rebut that determination. The County representative must reconsider the not responsible determination in light of the new information and must notify the bidder in question, in writing, of the final determination. If the final determination is that the bidder in question is actually responsible, then the project

must be awarded to the lowest bidder, including that bidder. If the final determination is that the bidder in question is in fact not responsible, then, after waiting two business days after the day when the non responsible bidder has received the final determination, the project must be awarded to the lowest bidder excluding the bidder in question.

8. **Award.** All written bids received pursuant to the small works roster process set forth herein shall be submitted to the Benton County Board of Commissioners along with a recommendation for award of the contract to the lowest responsible bidder. The Benton County Board of Commissioners shall then make a decision to award the contract to the lowest responsible bidder pursuant to a resolution in the form required hereby or to reject all bids as authorized herein.

BE IT FURTHER RESOLVED, resolution 08-133 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**

K

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF SOLICITING PERSONAL AND PROFESSIONAL SERVICE CONTRACTS; RESCINDING RESOLUTION 04-534

WHEREAS, Personal and Professional contracts are performed by the person (contractor) as an independent contractor. Qualifications and performance are the primary considerations in selection of the contractor with price being secondary or subject to negotiation; and

WHEREAS, contracts for personal or professional services do not need to follow any particular bid procedures, although the Request for Qualifications process may be helpful; and

WHEREAS, as per Resolution 04-534, the Board determined that applying bid procedures to the acquisition of all personal and professional contracts does not necessarily advance the county's interest in obtaining the highest quality services at the lowest cost; **NOW, THEREFORE**

BE IT RESOLVED, that the acquisition of architectural and engineering services shall be done in accordance with the provisions of RCW 39.80 as now in effect or hereafter amended; and

BE IT FURTHER RESOLVED, contracts for all public works projects, including those involving a service component for the maintenance of public facilities, shall be solicited in accordance with the competitive bid requirements of RCW 36.32.250 or alternative procedures as allowed by Benton County Resolution _____; and

BE IT FURTHER RESOLVED, except as resolved above, (contracts for services under RCW 39.80 and contracts for public works projects, including those involving a service component for the maintenance of public facilities) that contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but shall 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

BE IT FURTHER RESOLVED, all personal and professional service contracts must be awarded by the Board of Benton County Commissioners; and

BE IT FURTHER RESOLVED, Benton County Resolution 04-534 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

Benton and Franklin Counties
Board of Commissioners
Agenda Summary Report

COPY

DATE: December 2, 2009	PRESENTED BY: Benton and Franklin Counties Department of Human Services
SUBJECT / ISSUE: State Mental Health Agreement #BENFRS-09/11-00 with the Greater Columbia Behavioral Health	
ACTION(S) REQUESTED: Approve on Consent Agenda	
BACKGROUND: The Greater Columbia Behavioral Health contracts with the Benton and Franklin Counties Department of Human Services to provide or purchase age, linguistic and culturally competent community mental health services to the maximum extent possible and within the available resources for individuals within the contracted service area. This is a two year agreement, effective October 1, 2009 through September 30, 2011.	
COORDINATION: The Benton and Franklin Counties' Prosecuting Attorney's Office have reviewed this agreement and approved as to form with some comments that were forwarded to the Greater Columbia Behavioral Health. The Director of Human Services and program specialists have reviewed and approved the format and legal areas of the agreement.	
RECOMMENDATION: The Department of Human Services would like the commissioners of Benton and Franklin Counties to approve this agreement by their signatures on the agreement.	
HANDLING / ROUTING: Please sign and return to Human Services for distribution to the appropriate entities.	
ATTACHMENTS: Describe documents attached to this package. <ol style="list-style-type: none">1. Resolution2. Three original amendments for signature3. Copies of Cover Sheet and Resolution.	

I certify the above information is accurate and complete.

Carol Carey, Sr. Secretary

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

**IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF
BENTON AND FRANKLIN COUNTY COMMISSIONERS FOR AN AGREEMENT
BETWEEN THE BENTON AND FRANKLIN COUNTIES DEPARTMENT OF
HUMAN SERVICES AND GREATER COLUMBIA BEHAVIORAL HEALTH FOR
MENTAL HEALTH STATE ONLY FUNDING TO PROVIDE SERVICES TO
PROMOTE RECOVERY FOR SERIOUSLY MENTALLY ILL ADULTS AND
RESIDENCY FOR SERIOUSLY EMOTIONALLY DISTURBED CHILDREN, and**

WHEREAS, Carrie Hule-Pascua, Director of Human Services, believes it is in the best interest of Human Services and the service needs of these mentally ill persons, that the proposed Contract Agreement #BENFRS-09/11-00 be approved as presented for a term commencing October 1, 2009 and terminating September 30, 2011, **NOW, THEREFORE, BE IT RESOLVED**, that the Chairs of the Boards of Benton and Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, Contract Amendment #BENFRS-09/11-00.

Dated this day of 2009.

Dated this day of2009.

Benton County Board of Commissioners

Franklin County Board of Commissioners

Chair, Benton Co. Commissioners

Chair, Franklin Co. Commissioners

Chair Pro Tem

Chair 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

Originals: GCBH
Franklin County
Human Services

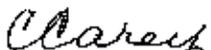
Carey

Benton and Franklin Counties
Board of Commissioners
Agenda Summary Report



DATE: December 2, 2009	PRESENTED BY: Benton and Franklin Counties Department of Human Services
SUBJECT / ISSUE: State Mental Health Agreement #BENFRP-09/11-00 with Greater Columbia Behavioral Health for Prepaid Inpatient Health Plan Services	
ACTION(S) REQUESTED: Approve on Consent Agenda	
BACKGROUND: The Greater Columbia Behavioral Health contracts with the Benton and Franklin Counties Department of Human Services to operate a Prepaid Inpatient Health Plan to provide medically necessary mental health services to enrollees with the Contractor's service area. This is a two year agreement, effective October 1, 2009 through September 30, 2011.	
COORDINATION: The Benton and Franklin Counties' Prosecuting Attorney's Office have reviewed this agreement and approved as to form with some comments that were forwarded to the Greater Columbia Behavioral Health. The Director of Human Services and program specialists have reviewed and approved the format and legal areas of the agreement.	
RECOMMENDATION: The Department of Human Services would like the commissioners of Benton and Franklin Counties to approve this agreement by their signatures on the agreement.	
HANDLING / ROUTING: Please sign and return to Human Services for distribution to the appropriate entities.	
ATTACHMENTS: Describe documents attached to this package. <ol style="list-style-type: none">1. Resolution2. Three original amendments for signature3. Copies of Cover Sheet and Resolution.	

I certify the above information is accurate and complete.



Carol Carey, Sr. Secretary

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

**IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF
BENTON AND FRANKLIN COUNTY COMMISSIONERS FOR AN AGREEMENT
BETWEEN THE BENTON AND FRANKLIN COUNTIES DEPARTMENT OF
HUMAN SERVICES AND GREATER COLUMBIA BEHAVIORAL HEALTH FOR
PREPAID INPATIENT HEALTH PLAN FUNDING TO PROVIDE MEDICALLY
NECESSARY MENTAL HEALTH SERVICES TO ENROLLEES WITHIN THE
SERVICE AREA, and**

WHEREAS, Carrie Hule-Pascua, Director of Human Services, believes it is in the best interest of Human Services and the service needs of these mentally ill persons, that the proposed Contract Agreement #BENFRP-09/11-00 be approved as presented for a term commencing October 1, 2009 and terminating September 30, 2011, NOW, THEREFORE, BE IT RESOLVED, that the Chairs of the Boards of Benton and Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, Contract Amendment #BENFRP-09/11-00.

Dated this day of 2009.

Dated this day of2009.

Benton County Board of Commissioners

Franklin County Board of Commissioners

Chair, Benton Co. Commissioners

Chair, Franklin Co. Commissioners

Chair Pro Tem

Chair 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

Originals: GCBH
Franklin County
Human Services

Carey

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	CONSENT AGENDA XX
MEETING DATE: B/C 12-14-09 F/C 12-21-09	Executive Contract XX	PUBLIC HEARING
SUBJECT: Interpreter Services - Maria Vera	Pass Ordinance XX	1 st DISCUSSION
Prepared By: Donna A. Lee	Pass Motion	2 nd DISCUSSION
Reviewed By: Sharon Paradis	Other	OTHER

BACKGROUND INFORMATION

Maria Vera is a court certified Spanish Interpreter for Medical, Social and Court matters in the State of Washington. By law we are required to provide interpreting services to defendants and families during court proceedings. Ms. Vera has currently been providing interpretive services to the Benton-Franklin Counties Juvenile Justice Center for the last six months. It is in the best interest of the Juvenile Court to enter into a formal agreement that would set forth a standard rate of compensation for the period of January 1, 2010 and through December 31, 2010.

SUMMARY

Ms. Vera is a court certified Spanish Interpreter, in the State of Washington, for medical, social and court matters. Compensation is set forth in the actual contract.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Personal Services Agreement between the Benton-Franklin Counties Juvenile Justice Center and Maria Vera.

FISCAL IMPACT

The compensation rate is included in Benton-Franklin Counties Juvenile Justice Center 2010 Budget.

MOTION

I move that the Board of Commissioners sign the Personal Services Contract between the Benton-Franklin Counties Juvenile Justice Center and Maria Vera.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND MARIA VERA, and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Personal Services Contract between Maria Vera and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing January 1, 2010 and terminating on December 31, 2010, NOW, THEREFORE

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

**DATED this 14th day of December 2010
BENTON COUNTY BOARD OF COMMISSIONERS**

**DATED this 21st day of December 2010
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

JUDGES

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRIG POTTS
Court Commissioners

PERSONAL SERVICES CONTRACT BETWEEN BENTON/FRANKLIN COUNTIES JUVENILE COURT AND MARIA VERA

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336-1388 (hereinafter collectively referred to as "Counties"), and Maria Vera, with her principal office at 164 Columbia Road, Burbank, WA 99323 (hereinafter referred to as "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 be January 1, 2010, through December 31, 2010. 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. Provide English to Spanish and Spanish to English oral and written language interpreting services to respondents and families on a scheduled and on-call basis during court proceedings and for Diversion, Becca, Community Supervision, Detention and Parent Pay matters at the Benton-Franklin Counties Juvenile Justice Center and other community-based locations as scheduled by the Benton-Franklin Counties Juvenile Justice Center staff.
- B. The total hours of services provided by Contractor under this Contract is not to exceed 120 hours per month without prior written authorization from the Juvenile Court Administrator, Intervention/Legal Processing Manager, and/or his/her designee.

- C. The Contractor agrees to provide its own labor and materials. The Counties will not supply any material, labor, or facilities unless otherwise provided for in this Contract.
- 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 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: **Maria Vera**
164 Columbia Road
Burbank, WA 99323
Phone: (509) 947-2338
Fax: (509) 545-4700
E-mail: mavera@charter.net

- B. For Counties: **Sharon Paradis, Administrator**
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 736-2722
Fax: (509) 222-2311
E-mail: sharon.paradis@co.benton.wa.us

4. COMPENSATION

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

- A. Except as provided in Section 4.B. below, at the rate of \$40.00 per hour for each hour of interpreting services provided for an individual and/or family during court proceedings or for Diversion, Becca, Community Supervision, Detention and Parent Pay matters at the Benton-Franklin Counties Juvenile Justice Center or other community-based locations as scheduled by Benton-Franklin Counties Juvenile Justice Center staff.
- B. If the Administrative Office of the Courts provides the Counties with funding for interpreters, the Counties may, in its discretion, increase the compensation rate

in Section 4.A. from \$40.00 per hour to \$50.00 per hour, subject to continued funding. If that funding is provided and subsequently withdrawn, reduced, or limited in any way, the hourly rate will be \$40.00 per hour.

- 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 will submit invoices to the Counties not more than once per month during the progress of the work for payment of the work completed to date. Invoices shall cover the time Contractor performed work for the Counties during the billing period that descriptively sets forth and details the total number of hours rounded to the nearest ¼ hour intervals. 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.
- 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 Counties.
- 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 Counties, 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.
- 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.

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' authorized representatives. 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 attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the 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. 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.
- 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 Legal Liability:** The Contractor shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor's profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy-limit it shall be at least two times the incident, loss or person limit.

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 bodily injury or property damage. 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 including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. Contractor is required to buy professional liability insurance for a period of 36 months after completion of this Contract,

which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy.

- 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. Other Insurance Provisions: 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. Benton and Franklin Counties, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required professional and automobile liability policy.
3. The Contractor's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.
4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.

5. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. 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.
7. 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.
8. The Contractor shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the Contractor's liability coverage is written as a "claims made" policy, then the Contractor must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

E. Verification of Coverage and Acceptability of Insurers: All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a current A.M. Best Rating of not less than A:VII. Any exception to this requirement must be reviewed and approved by both of the Benton and Franklin Counties Prosecutors' Offices. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. The Contractor shall furnish the Counties with properly executed and unaltered Acord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. For professional liability insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.
2. The Contractor shall furnish the Counties with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties as an additional insured.

3. Certificates of insurance shall show the certificate holder as "Benton and Franklin Counties" and include "c/o" the Counties' Contract Representative. The address of the certificate holder shall be shown as the current address of the Counties' Contract Representative.
4. 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, the Contractor shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to the Counties that Contractor is currently paying workers compensation.
5. All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following address:

**Juvenile Court Administrator
Benton Franklin Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick WA 99336**
6. The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton or Franklin County Risk Manager.
7. If Contractor is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to Counties. If requested by the Counties, the Contractor must describe its financial condition and the self-insured funding mechanism.

8. TERMINATION

- A. Either party in its sole discretion may terminate this Contract by giving sixty (60) days written notice by certified mail to the other party. Either party may terminate this Contract for cause by giving ten (10) days written notice by certified mail to the other party. In the event this Contract is terminated prior to the end of the contract term, the Counties shall pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice. Payment shall be made in accordance with 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 either party breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the other party, the

parties agree that such breach will constitute "cause" to terminate this Contract, 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 for cause, 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 the 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' authorized representatives.
- 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.

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 Four of this Contract, and the Contractor is not 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 Counties' 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. OTHER PROVISIONS

The Contractor shall comply with the following other provisions for all services provided under this Contract:

A. Background Check/Criminal History

- (1) In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the Contractor shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.
- (2) In addition, the Contractor may also be required to conduct background check/criminal history clearance for employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile.

B. Sexual Misconduct

- (1) The Contractor shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.
- (2) The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

14. 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.

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, 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 therefrom 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.

17. **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.

18. **DISPUTES**

Differences 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.

19. **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.

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 or Franklin Counties, Washington.

21. 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.

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 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.

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.

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

Contractor	Benton Franklin Counties Juvenile Justice Center
<i>Maria Vera</i> <i>11/30/2009</i>	<i>Sharon A. Paradis</i> <i>12/1/09</i>
Maria Vera Date	Sharon A. Paradis Date
BENTON COUNTY APPROVAL	FRANKLIN COUNTY APPROVAL
Approved as to Form:	Approved as to Form:
<u>Agreed Review Performed by Franklin County</u>	<u><i>BUB</i> <i>11/23/2009</i></u>
<u>Sarah Perry, Deputy Prosecuting Attorney</u> <u>Date</u>	<u>Ryan Verhulp, Civil Deputy Prosecuting Attorney</u> <u>Date</u>
By: _____	By: _____
Name: <u>Max E. Benitz</u>	Name: <u>Rick Miller</u>
Title: <u>Chairman, Board of Commissioners</u>	Title: <u>Chairman, Board of Commissioners</u>
Date: _____	Date: _____
Attest: _____	Attest: _____
Clerk of the Board: _____	Clerk of the Board: _____



AGENDA ITEM: Consent	TYPE OF ACTION NEEDED Executive Contract XX Pass Ordinance XX Pass Motion Other	CONSENT AGENDA XX PUBLIC HEARING
MEETING DATE: BC 12/14/09 FC 12/21/09		1 st DISCUSSION
SUBJECT: Interpreter Services - Mark A. Rudeen		2 nd DISCUSSION
Prepared By: Donna A. Lee		OTHER
Reviewed By: Sharon Paradis		

BACKGROUND INFORMATION

Mark A. Rudeen is a court certified Spanish Interpreter for Medical, Social and Court matters in the State of Washington. By law we are required to provide interpreting services to defendants and families during court proceedings. Mr. Rudeen has been providing interpretive services to the Benton-Franklin Counties Juvenile Justice Center on regular basis for a number of years. It is in the best interest of the Juvenile Court to enter into a formal agreement that would set forth a standard rate of compensation for the period beginning January 1, 2010 and through December 31, 2010.

SUMMARY

Mr. Rudeen is a court certified Spanish in Washington for medical, social and court matters. Compensation is set forth in the actual contract.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Personal Services Agreement between the Benton-Franklin Counties Juvenile Justice Center and Mark A. Rudeen.

FISCAL IMPACT

The compensation rate is included in Benton-Franklin Counties Juvenile Justice Center's 2010 Budget.

MOTION

I move that the Board of Commissioners sign the Personal Service Contract between the Benton-Franklin Counties Juvenile Justice Center and Mark A. Rudeen

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND MARK A. RUDEEN, and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Personal Services Contract between Mark A. Rudeen and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing January 1, 2010 and terminating on December 31, 2010, NOW, THEREFORE

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

**DATED this 14th day of December 2009
BENTON COUNTY BOARD OF COMMISSIONERS**

**DATED this 21st day of December 2009
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

JUDGES

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

PERSONAL SERVICES CONTRACT BETWEEN BENTON/FRANKLIN COUNTIES JUVENILE COURT AND MARK A. RUDEEN

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336-1388 (hereinafter collectively referred to as "Counties"), and Mark A. Rudeen, with his principal office at 250 Gage BLVD # 2095, Richland, Washington, 99352 (hereinafter referred to as "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 be January 1, 2010, through December 31, 2010. 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. Provide English to Spanish and Spanish to English oral and written language interpreting services to respondents and families on a scheduled and on-call basis during court proceedings and for Diversion, Becca, Community Supervision, Detention and Parent-Pay matters at the Benton-Franklin Counties Juvenile Justice Center and other community-based locations as scheduled by the Benton-Franklin Counties Juvenile Justice Center staff.
- B. The total hours of services provided by Contractor under this Contract is not to exceed 120 hours per month without prior written authorization from the Juvenile Court Administrator, Intervention/Legal Processing Manager, and/or his/her designee.

- C. The Contractor agrees to provide its own labor and materials. The Counties will not supply any material, labor, or facilities unless otherwise provided for in this Contract.
- 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 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: **Mark A. Rudeen**
250 Gage Blvd. # 2095
Richland WA 99352
Phone: (509) 628-3325
Cell Phone: (509) 366-3338
- B. For Counties: **Sharon Paradis, Administrator**
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 736-2722
Fax: (509) 222-2311
E-mail: sharon.paradis@co.benton.wa.us

4. COMPENSATION

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

- A. Except as provided in Section 4.B. below, at the rate of \$40.00 per hour for each hour of interpreting services provided for an individual and/or family during court proceedings or for Diversion, Becca, Community Supervision, Detention and Parent Pay matters at the Benton-Franklin Counties Juvenile Justice Center or other community-based locations as scheduled by Benton-Franklin Counties Juvenile Justice Center staff.
- B. If the Administrative Office of the Courts provides the Counties with funding for interpreters, the Counties may, in its discretion, increase the compensation rate in Section 4.A. from \$40.00 per hour to \$50.00 per hour, subject to continued

funding. If that funding is provided and subsequently withdrawn, reduced, or limited in any way, the hourly rate will be \$40.00 per hour.

- 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 will submit invoices to the Counties not more than once per month during the progress of the work for payment of the work completed to date. Invoices shall cover the time Contractor performed work for the Counties during the billing period that descriptively sets forth and details the total number of hours rounded to the nearest ¼ hour intervals. 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.
- 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 Counties.
- 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 Counties, 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.
- 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.

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' authorized representatives. 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 attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the 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. 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.
- 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 Legal Liability:** The Contractor shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor's profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy-limit it shall be at least two times the incident, loss or person limit.

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 bodily injury or property damage. 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 including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. Contractor is required to buy professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy.

- 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. **Other Insurance Provisions: 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. Benton and Franklin Counties, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required professional and automobile liability policy.
3. The Contractor's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.
4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.
5. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. 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.
 7. 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.
 8. The Contractor shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the Contractor's liability coverage is written as a "claims made" policy, then the Contractor must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.
- D. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a current A.M. Best Rating of not less than A:VII. Any exception to this requirement must be reviewed and approved by both of the Benton and Franklin Counties Prosecutors' Offices. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.
1. The Contractor shall furnish the Counties with properly executed and unaltered Acord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. For professional liability insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.
 2. The Contractor shall furnish the Counties with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties as an additional insured.
 3. Certificates of insurance shall show the certificate holder as "Benton and Franklin Counties" and include "c/o" the Counties' Contract Representative. The address of the certificate holder shall be shown as the current address of the Counties' Contract Representative.

4. 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, the Contractor shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to the Counties that Contractor is currently paying workers compensation.
5. All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following address:

**Juvenile Court Administrator
Benton Franklin Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick WA 99336**
6. The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton or Franklin County Risk Manager.
7. If Contractor is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to Counties. If requested by the Counties, the Contractor must describe its financial condition and the self-insured funding mechanism.

8. TERMINATION

- A. Either party in its sole discretion may terminate this Contract by giving sixty (60) days written notice by certified mail to the other party. Either party may terminate this Contract for cause by giving ten (10) days written notice by certified mail to the other party. In the event this Contract is terminated prior to the end of the contract term, the Counties shall pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice. Payment shall be made in accordance with 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 either party breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the other party, the parties agree that such breach will constitute "cause" to terminate this Contract, 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 for cause, 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 the 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' authorized representatives.
- 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.

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 Four of this Contract, and the Contractor is not 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 Counties' 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. OTHER PROVISIONS

The Contractor shall comply with the following other provisions for all services provided under this Contract:

A. Background Check/Criminal History

- (1) In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the Contractor shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.
- (2) In addition, the Contractor may also be required to conduct background check/criminal history clearance for employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile.

B. Sexual Misconduct

- (1) The Contractor shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.
- (2) The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

14. 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.

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, 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 therefrom 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.

17. 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.

18. DISPUTES

Differences 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.

19. 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.

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 or Franklin Counties, Washington.

21. 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.

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 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.

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.

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

Contractor	Benton Franklin Counties Juvenile Justice Center
<i>Mark A. Rudeen</i> <i>12/3/09</i>	<i>Sharon A. Paradis</i> <i>12/4/09</i>
Mark A. Rudeen Date	Sharon A. Paradis Date
BENTON COUNTY APPROVAL	FRANKLIN COUNTY APPROVAL
Approved as to Form:	Approved as to Form:
<u>Agreed Review Performed by Franklin County</u> Sarah Perry, Deputy Prosecuting Attorney Date	<u><i>RUB</i></u> <u><i>11/23/2009</i></u> Ryan Verhulp, Civil Deputy Prosecuting Attorney Date
By: _____	By: _____
Name: <u>Max E. Benitz, Jr.</u>	Name: <u>Rick Miller</u>
Title: <u>Chairman, Board of Commissioners</u>	Title: <u>Chairman, Board of Commissioners</u>
Date: _____	Date: _____
Attest: _____	Attest: _____
Clerk of the Board: _____	Clerk of the Board: _____

P

AGENDA ITEM: Consent		TYPE OF ACTION NEEDED	CONSENT AGENDA <u>xx</u>
MEETING DATE: B/C 12-14-09 F/C 12-21-09			EXECUTIVE CONTRACT <u>xx</u>
SUBJECT: Stephenson Computer Consulting			PASS RESOLUTION <u>xx</u>
Prepared By: Donna A. Lee	Reviewed By: Sharon A. Paradis		PASS ORDINANCE
		PASS MOTION	
		Other	PUBLIC HEARING
			1ST DISCUSSION
			2ND DISCUSSION
			OTHER

BACKGROUND INFORMATION

Stephenson Computer Consulting is an expert in their industry and has provided development and maintenance for the Benton-Franklin Counties Juvenile Justice Center Juvenile Tracking System (JTS) for many years. Stephenson's staff is extremely familiar with the many facets of the Juvenile Center's complex computer system and they are timely and quick in their ongoing service. This Personal Services Contract that is presented would continue uninterrupted service from January 1, 2010 through December 31, 2012.

SUMMARY

Stephenson Computer Consulting will provide maintenance support and program enhancement/development for the Benton-Franklin Counties Juvenile Justice Center's Juvenile Tracking System.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Personal Service Contract between Stephenson Computer Consulting and Benton-Franklin Juvenile Justice Center.

FISCAL IMPACT

The rates are included in approved Juvenile Justice Center's 2010 Budget.

MOTION

I move that the Chairman of the Board of Benton County Commissioners, and the Chairman of the Board Franklin County Commissioners be hereby authorized to sign the contract with Stephenson's Computer Consulting for the period beginning January 1, 2010 through December 31, 2012.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE CHAIRMAN OF THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND STEPHENSON COMPUTER CONSULTING, and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Personal Services Contract between Stephenson Computer Consulting, and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing January 1, 2010 and terminating on December 31, 2012, **NOW, THEREFORE**

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

**DATED this 14th day of December 2009
BENTON COUNTY BOARD OF COMMISSIONERS**

**DATED this 21st day of December 2009
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

JUDGES

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5806 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

PERSONAL SERVICE CONTRACT BETWEEN BENTON - FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND STEPHENSON COMPUTER CONSULTING

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5806 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter, collectively referred to as, "Counties"), and Stephenson Computer Consulting, with its principal offices at 328 Idaho Street, PO Box 1713, Twin Falls, Idaho 83303-1713 (hereinafter referred to as "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 be January 1, 2010 through December 31, 2012. 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 Maintenance Support and Program Enhancement/Development for the Counties as detailed in Exhibit A on no less often than a quarterly basis unless approved otherwise in writing by the Counties Contract Representative, which is attached hereto and incorporated herein by reference.

A. **System Administrators:** The Counties shall designate two (2) System Administrators and one (1) alternate as follows:

Primary: Carol Vance
(509) 736-2716
carol.vance@co.benton.wa.us

Secondary: Eric Lipp
(509) 783-2151 ext. 2535
eric.lipp@co.benton.wa.us
Alternate: Jennifer Bowe
(509) 736-2721
jennifer.bowe@co.benton.wa.us

- B. **Updates:** The Contractor shall provide new releases, upgrades or maintenance patches to the Software, along with appropriate documentation, on no less often than a quarterly basis unless approved otherwise in writing by the Counties Contract Representative. Counties are responsible for obtaining any upgrades or purchases of third party hardware and/or software required to operate the Update. The Contractor is responsible to notify the Counties of upgrades to third party hardware or software that will be required for any Updates and to provide notification to the Counties within a minimum of six (6) months of the date that the Update is provided to the Counties. Upgrades to hardware and third party software required by Updates must be agreed to by Contractor and Counties. Contractor may charge the Counties at its then-current rates to perform Maintenance Services required as a result of Counties' failure to install an Update in accordance with a schedule agreed to by the Contractor and Counties. The Counties shall report any failure of performance of an Update within twelve (12) business days after the Update is, or is required to be, installed.
- C. The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in this Contract, no material, labor, or facilities will be furnished by the Counties.
- 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 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.
- G. Contractor shall immediately contact the Counties' Contract Representative in the event any of the following interferes with Contractor's performance of Services under this Contract:
- (1) The hardware and software used with the Contractor's Software is not in good operating order or is not installed in a suitable operating environment;
 - (2) The data and/or the database structure used in conjunction with the Contractor software is manipulated using application software other than the Contractor software; and/or

- (3) The failure of performance is solely caused by the actions of the Counties, its employees or authorized representatives, or any third party with the exception of actions that may be reasonably construed as accidental or inadvertent in nature.

3. COUNTIES RESPONSIBILITIES

Counties shall be responsible for those items detailed in Exhibit B, which is attached hereto and incorporated herein by reference.

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: **Jim Stephenson**
PO Box 1713
Twin Falls ID 83303-1713
- B. For Counties: **Sharon Paradis, Administrator**
Benton-Franklin Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick WA 99336

5. COMPENSATION

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

- A. The Contractor shall be paid a monthly Maintenance Fee of \$1,600.00 each month for maintenance service and support as outlined in Exhibit A. In addition, Contractor shall be paid a rate of seventy-five dollars (\$75.00) for each hour rendered for JTS Program Enhancement and Development services as requested by the Counties. Time spent will be rounded to the nearest fifteen (15) minutes and hourly rate prorated accordingly.
- B. Travel costs to and from Counties premises will be paid to Contractor based on actual costs incurred.
- 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 will submit invoices to the Counties not more than once per month and no later than the tenth (10th) of each month for the prior month services, during the progress of the work for partial payment of the work completed to date, and for the current month Maintenance Fee. 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.

- 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 Counties.
- 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 Counties, 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.
- 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 Counties.
- B. No amendment, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties' authorized representatives. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the Counties.

7. 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 attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Counties, its officers, officials, employees or agents.
- B. In any and all claims against the Counties, 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. 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.

- 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 Legal Liability:** The Contractor shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor's profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy-limit it shall be at least two times the incident, loss or person limit.

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 bodily injury or property damage. 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 including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. Contractor is required to buy professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy.

- B. **Workers Compensation:** 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 is 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:** Contractor shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

Contractor also shall maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

- D. **Automobile Liability:** The Contractor shall maintain business automobile liability insurance with a limit of not less than one million dollars (\$1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto." Contractor waives all rights against the Counties for the recovery of damages to the extent they are covered by business auto liability.

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) Benton and Franklin Counties, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required professional and automobile liability policy.
- (3) The Contractor's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.

- (4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.
- (5) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (6) 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.
- (7) 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.
- (8) The Contractor shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the Contractor's liability coverage is written as a "claims made" policy, then the Contractor must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

F. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a current A.M. Best Rating of not less than A:VII. Any exception to this requirement must be reviewed and approved by the Benton and Franklin Counties Prosecutors' Offices. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

- (1) The Contractor shall furnish the Counties with properly executed and unaltered Accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. For professional liability insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.

- (2) The Contractor shall furnish the Counties with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton and Franklin Counties" and include "c/o" the Counties' Contract Representative. The address of the certificate holder shall be shown as the current address of the Counties' Contract Representative.
- (4) The Contractor shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to the Counties that Contractor is currently paying workers compensation.
- (5) All written notices under this Section Eight and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following address:

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

- (6) The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton or Franklin County's Risk Manager.
- (7) If Contractor is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to Counties. If requested by Counties, Contractor must describe its financial condition and the self-insured funding mechanism.

9. 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 by 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 terminate this Contract, 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.
- D. If the Counties fail to pay the monthly Maintenance Fee in a timely manner and fail to cure the breach within ten (10) days of written notice to do so by the Contractor, the Contractor may terminate this Contract, 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.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- A. The Contractor shall perform the terms of the 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' authorized representatives.
- 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.

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 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 Five of this Contract, and the Contractor is not 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 Counties' 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.

13. COMPLIANCE WITH LAWS

The Contractor shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, as well as all pertinent JRA Administration Policy Bulletins.

14. OTHER PROVISIONS

The Contractor shall comply with the following other provisions for all services provided under this Contract.

A. Background Check/Criminal History

- (1) In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the Contractor shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.
- (2) In addition, the Contractor may also be required to conduct background check/criminal history clearance for employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile.

B. Sexual Misconduct

- (1) The Contractor shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.
- (2) The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as

defined in RCW 9.94A.030. Such notification will be directed to the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

15. 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. The Contractor shall also keep all fiscal and clinical books, records, documents, and other material relevant to this Contract in accordance with WAC 388-805-320 and the WAC Implementation Guide.

16. NONDISCRIMINATION

The parties, their 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.

17. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- A. All reports, 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 therefrom 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.

18. 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.

19. DISPUTES

Differences 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.

20. 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.

21. 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 or Franklin County, Washington.

22. 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.

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. 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.

25. NOTICES

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

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

Stephenson Computer Consulting	Benton Franklin Counties Juvenile Justice Center
<i>Jim Stephenson</i> 12/11/2009 Jim Stephenson Date	<i>Sharon A. Paradis</i> 12/4/09 Sharon A. Paradis Date
BENTON COUNTY APPROVAL Approved as to Form: <u>Agreed Review Performed by Franklin County</u> Sarah Villanueva, Deputy Prosecuting Attorney Date	FRANKLIN COUNTY APPROVAL Approved as to Form: <i>BOB</i> 11/23/2009 Ryan Verhulp, Civil Deputy Prosecuting Attorney Date
By: _____ Name: <u>Max E. Bentz, Jr.</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____	By: _____ Name: <u>Neva J. Corkrum</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____
Attest: _____	Attest: _____
Clerk of the Board: _____	Clerk of the Board: _____

EXHIBIT A

**Contractor Maintenance Support and
Program Enhancement / Development Responsibilities**

Maintenance Support	Program Enhancement / Development
<p><u>Definition:</u> Services that are needed to maintain the current (as of date of execution of contract) program condition, operation, maintenance, functionality and scope, to include upgrading, troubleshooting, and operation.</p>	<p><u>Definition:</u> Services provided, at the request of the Counties, that enhance, modify, change, expand, and/or increase program abilities and functionality.</p>
<ul style="list-style-type: none">➤ JTS Program maintenance support➤ Program expertise and forethought of any issues, problems, and glitches that may arise as a result of Program enhancement requests and appropriate development of Program to avoid such issue➤ Support of third-party software required to run JTS Program➤ Notification of necessary Service Packs approved by Contractor➤ Upgrade impact planning and assistance➤ Proper scheduling of upgrades to third-party software programs	<ul style="list-style-type: none">➤ Develop / make changes to current JTS Program to meet the changing and growing need of the Counties➤ Offer programming recommendations that would best accomplish Counties needs taking into consideration all current Program functionalities and the effects on each module

EXHIBIT B

Counties Responsibilities

- Hardware problem diagnosis and resolution
- Third-party software problem diagnosis and resolution
- Support of client and server operating systems
- Provide remote access to JTS (e. g., GoToMyPC) at reasonable times and dates as agreed to by Counties and Contractor
- Become reasonably familiar with JTS Program
- Reasonably understand proper use of JTS Program functions and proper use of JTS Program in the conduct of the Juvenile Justice Center management and administration
- Inquire directly with Contractor support for questions regarding use of JTS Program
- Routine backup of JTS data
- Validate any data input and output in the day to day use of JTS Program
- Maintain and manage software license compliance and hardware warranty agreements
- Provide third-party software required for operation of JTS
- Maintain a set of change and configuration logs defined by Contractor

9.

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED Executive Contract <u>XX</u> Pass Resolution <u>XX</u> Pass Ordinance Pass Motion Other	CONSENT AGENDA <u>XX</u>
MEETING DATE: B/C 12-14-09 F/C 12/21/09		PUBLIC HEARING
SUBJECT: Pass Through Monies for Extended Day Program Start-up Costs		1ST DISCUSSION
Prepared By: Donna A. Lee		2ND DISCUSSION
Reviewed By: Sharon Paradis		OTHER

BACKGROUND INFORMATION

As an outgrowth of the Building Bridges data, a population of students who need further academic and social supports in the form of an alternative schedule and specific personal and social responsibility training has been identified. The proposal is for a transitional program that dovetails the day program allowing students to fluidly change class schedules while continuing to earn credit.

SUMMARY

Under its MacArthur Foundation, Models for Change Grant, Benton and Franklin Counties are authorized to pass through Thirty Thousand dollars (\$30,000) of grant funds it received from the MacArthur Foundation to Pasco School District to support the District's administrative program development costs for expanding its New Horizons afternoon/evening educational program.

RECOMMENDATION

We recommend that the Boards of County Commissioners of Benton and Franklin Counties sign the Contract with the Pasco School District.

FISCAL IMPACT

These are pass-through monies from the MacArthur Foundation that specifically authorize funds to be paid to Pasco School District for this extended Day Program.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board Franklin County Commissioners be hereby authorized to sign the contract with the Pasco School District.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND THE PASCO SCHOOL DISTRICT TO PROVIDE PASS THROUGH FUNDS FROM MACARTHUR FOUNDATION FOR ADMINISTRATIVE AND DEVELOPMENT COSTS FOR NEW HORIZONS HIGH SCHOOL EXTENDED DAY PROGRAM, and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the proposed Contract between the Juvenile Court and the Pasco School District be approved as presented for a term commencing November 1, 2009, and terminating on June 30, 2010, **NOW, THEREFORE,**

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be hereby are authorized to sign, on behalf of their respective county, the Contract between the Juvenile Court and the Pasco School District shall be for a period commencing November 1, 2009, and terminating on June 30, 2010.

DATED this day 14th of December 2009

DATED this 21st day of December 2009

BENTON COUNTY BOARD OF COMMISSIONERS

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

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

PERSONAL SERVICES CONTRACT BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND PASCO SCHOOL DISTRICT

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336-1388, (hereinafter collectively referred to as "Counties"), and Pasco School District, with its principal offices at 1215 West Lewis Street, Pasco, WA 99301 (hereinafter referred to as the "District").

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 be November 1, 2009 through June 30, 2010. The District 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

- A. The District shall perform the services described in the Statement of Work set forth in Exhibit A, which is attached hereto and incorporated herein by reference.
- B. The District 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 District shall perform the work specified in this Contract according to standard industry practice.
- D. The District shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- E. The District shall confer with the Counties from time to time during the progress of the work. The District 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 the District: **Christy Challendar
New Horizons Alternative School
3110 W Argent Rd
Pasco, WA**

- B. For Counties: **Sharon Paradis, Administrator
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336**

4. COMPENSATION

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

- A. The Counties agrees to reimburse the District for services performed under this Contract in an amount up to a maximum of Thirty Thousand Dollars (\$30,000.00), as invoiced by the District in accordance with this Section 4. This amount is to be used to support the District's administrative program development costs for expanding the District's New Horizons extended day educational program. The District shall be responsible for all funding for this program other than this \$30,000.00 in start-up funding.

- B. The maximum total amount payable by the Counties to the District under this Contract is Thirty Thousand Dollars (\$30,000.00).

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

- D. The District shall submit invoices to the Counties not more than once per month during the progress of the work for the costs of the work completed to date. Invoices submitted by the District shall include the date, description, and cost for each item for which the District seeks reimbursement. The District shall maintain sufficient backup documentation of expenses under this Contract.

- E. All invoices must be submitted to the Counties **no later than June 30, 2010**. Invoices shall cover the time the District performed work for the Counties during the billing period. The Counties shall pay the District for approved costs for services rendered within thirty (30) days from the date of receipt of the invoice.

- F. The District 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 District has failed to perform any substantial obligation to be performed by the District under this Contract and such failure has not been cured within ten (10) days following notice from the Counties, the Counties may, in its sole discretion, upon written notice to the District, withhold any and all monies due and payable to the District, 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. Once payment has been transmitted to the District, if the District breaches any of its obligations hereunder, and fails to cure the breach within ten days after receiving written notice from the Counties to do so, the District agrees to Reimburse the Counties, in an amount determined by the Counties, up to the full amount of the compensation under this Contract. The District shall bear all costs and expenses incurred by the Counties in completing the work and all damages sustained by the Counties by reason of the District's breach.
- H. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the District will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after **June 30, 2010**.

5. AMENDMENTS AND CHANGES IN WORK

- A. In the event of any errors or omissions by the District in the performance of any work required under this Contract, the District shall make any and all necessary corrections without additional compensation. All work submitted by the District shall be certified by the District and checked for errors and omissions. The District shall be responsible for the accuracy of the work, even if the work is accepted by the Counties.
- B. No amendment, modification or renewal 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 District shall hold harmless, indemnify and defend the Counties, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the District's acts, errors or omissions in the performance of this Contract. Provided, that the District'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. In any and all claims against the Counties, its officers, officials, employees and agents by any employee of the District, 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 District 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 District expressly waives any immunity the District might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the District 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 District makes with any subcontractor or agent performing work hereunder. District's obligations under this Section 6 shall survive termination and expiration of this Contract.**
- C. The District'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 District, the District's employees, agents or subcontractors.

7. INSURANCE

- A. **Workers Compensation:** The District shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of the District 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, the District 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 the District, 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, the District shall indemnify the Counties. Indemnity shall include all fines, payment of benefits to the District 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 the District pursuant to the indemnity agreement may be deducted from any payments owed by Counties to the District for performance of this Contract.

- B. Commercial General Liability and Employers Liability Insurance:** The District shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The District will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the District will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

The District shall obtain and maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

C. Other Insurance Provisions:

1. The District'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 District's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties.
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 District'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 District 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 District shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be

promptly replaced. If the District's liability coverage is written as a "claims made" policy, then the District must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

- E. Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a current A.M. Best Rating of not less than A:VII. Any exception to this requirement must be reviewed and approved by both of the Benton and Franklin Counties Prosecutors' Offices. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.
1. The District shall furnish the Counties with properly executed and unaltered Acord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. The District shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. The District shall also instruct the insurer to give the Counties forty-five (45) days advanced notice of any cancellation by the insurer.
 2. Certificates of insurance shall show the certificate holder as "Benton and Franklin Counties" and include "c/o" the Counties' Contract Representative. The address of the certificate holder shall be shown as the current address of the Counties' Contract Representative.
 3. The District shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to the Counties that the District is currently paying workers compensation.
 4. All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following address:

**Juvenile Court Administrator
Benton Franklin Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick WA 99336**
 5. The District or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton or Franklin County's Risk Manager.

6. If the District is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to Counties. If requested by the Counties, the District must describe its financial condition and the self-insured funding mechanism.

8. TERMINATION

- A. The Counties may terminate this Contract in whole or in part whenever the Counties determine, in their sole discretion, that such termination is in the best interests of the Counties. The Counties may terminate this Contract by giving ten (10) days written notice by certified mail to the District. In that event, the Counties shall pay the District for all approved costs incurred by the District in performing this 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 District. After the effective date, no charges incurred under this Contract shall be allowed.
- C. If the District 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 terminate this Contract, in which case the Counties shall pay the District 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 District 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 District's breach.

9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- A. The District shall perform the terms of the Contract using only its bona fide employees or agents, and the obligations and duties of the District 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 District 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 the District, 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.

11. INDEPENDENT CONTRACTOR

- A. The District's services shall be furnished by the District as an independent contractor and not as an agent, employee or servant of the Counties. The District specifically has the right to direct and control the District's own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- B. The District acknowledges that the entire compensation for this Contract is set forth in Section Four of this Contract, and the District is not 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 Counties employees.
- C. The District 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 District shall be or deem to be or act or purport to act as an employee, agent, or representative of the Counties.
- D. The District 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 District 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 District shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, as well as all pertinent JRA Administration Policy Bulletins.

13. OTHER PROVISIONS

The District shall comply with the following other provisions for all services provided under this Contract:

- A. Background Check/Criminal History
 - 1. In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the District shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.

2. In addition, the District may also be required to conduct background check/criminal history clearance for employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile.

B. Sexual Misconduct

1. The District shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.
2. The District shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

14. INSPECTION OF BOOKS AND RECORDS

The Counties may, at reasonable times, inspect the books and records of the District relating to the performance of this Contract. The District shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes. The District shall also keep all fiscal and clinical books, records, documents, and other material relevant to this Contract in accordance with WAC 388-805-320 and the WAC Implementation Guide.

15. NONDISCRIMINATION

The parties, their 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, 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 District for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the District harmless therefrom to the extent such use is not agreed to in writing by the District.

- 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.

17. PATENT/COPYRIGHT INFRINGEMENT

The District 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 District or subcontractor infringes any patent or copyright. The District shall be notified promptly in writing by the Counties of any notice of such claim.

18. DISPUTES

Differences between the District 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 District shall be decided by the Counties' Contract Representative or designee. All rulings, orders, instructions and decisions of the Counties' Contract Representative shall be final and conclusive, subject to the District's right to seek judicial relief.

19. CONFIDENTIALITY

The District, 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 District shall promptly give the Counties 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 or Franklin Counties, Washington.

21. SUCCESSORS AND ASSIGNS

The Counties, to the extent permitted by law, and the District 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 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.

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.

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

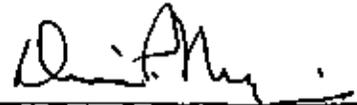
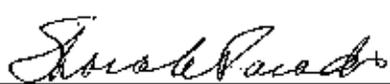
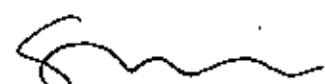
The District	Benton Franklin Counties Juvenile Justice Center
	
<u>Dennis Maguire</u> <u>11/23/09</u> Date	<u>Sharon A. Paradis</u> <u>11/18/2009</u> Date
<p style="text-align: center;">BENTON COUNTY APPROVAL</p> <p>Approved as to Form:</p>  <u>Sarah Perry, Deputy Prosecuting Attorney</u> <u>11/19/09</u> Date	<p style="text-align: center;">FRANKLIN COUNTY APPROVAL</p> <p>Approved as to Form:</p> <p><u>Agreed Review Performed by Benton County</u> <u>Ryan Verhulp, Civil Deputy Prosecuting Attorney</u> <u> </u> Date</p> <p>By: _____ Name: <u>Rick Miller</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest: _____</p> <p>Clerk of the Board: _____</p>

EXHIBIT A – STATEMENT OF WORK

BACKGROUND:

In its work under the MacArthur Foundation, Models for Change Grant (MFCG), Targeted Area of Improvement (TIA) Alternatives to Formal Processing and Secure Confinement, the Benton Franklin Juvenile Justice Center (BFJJC) has focused on the analysis of data related to truancy issues and causes. Though the BFJJC MFCG proposal, which included data collection, analysis and strategic planning, BFJJC has identified a critical need for expanding school-based retrieval and retention services for youth whose school refusal behavior has resulted in dropout status. Based on this critical need, the MFCG Truancy TAI workgroup recommended the expansion of the New Horizons educational model as a priority for moving forward systems reform efforts related to truancy and dropout prevention.

New Horizons Alternative School in the Pasco School District has implemented an educational model that is very successful with youth who have dropped out of high school. This model is highly effective and, if given the opportunity to expand, can become a model to drive system reform at the school level for drop out prevention across the state. The program serves a large population of students that are credit deficient, pregnant/parenting teens, students in need of an alternative school setting/schedule, as well as students that are re-entering the high school system, and serves a large Latino/Hispanic population (76%). Over the past two years, New Horizons High School, under the direction of Principal Christy Challender, has successfully launched and managed a school retrieval program. For the 2008/2009 school year, this program (commonly referred to as "Destination Graduation" under the OSPI Building Bridges Grant) retrieved 70 drop out students – all of whom were at one time chronic truants. By the end of the 2008-2009 school year, 23 retrievals had graduated from New Horizons High School. Of those 23, six were retrieved as Juniors and 17 were retrieved as Seniors. This program enjoys an 89% retention rate for students. At this time, New Horizons has the opportunity to expand this educational model into the afternoon/evening in order to engage another 15 to 30 youth who have dropped out of school but cannot be served by a program the operates in the morning and early afternoon.

Under its MFCG, Benton and Franklin Counties are authorized to pass through Thirty Thousand Dollars (\$30,000.00) of grant funds it receives from the MacArthur Foundation to Pasco School District to support the District's administrative program development costs for expanding its New Horizons afternoon/evening educational program.

THE DISTRICT SHALL:

1. Expand its current retrieval and retention program at New Horizons to the afternoon and evening hours to capture up to 30 additional students during the 2009-2010 school year who need further academic and social supports in the form of an alternative schedule and specific personal asocial responsibility training.
2. Document its work in modifying the Destination Graduation Project to the Extended Day Program at New Horizons Alternative School.

3. Develop a mechanism for measuring and reporting the outcomes of the Extended Day Program at New Horizons Alternative School to include, at a minimum, the data required for the reports defined in the following section, Section 4 of Exhibit A.
4. Provide a mid-year report to the BFJJC not later than March 15, 2010, and a final report to BFJJC not later than June 15, 2010. Each report will detail the following:
 - a. The age, race, ethnicity and gender of all students participating in the Extended Day Program at New Horizons Alternative School;
 - b. Information about student outcomes, including, but not limited to: active participation; drop out; transition to other educational programs; graduation; credit retrieval, student participation in additional services such as use of child care, on site chemical dependency treatment, or other programs that offer critical support to any student's success in the Extended Day Program; and
 - c. Successes and challenges that have been identified with the transition to and sustainability of the Extended Day Program.

AGENDA ITEM: <u>Consent</u> MEETING DATE: <u>B/C 12-14-09 F/C 12-21-09</u> SUBJECT: <u>Electronic Monitoring Agreement with BRK Management Services Inc.</u> Prepared By: <u>Donna A. Lee</u> Reviewed By: <u>Sharon Paradis</u>	TYPE OF ACTION NEEDED Executive Contract <u>XX</u> Pass Resolution <u>XX</u> Pass Ordinance Pass Motion Other	CONSENT AGENDA <u>XX</u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER
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BACKGROUND INFORMATION

BRK Management Services, Inc. provides electronic monitoring services. This service is an alternative sentencing to eligible offenders. The sentencing judge determines offender eligibility for this sentencing option.

SUMMARY

The Electronic Monitoring System is a viable sentencing option for lesser offenses. Participants of this sentencing option will pay for all costs incurred.

RECOMMENDATION

I recommend that the Boards of Commissioners of Benton and Franklin Counties sign the Electronic Monitoring Agreement.

FISCAL IMPACT

There is no fiscal impact to either county regarding this agreement.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county, the Electronic Monitoring Agreement between Benton-Franklin Counties Juvenile Justice Center and BRK Management Services, Inc.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE SERVICES AGREEMENT BETWEEN THE JUVENILE JUSTICE CENTER AND BRK MANAGEMENT SERVICES, INC, and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the proposed Electronic Monitoring Agreement between the Juvenile Justice Center and BRK Management Services, Inc. be approved as presented for a term commencing January 1, 2010, through December 31, 2010, **NOW, THEREFORE,**

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

DATED this 14th day of December 2009.

DATED this 21st day of December 2009.

BENTON COUNTY BOARD OF COMMISSIONERS

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

PROVIDER AGREEMENT

This Agreement (hereinafter "Agreement") is made by and between BRK MANAGEMENT SERVICES, Inc., a Washington corporation, and BENTON-FRANKLIN COUNTIES (hereinafter "Customer").

TERM: The term of this Agreement is for one year commencing on January 01, 2010 (hereafter the "Term"). Upon completion of the Term, this Agreement shall automatically renew for an additional successive one (1) year term. Either party may provide intent to terminate during the term with at least forty five (45) days written notice signed by authorized representatives of the terminating party.

PAYMENTS: Customer agrees to pay to Provider for applicable equipment at the rates set forth in schedule(s) herein this Agreement. Payments will commence as delineated on the schedule(s) herein this Agreement. No payment required hereunder shall be prorated except at Provider's discretion. Any payment that is more than 30 days past due may bear interest at the rate of ten percent (10%) until paid. Customer is responsible for any and all loss or damage to, or theft of the equipment. Customer's costs, due to loss, damage or theft, excluding normal wear and tear, of the equipment is limited to the replacement cost of the equipment. It is understood between the parties that if Customer elects to pay for insurance any loss, damage or destruction of Tracker Pal II is covered except for a \$50.00 deductible. However, the insurance does not provide coverage for the items specified on page 6 (known as components).

DEFAULT. If Customer fails to make payments when due or if Customer breaches any provision of this Agreement, Customer shall be in default. In the event of default, Provider can require, with minimum fourteen (14) days' prior written notice to Customer, that Customer return the equipment to Provider and that Customer immediately pay to Provider the remaining balance of any amounts due under this Agreement. If Provider is required to track a client of Customer to make demand on such client to repossess the equipment after the notice period has expired, Customer agrees to pay to Provider, immediately upon demand, the cost of locating, repossessing, storing, shipping, repairing, and re-leasing the equipment or, in the alternative, the replacement cost of the equipment, whichever is less.

DAMAGE. If The Equipment is damaged, lost or stolen, excluding normal wear and tear, while in Customer's possession, Customer agrees to pay Provider the full cost to repair or replace such equipment based on the rates set forth in the schedules herein this Agreement. Provider will make a determination of whether the equipment will be repaired or replaced at Provider's sole discretion. Provider will give Customer a written invoice detailing the repair costs. Customer has a right to challenge Provider's determination and Customer's costs are limited to either the cost of repair or replacement, whichever is less.

OWNERSHIP: Customer is neither the owner of the equipment nor has title to the equipment. Customer may not sell, transfer, assign, or sub the equipment, without the express prior written permission of Provider. Customer may not attempt to alter or otherwise tamper with the equipment. Customer agrees that it shall at all times keep the equipment free from any legal process or lien whatsoever, and agrees to give Provider immediate notice if any legal process or lien is asserted or made against the equipment.

NO WARRANTIES; this Agreement, PROVIDER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IN CONNECTION WITH THIS AGREEMENT, EQUIPMENT, MONITORING AND OTHER SERVICES AND USER INTERFACES TO MONITORING SERVICES. Provider is not responsible for any injuries, damages, or losses to Customer or to any other person or to any property, regardless of owner, caused by the misuse, improper activation, or improper maintenance of the Equipment, or the failure to connect to, or the inability to access user interfaces to Monitoring Services, the failure to follow any instructions or abide by any policies related thereto or to Monitoring Services, or Other Services, or the failure of the same to operate as anticipated, including, without limitation, as a result of any defects in the manufacturing or programming of the same or any failure of Equipment, Monitoring and Other Services, or any failure of user interfaces to Monitoring Services to operate for any reason, other than any such injuries, damages or losses caused by the gross negligence of Provider. Provider shall not be liable for any loss, damage, detention, failure to perform or delay resulting from any cause whatsoever beyond Provider's reasonable control or resulting from a *force majeure*, including, without limitation, fire, flood, strike, lockout, civil or military authority, insurrection, acts of terrorism, war, embargo, power outages, downed cell sites, Internet connection problems or similar causes. Customer acknowledges that Equipment, Monitoring and Other Services shall not prevent, nor are intended to prevent, any Client of Customer from committing any harmful, tortious, or illegal acts. Customer further acknowledges that it may be possible for a Client to remove The Equipment by unauthorized means, and that Provider expressly disclaims any


Provider's Initials


Customer's Initials

liability for any harmful, tortious, or illegal acts committed by such a Client while using The Equipment, as well as any liability for any acts committed by a Client who removes The Equipment and subsequently engages in any harmful, tortious, or illegal acts. Customer acknowledges and agrees that use of The Equipment and Monitoring Services shall be reserved for those Clients of Customer who are considered to be minimal flight risks and minimal risks for commission of crimes or torts against person or property.

INDEMNITY. Customer agrees to indemnify, defend and hold Provider harmless from and against any and all claims for any losses, damages, or injuries that may be asserted for any negligent acts, errors, or omissions of the Customer in the performance of this Agreement, including those listed above, by Client or any other third party against Provider, except for the sole negligence of the Provider.

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 Provider: Barbara E. Miller, President
BRK Management Services, Inc
P. O. Box 11215
Olympia, WA 98508
Phone: (360) 586-2731

- B. For Counties: Sharon Parads, Administrator
Benton-Franklin Counties Juvenile Justice Center
5605 W Canal PL STE 206
Kennewick WA 99336
Phone: (509) 736-2724

MISCELLANEOUS PROVISIONS:

Assignment: Provider will provide 45 days written notice to Customer if Provider sells, assigns or transfer its rights, benefits and obligations under this Agreement or Provider's ownership of the equipment; Customer agrees that if Provider makes such assignment or sells The Equipment the assignee or buyer shall have the same rights, benefits and obligations that Provider now has. The parties agree that any such sale, assignment or transfer of this and/or the equipment by Provider or Provider's assignee or transferee shall not change the duties or obligations of Provider or Customer under this Agreement.

Monitoring: Provider agrees that, during the term, it shall maintain twenty four (24) hour, seven (7) day per week technical assistance and monitoring of clients through the central host computer system operated by Secure Alert and guaranteed to Provider and Provider customers as set forth in paragraph 2 of Provider Obligations-Monitoring in this Agreement.

Construction: The parties intend this Agreement to be a valid and legal document. This Agreement shall be construed according to its fair meaning and not strictly for or against Provider or Customer, as if each of Provider and Customer had prepared it.

No Waiver: Customer and Provider acknowledge and agree that any delay or failure by either party herein to enforce its rights under this Agreement does not prevent it from enforcing any rights at a later time.

Attorney Fees: In the event of any litigation between the parties regarding this Agreement the prevailing party shall be entitled to an award of its reasonable attorneys' fees, court costs and litigation expenses.

Jurisdiction and Venue: This Agreement shall be governed, interpreted and construed under the laws of the State of Washington. Any and all disputes arising out of or relating to this Agreement shall be resolved in the venue of the Thurston County Superior Court unless otherwise agreed to in writing by authorized representatives of the parties herein.

No Third Party Beneficiaries: This Agreement is intended for the exclusive benefit of Provider, Customer and Customer and their respective permitted assigns and is not intended and shall not be construed as conferring any benefit on any third party or the general public.

Severability: Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Headings: The headings used in this Agreement are for convenience only and shall not be used to limit or construe the contents of any of the sections of this Agreement.

Notices: Notices to the parties hereto pursuant to this Agreement shall be given in writing and delivered by depositing them in the custody of the United States Postal Service (USPS), postage prepaid, addressed as set forth below for the respective parties. Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice.

Entire Agreement: This Agreement constitutes the entire Agreement between the parties hereto and there are no covenants, terms or conditions, express or implied, other than as set forth or referred to herein. This Agreement supersedes all prior agreements between the parties hereto relating to all or part of the subject matter herein. No party has made any representations, oral or written, modifying or contradicting the terms of this Agreement. The parties may not amend, modify or cancel this Agreement except as provided herein or by a written agreement signed by authorized representatives of all parties to this Agreement.

Acknowledgment: The parties acknowledge that they have had an opportunity to fully examine this Agreement and completely understand its terms, and that they approve the same including all of the terms and conditions.

AUTHORITY OF SIGNER. By signing below, the signers of this instrument on behalf of Provider or Customer certify that he/she has all proper authority to bind Provider or Customer hereto, pursuant to its Articles, Bylaws, statutory or other charter, ordinances, laws, or any other rules governing such authority.

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date and year first set forth above.

Provider:

BRK Management Services, Inc.

P.O. Box 11215 Olympia, WA 98508.

Contact Phone No: (360) 586-2731

X *SEE ATTACHED SIGNATURE PAGE*

Printed Name: Barbara E Miller

Title: President

Customer:

Benton-Franklin Counties Juvenile Justice Center

Address: 5606 W Canal Dr, Suite 106

City/State/Zip: Kennewick, WA 99336

By: * SEE ATTACHED SIGNATURE PAGE *

Printed Name: * SEE ATTACHED SIGNATURE PAGE *

Title: * SEE ATTACHED SIGNATURE PAGE *

Contact: Sharon A. Paradis, Court Administrator

Email address: Sharon.Paradis@co.benton.wa.us

Contact Phone No: (509) 736 - 2722

Check here if billing information is same as above or enter billing information to the right:

Billing Information:

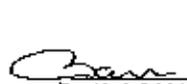
Address: _____

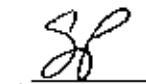
City/State/Zip: _____

Billing Contact: Jennifer Bowe, Administrative Services Manager

Email: Jennifer.Bowe@co.benton.wa.us

Billing Phone No: (509) 736 - 2721


Provider's Initials


Customer's Initials

Schedule: TrackerPAL II Equipment and Services

EQUIPMENT AND SERVICES

The initial quantity of TPII devices to be delivered pursuant to this Agreement is 5.

These 5 devices, and all additional devices as requested in writing by the Customer's Contract Representative, up to a maximum of 30 devices, will be billed at a rate of \$ 8.00 per Active Day and \$ 3.00 per Inactive Day. It should be noted that Customer will be provided one (1) shelf.

This Agreement provides for _____ TPII devices to be enabled for use of the eArrest Beacon feature at an additional rate of \$ _____ per Active day per enabled device (cannot exceed the maximum # of TrackerPAL II's shown above).

The initial quantity of eArrest Beacons to be delivered pursuant to this Agreement is _____

TrackerPAL II Device Insurance at \$0.50 per device per day through Travelers Insurance

The rates set forth above include a 10% overstock allowance for quantities of 10 or more billable devices. The rates set forth above include 3-5 day ground shipping. Customer agrees to pay for return shipping, if units are being returned at Customer's discretion. The rates set forth above are guaranteed for the Initial Term, but is subject to change for any renewal Term, if Provider provides notice of any such proposed change in rate to Customer at least thirty (30) days prior to the expiration of the Term. Such increased rate shall become effective as of the renewal Term unless Customer provides notice of its intent to terminate the Agreement as provided in Term Section of this Agreement.

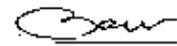
Insurance Terms: If insurance is chosen, it must be taken on all devices and is payable every day, Active and Inactive days. There is a \$50 deductible for TPII devices.

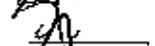
CUSTOMER OBLIGATIONS

- PAYMENT:** BRK/Provider will invoice the Customer once a month for equipment and services rendered. Customer agrees to pay monthly to Provider, for Equipment and Other Services Indicated and at the rates set forth herein.
- CASE SELECTION:** Customer understands, agrees and acknowledges that during the Term it shall (a) retain complete authority for case selection, management and administration with respect to each individual who shall participate in Electronic Monitoring (hereinafter "Client"), including, without limitation, monitoring responsibility with respect to each Client; (b) be responsible for all liaison work with the involved courts and/or agencies; (c) identify and make available Customer staff and/or equipment that complies with Provider's policies as in effect from time to time, in order to use and access the Monitoring Services, including, without limitation with respect to Provider's policy that establishes a specifically correct method of equipment (i.e.: fax, phone, pager) for the purpose of Provider notification of Alert Conditions to Customer; (d) perform or oversee Client orientation, installation and de-installation of Equipment and overall compliance with Provider's policies, which policies include, without limitation, a specific method of equipment installation, and Client equipment use guidelines; (e) establish alert notification protocols and parameters, in accordance with available Notification Options, and an alert response policy, and respond to Alert Conditions in accordance with that policy; (f) assume the financial responsibility for the cost associated with replacing any lost, stolen, or damaged Equipment or accessories excluding normal wear and tear; and (g) provide to Provider the required information and parameters unless prohibited by operation of law for monitoring each Client, including, without limitation, each Client's case curfew, movement restrictions, inclusion and exclusion zone information, essential demographic and case information. Customer will be solely responsible for properly recording all Alert Conditions and other information relative to monitoring The Equipment when located on a Client, including, without limitation, data entry and data storage of all such Customer specified information into Provider's computer system.

PROVIDER OBLIGATIONS

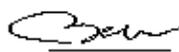
- ORDERING AND DELIVERY OF EQUIPMENT; ACCESSORY EQUIPMENT:** Provider shall coordinate with Customer to deliver the Equipment to Customer pursuant to the Shipping terms described above. Provider shall also supply to Customer, an installation and maintenance kit for The Equipment which includes different sizes of straps, tamper caps, measuring


Provider's Initials


Customer's Initials

device and torque driver. Unless otherwise agreed between Customer and Provider, Customer shall return the installation and maintenance kit to Provider upon termination of the Agreement. Additional Installation and maintenance kits or kit components shall be subject to such additional charges as are set forth in Replacement and Consumables Costs below.

2. **MONITORING SERVICE.** Provider agrees that during the Term it shall (a) maintain twenty-four (24) hour, seven (7) days per week monitoring of Clients through the central host computer system owned and operated by Provider; such host computer which communicates with The Equipment which is properly installed and has not been tampered with or altered, through cellular service where available, and based upon the data provided by Customer to Provider for each Client, as described in Section 3 below; such communication from the Equipment to the host computer shall be at 5 minute intervals (b) subject to the minimum equipment and system requirements required to be satisfied by Customer to access the web-based user interface, provide Customer's authorized personnel twenty-four (24) hour, seven (7) days per week access to Provider's user interface for the purpose of directly monitoring Clients based on the Equipment; (c) provide notification of Alert Conditions as described in Section 4 below to those authorized personnel of Customer identified in writing by Customer to Provider as being authorized to receive such information, which information is to be provided to Customer pursuant to the predefined notification protocols to be delivered by Customer to Provider pursuant to Section 3 below; and (d) document and maintain Alert Conditions and Equipment status information for each Client properly enrolled during the Term.
3. **NOTIFICATION OPTIONS:** Provider shall notify Customer of any Alert Conditions based upon predefined notification protocols available and specified by Customer in writing and delivered to Provider on or before the commencement of the monitoring of any specific Client.
4. **ALERT CONDITIONS:** For purposes of this Agreement, "Alert Conditions" means an alert notification condition as specified by Customer, including daily curfew, movement restrictions, inclusion and exclusion zone restriction violations, tamper alerts and Equipment status alerts that the monitoring system is able to identify based on the Equipment, and about which Provider agrees to notify Customer based on protocols available and specified by Customer in writing and delivered to Provider on or before the commencement of the monitoring of any specific Client.
5. **TRAINING OF AUTHORIZED PERSONNEL:** Provider agrees that it shall provide Customer reasonably necessary training for its authorized personnel who shall be monitoring Clients so that such personnel may properly use the user interface for the purposes of monitoring Clients as set forth herein as follows: If the initial quantity of TPII devices delivered, as set forth above, is from 1 to 20 then live, internet based training will be provided. If the initial quantity of TPII devices delivered, as set forth above, is greater than 20 then live, onsite training will be provided. Customer acknowledges that Customer's access to the user interface shall generally be limited to password-controlled internet access and that no software shall actually be delivered to Customer. Customer shall bear all responsibility for providing its own computer hardware, software and internet access meeting Provider's minimum requirements for access to the monitoring service.
6. **CUSTOMER SUPPORT:** Provider shall provide customer service to Customer as reasonably necessary to provide assistance to and to update Customer on any changes or updates to The Equipment, Monitoring Services and overall operation of the monitoring system with respect to The Equipment and accessories which may affect Customer's reasonable use thereof.


Provider's Initials


Customer's Initials

REPLACEMENT COSTS

- If insurance option isn't chosen, and a device is lost or irreparably damaged, the following replacement charges will apply:
 - TPI - \$950.00
 - TPII - \$950.00
- Following are replacement costs for the following uninsurable components:
 - TPI Battery - \$35.00
 - TPI Charging Unit - \$35.00
 - eArrest Beacon - \$100.00
 - TPII Charging Cord - \$30.00
 - TPII Breakaway Cord - \$10.00

CONSUMABLES COSTS

	Kit - \$190.00	Individual Items - Prices Below
	Qty. In Kit:	No Minimum Qty.
Tool Box	1	\$7.25
Hex Driver	1	\$2.20
Torque Driver	N/A	\$33.15
Measuring Device	1	\$1.80
Left tamper caps and Right tamper caps	15 each	\$0.20
F Strap	2	\$9.25
G Strap	3	\$9.35
H Strap	3	\$9.35
I Strap	3	\$9.55
J Strap	2	\$9.65
K Strap	2	\$9.85

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AGENDA ITEM: Consent		TYPE OF ACTION NEEDED		CONSENT AGENDA <u>xx</u>
MEETING DATE: B/C 12-14-09 F/C 12-21-09		Executive Contract	<u>xx</u>	PUBLIC HEARING
SUBJECT: Contract with Washington Collectors Tri-Cities, Inc		Pass Resolution	<u>xx</u>	1ST DISCUSSION
Prepared By:	Donna A. Lee	Pass Ordinance		2ND DISCUSSION
Reviewed By:	Sharon A. Paradis	Pass Motion		OTHER
		Other		

BACKGROUND INFORMATION

Washington Collectors Tri-Cities, Inc. is a licensed collection agency with which Benton-Franklin Counties Juvenile Justice Center (BFJJC) has contracted with for several years to collect on past due parental payment accounts. Parents or legal guardians are charged a fee for Diversion, Detention and Work Crew. Unpaid accounts are submitted to Washington Collectors, Inc. for further collection efforts.

SUMMARY

The term of this Contract is for two years, January 1, 2010, through December 31, 2012. 100% of the face value of the account submitted will be returned to BFJJC upon payment of obligated party.

RECOMMENDATION

I recommend that the Boards of County Commissioners authorize their Chairs to sign the Contract as outlined above.

FISCAL IMPACT

There is not cost to either county for collection. Washington Collectors Inc., charges the obligated parties above and beyond the face value of the account.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, the Contract between the Benton-Franklin Counties Juvenile Justice Center and Washington Collectors Tri-Cities, Inc., for the period commencing January 1, 2010, and terminating December 31, 2012.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND WASHINGTON COLLECTORS TRI-CITIES, INC., and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Contract between Washington Collectors Tri-Cities, Inc. and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing January 1, 2010 and terminating on December 31, 2012, NOW, THEREFORE,

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

**DATED this 14th day of December 2009
BENTON COUNTY BOARD OF COMMISSIONERS**

**DATED this 21st day of December 2009
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

JUDGES

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

BENTON-FRANKLIN COUNTIES
JUVENILE JUSTICE-CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

PERSONAL SERVICES CONTRACT BETWEEN
BENTON AND FRANKLIN COUNTIES JUVENILE JUSTICE CENTER
AND WASHINGTON COLLECTORS TRI-CITIES, INC.

THIS CONTRACT is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton/Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and Washington Collectors Tri-Cities, Inc., a Washington corporation and licensed collection agency under Chapter 19.16 RCW, with its principal offices at 510 North 20th Street, STE D, Pasco WA 99301 (hereinafter referred to as "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 on January 1, 2010, through December 31, 2012. 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 shall collect unpaid fees and interest on assessments that have been imposed by the Counties.
- B. The Contractor shall disburse funds collected on accounts to the Counties no later than the fifth (5th) of each month. If the fifth (5th) falls on a weekend or a holiday, then the Contractor shall disperse funds to the Counties by the next business day.
- C. The Contractor shall supply the Counties with a full client account report by the fifth (5th) of each month, with the disbursement check. This report shall be

formatted to include the following information in column order and sorted by client's last name:

Debtor's account # (7 digits);
Account code (BEN###);
Client's full name (last name first);
Client's address;
Client's city, state and zip;
Counties transaction / invoice #;
Date of service;
Contractor's account status code;
Principal amount assigned (does not include collection fee); and
Balance due (excluding collection fee).

The Contractor shall supply the Counties with other reports / lists upon request with reasonable notice.

- D. The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in this Contract, the Counties will furnish no material, labor, or facilities.
- E. The Contractor shall identify in writing no less than two (2) contact persons employed by the Contractor assigned to the Counties, which will be available for consultation with the Counties staff.
- F. The Contractor shall perform the work specified in this Contract according to standard industry practice.
- G. The Contractor shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- H. 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: **Sean Lamb**
Secretary-Treasurer
PO Box 742
Pasco WA 99301-0742

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

4. COMPENSATION

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

- A. In accordance with RCW 19.16.500, a collection commission of fifty percent (50%) of the assigned amount shall be added as a collection cost to each client account to be collected by the Contractor from the client, with NO increase if legal action becomes necessary.
- B. The Contractor shall assess twelve percent (12%) interest (APR) to each client account and shall split all interest collected on accounts assigned after January 1, 1998, at a rate of fifty percent (50%) with the Counties.

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 addition 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, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by authorized representatives of both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the 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 attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Counties, its officers, officials, employees or agents.

- B. In any and all claims against the Counties, 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. 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.
- 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 Legal Liability:** The Contractor shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor's profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy-limit it shall be at least two times the incident, loss or person limit.

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 bodily injury or property damage. 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 including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. Contractor is required to buy professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy.

- B. **Workers Compensation:** 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 incurs 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:** Contractor shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

Contractor also shall maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

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 Counties, its elected and appointed officers, officials, employees and agents.
- (2) Benton and Franklin Counties, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required professional and automobile liability policy.
- (3) The Contractor's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.

- (4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.
- (5) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (6) 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.
- (7) 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.
- (8) The Contractor shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the Contractor's liability coverage is written as a "claims made" policy, then the Contractor must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

E. Verification of Coverage and Acceptability of Insurers: All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a current A.M. Best Rating of not less than A: VII. Any exception to this requirement must be reviewed and approved by the Benton and Franklin Counties Prosecutors' Offices. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

- (1) The Contractor shall furnish the Counties with properly executed and unaltered Accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. For professional liability insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced notice of any cancellation by the insurer. The certificate or

endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.

- (2) The Contractor shall furnish the Counties with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton and Franklin Counties" and include "c/o" the Counties' Contract Representative. The address of the certificate holder shall be shown as the current address of the Counties' Contract Representative.
- (4) The Contractor shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to the Counties that Contractor is currently paying workers compensation.
- (5) All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following addresses:

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

- (6) The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton or Franklin County's Risk Manager.
- (7) If Contractor is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to Counties. If requested by Counties, Contractor must describe its financial condition and the self-insured funding mechanism.

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 by giving ten (10) days written notice by certified mail to the Contractor, in which case the Contractor shall retain all previously assigned accounts and disburse collected funds in accordance with this Contract. The Counties will cease assigning new accounts upon termination.

- 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. In this case the Contractor shall retain all previously assigned accounts and disburse collected funds in accordance with this Contract. The Counties will cease assigning new accounts upon termination.
- 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 terminate this Contract, in which case the Contractor shall disburse all collected funds, plus interest, to the Counties, and any previous right or claim of Contractor to any outstanding collection accounts shall terminate. The Contractor will cease collection efforts and reassign the accounts back to the Counties. 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' authorized representatives.
- 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.

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 Four of this Contract, and the Contractor is not 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 Counties' 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, as well as all pertinent JRA Administration Policy Bulletins.

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. The Contractor shall also keep all fiscal and clinical books, records, documents, and other material relevant to this Contract in accordance with WAC 388-805-320 and the WAC Implementation Guide.

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, 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 therefrom 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**

Differences 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 or 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.

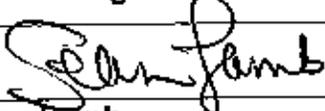
22. ENTIRE AGREEMENT

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.

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

Washington Collectors Tri-Cities, Inc.	Benton Franklin Counties Juvenile Justice Center
	
Sean Lamb	Sharon A. Paradis
<p align="center">BENTON COUNTY APPROVAL</p> <p>Approved as to Form:</p> <p><u>Agreed Review Performed by Franklin County</u> Sarah Villanueva, Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: <u>Max E. Benitz</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>	<p align="center">FRANKLIN COUNTY APPROVAL</p> <p>Approved as to Form:</p> <p><u>RUB</u> <u>11/20/2009</u> Ryan Verhulp, Civil Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: <u>Rick Miller</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	CONSENT AGENDA <input checked="" type="checkbox"/>
MEETING DATE: B/C 12-14-09 F/C 12-21-09	Executive Contract <input checked="" type="checkbox"/>	PUBLIC HEARING
SUBJECT: Contract between Tri-Cities Maintenance & Janitorial II to Provide Janitorial/Custodial Services.	Pass Resolution <input checked="" type="checkbox"/>	1st DISCUSSION
	Pass Ordinance	2nd DISCUSSION
Prepared By: Donna A. Lee	Pass Motion	OTHER
Reviewed By: Sharon A. Paradis	Other	

BACKGROUND INFORMATION

Tri-Cities Maintenance & Janitorial II has been providing custodial service to the Benton-Franklin Counties Juvenile Justice Center since June 2006. The Personal Services Contract that is presented would continue uninterrupted service for the period of January 1, 2010 through December 31, 2012.

SUMMARY

Tri-Cities Maintenance & Janitorial II is a locally owned and operated company. By contracting for the janitorial services from Tri-Cities Maintenance & Janitorial II rather than hiring a part-time employee to provide cleaning services we have had more consistent and cost-effective professional cleaning services for the Benton-Franklin Juvenile Justice Center.

RECOMMENDATION

I recommend that the Board of Benton County Commissioners and the Board of Franklin County Commissioners sign the Personal Service Contract between Tri-Cities Maintenance & Janitorial II and Benton-Franklin Juvenile Justice Center for services for the period of January 1, 2010 through December 31, 2012.

FISCAL IMPACT

This is a fee for services rendered contract and has been approved in the 2010 Juvenile Budget.

MOTION

I move that the Chairman of the Board of Benton County Commissioners, and the Chairman of the Board Franklin County Commissioners be hereby authorized to sign the personal service contract with the Tri-Cities Maintenance & Janitorial II.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE CHAIRMAN OF THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND TRI-CITIES MAINTENANCE & JANITORIAL II, and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Personal Services Contract between the Benton-Franklin Counties Juvenile Justice Center and Tri-Cities Maintenance & Janitorial II, be approved as presented for a term commencing upon January 1, 2010 and terminating on December 31, 2012, NOW, THEREFORE

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county the Personal Services Contract between the Benton-Franklin Juvenile Justice Center and Tri-Cities Maintenance & Janitorial II.

**DATED this 14th day of December 2009
BENTON COUNTY BOARD OF COMMISSIONERS**

**DATED this 21st day of December 2009
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

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

PERSONAL SERVICES CONTRACT BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND TRI-CITIES MAINTENANCE & JANITORIAL II

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336-1388, (hereinafter collectively referred to as "Counties"), and Tri-Cities Maintenance & Janitorial II, with its principal offices at 303 Casey STE A, Richland, WA, 99352 (hereinafter referred to as "Contractor").

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

1. CONTRACT DOCUMENTS

This Contract consists of this agreement and following attached exhibits, which are incorporated by reference:

- A. Exhibit A – Washington State Prevailing Wage Rates For Public Works Contracts – Benton County – Effective 09-02-2009;
- B. Exhibit B – Statement of Intent to Pay Prevailing Wages (Sample Form) and Addendum B;
- C. Exhibit C – Affidavit of Wages Paid & Addendum B (Sample Form).

2. DURATION OF CONTRACT

The term of this Contract shall be January 1, 2010, through December 31, 2012. 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 janitorial services at the Benton-Franklin Counties Juvenile Justice Center:

- A. Five Times Per Week Janitorial Service for Administrative Area, Courtroom, and Judges Chambers including:
1. Gather all waste and place for disposal. Reline receptacles when necessary using liners provided by the Counties. (For sanitary reasons, liners must be used in all waste receptacles.)
 2. Dust all accessible (uncluttered) horizontal and vertical surfaces: desks, chairs, file cabinets, tables, windowsills, ledges and shelves within reach from floor.
 3. Remove cobwebs accessible from the floor. Remove prints/smudge marks from light switch plates, doorknobs and glass on interior side of door.
 4. Dust mop/damp mop accessible areas, resilient covered floors with disinfectant cleaner and vacuum all accessible carpeted areas including entrance carpet mats.
- B. Five Times Per Week Janitorial Service for Restrooms including:
1. Gather all waste and place for disposal. Reline receptacles when necessary using liners provided by the Counties. (For sanitary reasons, liners must be used in all waste receptacles.)
 2. Clean and sanitize restroom fixtures, i.e. sinks, toilets, mirrors, dispensers as needed (cleaner/sanitizer provided by Counties)
 3. Spot wash walls and partitions.
 4. Damp mop floors with disinfectant cleaner.
- C. Five Times Per Week Janitorial Service for Employee Lounge/Lunch Room including:
1. Damp wipe with disinfectant cleaner accessible areas of counters in kitchen/employees' lounge.
 2. Dust mop/damp mop floors.
 3. Dust faces of accessible tops of cabinets as necessary.
 4. Clean kitchen sink, provided it is free of dirty dishes. Dirty dishes are the responsibility of the Counties.
 5. Coffee nook to receive trash service only.
- D. Five Times Per Week Janitorial Service for Detention Area, including:

1. The three restrooms and two locker rooms will be serviced in same manner as restrooms in the administrative areas.
 2. Five classrooms and muster room will receive trash service only.
- E. One Time Per Month Service:
1. Dust and wipe courtroom wood with wood cleaner.
- F. The Counties will provide waste receptacle liners, soap for soap dispensers, and toilet paper and paper towels for the paper towel dispensers.
- G. The counties will provide the Contractor with two (2) sets of working keys that will be stored on-site with a 24-hour access portal.
- H. The Contractor will not remove recyclable cans. These cans and their receptacles are the responsibility of the Counties.
- I. 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. The Contractor agrees to pre-assign and identify by name to the Counties one (1) employee of the Contractor who shall render the janitorial services herein. This pre-assigned employee of the Contractor shall be the only employee authorized to render the services herein, absent separate written permission of the Counties' contract representative.
- J. The Contractor shall perform the work specified in this Contract according to standard industry practice.
- K. The Contractor shall complete its work in a timely manner and in accordance with the schedule mutually agreed upon by the parties. During the agreed hours of service by Contractor that are outside the business hours for the Benton-Franklin Counties Juvenile Justice Center (8:00 a.m. – 5:00 p.m., Monday – Friday), the Contractor assumes full responsibility for access to the premises for individuals other than the Counties personnel.
- L. Representatives from both parties to this Contract will conduct periodic inspections. Should a deficiency in the quality of the services provided be noted, the Contractor will be responsible for correction of the problem(s) without additional compensation.
- M. 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.

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: **Bruce Williams**
PO Box 2465
Pasco, WA 99302
Phone: (509) 946-0203
Fax: (509) 943-5191
- B. For Counties: **Sharon Paradis, Administrator**
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 736-2722
Fax: (509) 222-2311

5. COMPENSATION

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

- A. The fee for services rendered shall be \$2,281.00 per month.
- B. No payment shall be made for any work performed by the Contractor, except for work identified and set forth in this Contract.
- C. The Contractor will 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.
- D. The Contractor shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the Counties.
- E. In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Contract and such failure has not been cured within ten (10) days following notice from the Counties, 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.
- F. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the Contractor will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. AMENDMENTS 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, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties' authorized representatives. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the Counties.

7. 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 attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Counties, its officers, officials, employees or agents.
- B. 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. 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.
- 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.

B. INSURANCE

- A. **Workers Compensation:** 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.

- B. **Commercial General Liability and Employers Liability Insurance:** Contractor shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the Industry of the Contractor will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

Contractor acknowledges and represents that Contractor currently does not have any employees and, therefore, does not maintain employers liability insurance. To the extent Contractor hires any employees, however, Contractor shall obtain and maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

- C. **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. Benton and Franklin Counties, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required professional and automobile liability policy.
3. The Contractor's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.
4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.
5. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. 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.
7. 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.
8. The Contractor shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the Contractor's liability coverage is written as a "claims made" policy, then the Contractor must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

E. Verification of Coverage and Acceptability of Insurers: All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a current A.M. Best Rating of not less than A:VII. Any exception to this requirement must be reviewed and approved by both of the Benton and Franklin Counties Prosecutors' Offices. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. The Contractor shall furnish the Counties with properly executed and unaltered Accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. For professional liability

insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.

2. The Contractor shall furnish the Counties with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties as an additional insured.
3. Certificates of insurance shall show the certificate holder as "Benton and Franklin Counties" and include "c/o" the Counties' Contract Representative. The address of the certificate holder shall be shown as the current address of the Counties' Contract Representative.
4. The Contractor shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to the Counties that Contractor is currently paying workers compensation.
5. All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following address:

**Juvenile Court Administrator
Benton Franklin Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick, WA 99336**

6. The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton or Franklin County's Risk Manager.
7. If Contractor is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to Counties. If requested by the Counties, the Contractor must describe its financial condition and the self-insured funding mechanism.

9. TERMINATION

- A. The Counties may terminate this Contract in whole or in part whenever the Counties determine, in their sole discretion, that such termination is in the best interests of the Counties. The Counties may terminate this Contract by giving ten

(10) days written notice by certified mail to the Contractor. In that event, the Counties shall pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice. Payment shall be made in accordance with 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 terminate this Contract, 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.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- A. The Contractor shall perform the terms of the 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' authorized representatives.
- 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.

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 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 Four of this Contract, and the Contractor is not 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 Counties' 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.

13. COMPLIANCE WITH LAWS

- A. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, as well as all pertinent JRA Administration Policy Bulletins, including but not limited to prevailing wage laws.
- B. The Contractor shall pay its employees or agents the prevailing rate of wage in accordance with prevailing wage laws and as set forth in the attached and incorporated herein Exhibit A – Washington State Prevailing Wage Schedule. Contractor also recognizes the potential for future variance in applicable prevailing wages each year.
- C. Pursuant to RCW 39.12.040, prior to payment by the Counties, the Contractor must submit to the Counties, on behalf of itself and each and every subcontractor, the attached hereto and incorporated herein Exhibit B – "Statement of Intent to Pay Prevailing Wages," in a non-sample form, which must be approved by Washington Department of Labor and Industries prior to submission. Following the final acceptance of the project, the Contractor must submit, on behalf of itself and each and every subcontractor, the attached hereto and incorporated Exhibit C – "Affidavit of Wages Paid" and "Addendum B" in a non-sample form.

14. OTHER PROVISIONS

The Contractor shall comply with the following other provisions for all services provided

under this Contract.

A. Background Check/Criminal History

1. In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the Contractor shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.
2. In addition, the Contractor may also be required to conduct background check/criminal history clearance for employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile.

B. Sexual Misconduct

1. The Contractor shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.
2. The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

15. 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. The Contractor shall also keep all fiscal and clinical books, records, documents, and other material relevant to this Contract in accordance with WAC 388-805-320 and the WAC Implementation Guide.

16. NON-COMPETITION AGREEMENT

The Counties agree not to hire or retain as an employee or independent contractor any employee of the Contractor, for a period of one year subsequent to the termination of this Contract or any extension thereof.

17. NONDISCRIMINATION

The parties, their 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.

18. BOND

The Contractor shall provide a benefit to subscriber (the Counties) fidelity bond in the amount of \$10,000.

19. DISPUTES

Differences 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.

20. 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.

21. 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 or Franklin Counties, Washington.

22. 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.

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.

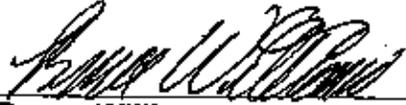
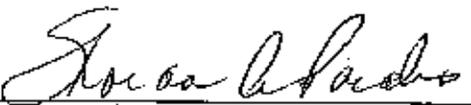
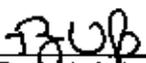
24. ENTIRE AGREEMENT

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.

25. NOTICES

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

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

Contractor	Benton Franklin Counties Juvenile Justice Center
 Bruce Williams	 Sharon A. Paradis
<u>12/1/09</u> Date	<u>12/1/09</u> Date
BENTON COUNTY APPROVAL	FRANKLIN COUNTY APPROVAL
Approved as to Form:	Approved as to Form:
<u>Agreed Review Performed by Franklin County</u> Sarah Perry, Deputy Prosecuting Attorney Date	 Ryan Verhulp, Civil Deputy Prosecuting Attorney Date
<u>11/20/2009</u> Date	<u>11/20/2009</u> Date
By: _____ Name: <u>Max E. Benitz</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____	By: _____ Name: <u>Rick Miller</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____
Attest:	Attest:
Clerk of the Board: _____	Clerk of the Board: _____

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AGENDA ITEM: Consent	TYPE OF ACTION NEEDED Executive Contract <u>xx</u> Pass Resolution <u>xx</u> Pass Ordinance Pass Motion Other	CONSENT AGENDA <u>xx</u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER
MEETING DATE: B/C 12-14-09 F/C 12-21-09		
SUBJECT: Contract with J & J Security & Transport, Inc. to provide security to the Juvenile Justice Center		
Prepared By: Donna A. Lee		
Reviewed By: Sharon A. Paradis		

BACKGROUND INFORMATION

J&J Security has been providing security and juvenile transportation services to the Juvenile Justice Center since 1996. J & J Security & Transport, Inc. performs security services to maintain a safe work environment for staff and clients, which includes the additional security officers and screening especially during high-risk hearings. The contract period is from January 01, 2010 through December 31, 2012.

SUMMARY

The Agreement between Benton-Franklin Counties Juvenile Justice Center and J&J Security sets forth the parameters to provide security to the staff and public at the Benton-Franklin Counties Juvenile Justice Center.

RECOMMENDATION

We recommend that the Boards of Commissioners of Benton and Franklin Counties sign the Contract between Benton-Franklin Juvenile Justice Center and J&J Security & Transport, Inc. for the period of January 01, 2010 through December 31, 2012.

FISCAL IMPACT

The rates are included in the Benton-Franklin Counties Juvenile Justice Center's 2010 Budget.

MOTION

I move that the Boards of Commissioners of Benton and Franklin Counties sign the Contract between Benton-Franklin Counties Juvenile Justice Center and J&J Security & Transport, Inc., to provide security and juvenile transportation services for the Juvenile Justice Center for the period of January 01, 2010 through December 31, 2012.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE CHAIRMAN OF THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND J & J SECURITY & TRANSPORT, INC., and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Personal Services Contract between J & J Security & Transport, Inc., and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing upon January 1, 2010 and terminating on December 31, 2012, NOW, THEREFORE

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

DATED this 14th day of December 2009.

DATED this 21st day of December 2009.

BENTON COUNTY BOARD OF COMMISSIONERS

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

JUDGES

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 98336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

PERSONAL SERVICES CONTRACT BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND J & J SECURITY & TRANSPORT, INC.

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton/Franklin Counties Juvenile Justice Center, a bi-County agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties") and J & J Security & Transport, Inc. with its principal offices at 1907 S Highlands BLVD, West Richland, WA 99353-4459 (hereinafter referred to as "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 be January 1, 2010 through December 31, 2012. 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 services as follows:

A. Security Services:

- (1) The Contractor shall perform security services to maintain a safe work environment for staff and clients of the Counties.
- (2) The Contractor shall provide one full time, regular or reserve, commissioned Police Officer, who is current with all training, to serve as a Security Officer, to keep order, and to maintain the control needed in the areas as follows:
 - a. Benton-Franklin Counties Juvenile Justice Center lobby area;
 - b. Benton-Franklin Counties Juvenile Justice Center first and second courtrooms;

- c. Benton-Franklin Counties Juvenile Justice Center hallways and offices; and
 - d. Surrounding outside premises of Benton-Franklin Counties Juvenile Justice Center, with the exception of the Detention area;
- (3) The Contractor shall provide an additional Security Officer or Officers, as needed, for high-risk hearings, as determined by the Counties, or as requested by the Counties for reasonable and agreeable needs;
 - (4) The Contractor shall provide training and drills, so that all staff at the Counties will know what to do in the event of an emergency, as outlined by the Counties' policy (e.g., hostage situation); and
 - (5) The Contractor shall provide one on-site course for the Counties' staff at the Counties, up to three hours in length, to be given as requested by the Counties, in "Critical Incident Emergency Management" and "How to Avoid and Escape High Risk Incidents";
 - (6) The Counties agree to:
 - a. cooperate and assist Security Officers in order to maintain safety, which may include sharing information of known or suspected threats;
 - b. provide court docket and advanced notice when the second courtroom will be used; and
 - c. provide advance notice when a high-risk hearing or other situations arise that might require additional security needs or staffing.

B. Screening Station Services:

The Contractor shall:

- (1) Monitor the main entrance at the Benton Franklin Counties Juvenile Justice Center during assigned hours so as to protect the employees of the Counties, and the public in the Benton Franklin Counties Juvenile Justice Center;
- (2) Provide one, full time, regular or reserve, commissioned Police Officer, who is current with all training, to serve as a Security/Screening Officer, to monitor the main entrance of the Benton Franklin Counties Juvenile Justice Center, during normal business hours, Monday through Friday, 8:00 AM to 5:00 PM except on holidays established by the Benton-Franklin Counties Superior Court;
- (3) Provide one, part time, Screener to monitor the main entrance of the Benton Franklin Counties Juvenile Justice Center, Monday through Friday, 8:00 AM to 10:00 AM and 12:30 PM to 2:30 PM, unless hours are adjusted by agreement of the Juvenile Court Administrator and the Contractor, except on holidays established by the Benton-Franklin Counties Superior Court;

- (4) Provide additional Screeners, as needed, for extended hours or as requested by the Counties for reasonable and agreeable needs;
- (5) Direct the public through the screening station;
- (6) Monitor the public and watch and report any disturbances and/or potential disturbances;
- (7) Perform pat-down searches of clients entering the Counties' facility, as Security Officer deems necessary, to prevent weapons being brought into the facility;
- (8) Perform any and all other duties as assigned by the Counties and agreed upon by the Counties and the Contractor.
- (9) Ensure that screening staff have been fully trained in the operation of the screening station and that screening staff have read and are familiar with the Benton-Franklin Counties Juvenile Justice Center Security Procedures; and
- (10) Maintain training records of each screening staff and make those records available to the Counties upon request.

C. Consultation:

The Contractor shall provide consultation with the Counties' staff and management on any security matters as needed or requested by the Counties.

D. Transport Services:

- (1) Contractor shall transport high and low risk Juvenile Justice Center clientele from various locations to the Counties for court and other needs.
- (2) The Counties shall furnish a cage vehicle to Contractor for the express purpose of transport needs.
- (3) The Counties shall ensure that all vehicle insurance requirements are met and remain in full force and effect for the transport cage vehicle.
- (4) The Counties shall provide a cage vehicle for transporting juvenile offenders.
- (5) The Counties shall provide at least one (1) day's notice of need to transport youth from Detention for appointments, courts, etc.

E. The Contractor shall provide a signed release authorizing the Counties to obtain driving records from the Washington State Department of Motor Vehicles and/or Licensing and to provide certificates of training for each security officer.

- F. The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the Counties.
- G. The Contractor shall perform the work specified in the Contract according to standard industry practice.
- H. The Contractor shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- I. 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: **Alison Moore, President
J & J Security & Transport, Inc.
PO Box 4459
West Richland WA 99353-4459**
- B. For Counties: **Sharon Paradis, Administrator
Benton-Franklin Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick WA 99336**

4. COMPENSATION

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

- A. Regular security (8:00 a.m. through 5:00 p.m.) rate of \$5,575.00 per month (includes lunch).
- B. The rate of \$29.00 per hour will be charged for any security coverage prior to 8:00 a.m. and/or after 5:00 p.m., or if a second security officer is needed to provide security coverage to the second courtroom, dependency hearings or parent pay court coverage, as needed.
- C. The rate of \$19.50 per hour will be charged for a full time, regular or reserve, commissioned Police Officer to serve as a Security/Screening Officer, to monitor the main entrance of the Benton Franklin Counties Juvenile Justice Center.

- D. The rate of \$15.30 per hour will be charged for a part time Screener to monitor the main entrance of the Benton Franklin Counties Juvenile Justice Center.
- E. The rate of \$15.30 per hour will be charged for any additional Screeners as requested by Counties for reasonable and agreeable needs
- F. Local and out of the area transport rate of \$27.15 per hour.
- G. Tracking service rate of \$23.70 per hour.
- H. No payment shall be made for any work performed by the Contractor, except for work identified and set forth in this Contract.
- I. 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 that descriptively sets forth and details the total number of hours rounded to the nearest ¼ hour intervals. 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 of invoice.
- J. 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.
- K. 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, 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.
- L. Unless otherwise provided for 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, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by authorized representatives of both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the Counties.

6. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contractor's shall hold harmless, indemnify and defend the Counties, their officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Counties, its officers, officials, employees or agents.
- B. 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. 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.
- 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 Legal Liability:** The Contractor shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor's profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy-limit it shall be at least two times the incident, loss or person limit.

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 bodily injury or property damage. 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 including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. The Contractor is required to buy professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy.

- B. Workers Compensation:** 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, 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 Counties incur fines or is 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:** The Contractor shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The Contractor will provide commercial general liability coverage, which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent; provided, coverage will be not more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

Contractor also shall maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

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 Counties, its elected and appointed officers, officials, employees and agents.
- (2) Benton and Franklin Counties, its officers, officials, employees and agents shall be named as additional insured with respect to performance of services on all required insurance policies, except for any required automobile liability policy.
- (3) The Contractor's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.
- (4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.
- (5) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (6) The Contractor shall include all subcontractors as insured 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.
- (7) 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.
- (8) The Contractor shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the Contractor's liability coverage is written as a "claims made" policy, then the Contractor must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

F. Verification of Coverage and Acceptability of Insurers: All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a current A.M. Best Rating of not less than A:VII. Any exception to this requirement must be reviewed and approved by the Benton and Franklin Counties Prosecutors' Offices. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

- (1) The Contractor shall furnish the Counties with properly executed and unaltered Accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. For professional liability insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.
- (2) The Contractor shall furnish the Counties with evidence that the additional insured provision required above have been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton-Franklin Counties" and include "c/o" the Counties' Contract Representative. The address of the certificate holder shall be shown as the current address of the Counties' Contract Representative.
- (4) The Contractor shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that Contractor is currently paying workers compensation.
- (5) All written notices under this Section 7 and notice of cancellation or change of required insurance coverage shall be mailed to the Counties at the following addresses:

**Juvenile Court Administrator
Benton-Franklin Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick WA 99336**
- (6) The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton or Franklin County's Risk Manager.
- (7) If Contractor is self-insured for worker's compensation coverage, evidence of its status, as a self-insured entity shall be provided to Benton County. If requested by Counties, Contractor must describe its financial condition and the self-insured funding mechanism.

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 terminate this Contract, 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 the 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' authorized representatives.
- 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.

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 Four of this Contract, and the Contractor is not 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 Counties' 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. The 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, as well as all pertinent JRA Administration Policy Bulletins.

13. OTHER PROVISIONS

The Contractor shall comply with the following other provisions for all services provided under this Contract.

- A. Background Check/Criminal History
 - (1) In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the Contractor shall be required to conduct background check/criminal history clearance for all employees and subcontractors who may or will have regular access to any client/juvenile.
 - (2) In addition, the Contractor may also be required to conduct background check/criminal history clearance for employees and subcontractors who may or will have limited access to any client/juvenile.

B. Sexual Misconduct

- (1) The Contractor shall ensure all employees and subcontractors are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sexual Offense.
- (2) The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, and any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

14. **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. The Contractor shall also keep all fiscal and clinical books, records, documents, and other material relevant to this Contract in accordance with WAC 388-805-320 and the WAC Implementation Guide.

15. **NONDISCRIMINATION**

The parties, their 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. **DISPUTES**

Differences 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.

17. **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.

18. 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 Counties, Washington.

19. 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.

20. 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.

21. 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.

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

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

<p>J & J Security & Transport, Inc.</p>	<p>Benton Franklin Counties Juvenile Justice Center</p>
<p><i>Alison Moore</i> <i>11/25/09</i> Alison Moore, President Date</p>	<p><i>Sharon A. Paradis</i> <i>11/1/09</i> Sharon A. Paradis Date</p>
<p>BENTON COUNTY APPROVAL</p> <p>Approved as to Form: <u>Agreed Review Performed by Franklin County</u> Sarah Villanueva, Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: <u>Max E. Benitz, Jr.</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest: Clerk of the Board: _____</p>	<p>FRANKLIN COUNTY APPROVAL</p> <p>Approved as to Form: <u>BUP</u> <i>11/23/2009</i> Ryan Verhulp, Civil Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: <u>Rick Miller</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest: Clerk of the Board: _____</p>

RESOLUTION

V

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON**

IN THE MATTER OF A SERVICE AGREEMENT WITH NATIVE PLANT LANDSCAPING AND RESTORATION, LLC, FOR HERBICIDE TREATMENT FOR NECESSARY LOCATIONS IN BENTON COUNTY

WHEREAS, the flowering rush (*Butomus umbellatus*) has been growing along the Yakima River in Benton County. The population has been assessed and grows along about 100 m of shoreline on the west side of the river and is an early infestation and small enough to potentially control; and

WHEREAS, the Noxious Weed Coordinator recommends contracting with Native Plant Landscaping and Restoration, LLC, West Richland, WA for a three (3) year contract period for herbicide treatment to control said vegetation for a total contract amount not to exceed \$31,515.00 for the total three-year contract period; **NOW, THEREFORE**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby agrees with the recommendation and awards Native Plant Landscaping and Restoration, LLC the service agreement for said services for an amount not to exceed \$31,515.00.

Dated this _____ day of _____, 2009

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

**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 **Native Plant Landscaping and Restoration, LLC**, with its principal offices at **4606 E. Robin Ct., West Richland, WA 99353**, (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, Scope of Work; and**
- c. **Exhibit B, Compensation.**

2. DURATION OF CONTRACT

The term of this Contract shall begin **July 15, 2009**, and shall expire on **June 30, 2012**. 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, Scope of Work", which is attached hereto and incorporated herein by reference.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.
- c. The CONTRACTOR shall 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: **Steven Link, 4606 E. Robin Ct.,
Richland, WA 99353**
- b. For COUNTY: **Marc Staiuret Benton County Noxious Weed
Board 1215 Dudley Prosser, WA
Control 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 B, "Compensation"**, which is attached hereto and incorporated herein by reference. Compensation is agreed to be as follows:
 - i. Compensation for year 1, beginning July 15, 2009 and ending June 30, 2010: \$15,170;
 - ii. Compensation for year 2, beginning July 1, 2010 and ending June 30, 2011: \$8,029;
 - iii. Compensation for year 3, beginning July 1, 2011 and ending June 30, 2012: \$8,316.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$20,000.00 for any one-year period (as described within section 5.a. above) and shall not exceed **\$31,515.00** for the total three-year contract period.
- 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 B,**

submit invoices to the COUNTY 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 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, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.
- 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 Legal Liability:** Prior to the start of work under this Contract, the CONTRACTOR, if he, she or it is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy limit it shall be at least two times the incident, loss or person limit.

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 bodily injury or property damage. 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 including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. The policy shall state that coverage is claims made, and state the retroactive date. CONTRACTOR is also required to buy claims made professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy. 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. 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.

Certain work or services under this Contract may require insurance coverage for long shore or harbor workers other than seaman as provided in the Long Shore and Harbor Workers Compensation Act [33 U.S.C.A. Section 901 et seq.]. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Certain work or services under this Contract may require insurance coverage for seamen injured during employment resulting from the negligence of the owner, master or fellow crew members as provided in 46 U.S.C.A. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain coverage.

- 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)

for wrongful death, bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The general commercial liability policy will contain an endorsement naming the COUNTY as an additional insured (CG2010) and an endorsement that specifically states that CONTRACTOR's 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]. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

If CONTRACTOR has any employees, CONTRACTOR also shall maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

- d. **Automobile Liability:** The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars (\$1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of Any Auto. CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability.
- 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. Professional liability insurance on a Claims Made form shall have a retroactive date prior to or coincident with the effective date of this Contract.
- f. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published

edition of Best=s Reports. Any exception to this requirement must be reviewed and approved in writing 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) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered Acord form certificates of insurance and, if requested, a signed policy endorsement(s) which shall clearly evidence all required insurance prior to commencing work under this Contract. The certificates will, at a minimum, list limits of liability and coverage. For any professional liability insurance, the CONTRACTOR agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the COUNTY by the CONTRACTOR. For other insurance policies, CONTRACTOR shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the COUNTY. CONTRACTOR shall also instruct the insurer to give the COUNTY forty-five (45) days advanced written notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the COUNTY as an additional insured of cancellation.
- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
- (4) If the CONTRACTOR or any subcontractor or sub-subcontractor has any employees, CONTRACTOR shall request the Washington State Department of Labor

and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.

- (5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Benton County Risk Manager/Personnel Dept.
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

- (6) 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.

- (7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

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 therefrom 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 Ahold≅ 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: 12-08-09

BENTON COUNTY BOARD OF COMMISSIONERS

NATIVE PLANT LANDSCAPING AND RESTORATION, LLC

Chairman

STEVEN LINK
Steven Link

Member

Its
SL

Member

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

Attest:

Clerk of the Board

Approved as to Form:

Deputy
Prosecuting Attorney

“Exhibit A”

Scope of Work

7-3-9

Flowering Rush Control

Steven O. Link^{1,2}
Marc Staire²

¹Environmental Solutions: Technology and Service
4606 E. Robin Ct.
West Richland, WA 99353
509-948-0054
stevenlink123@yahoo.com

²Benton County Noxious Weed Control Board

Introduction

Flowering rush (*Butomus umbellatus*) has been found growing along the Yakima River in Benton County (Fig. 1). The population has been assessed and grows along about 100 m of shoreline on the west side of the river. This is an early infestation and small enough to potentially control. It is small enough to be listed as a Class A noxious weed in the state of Washington. This listing places flowering rush at the top of the priority list for control.

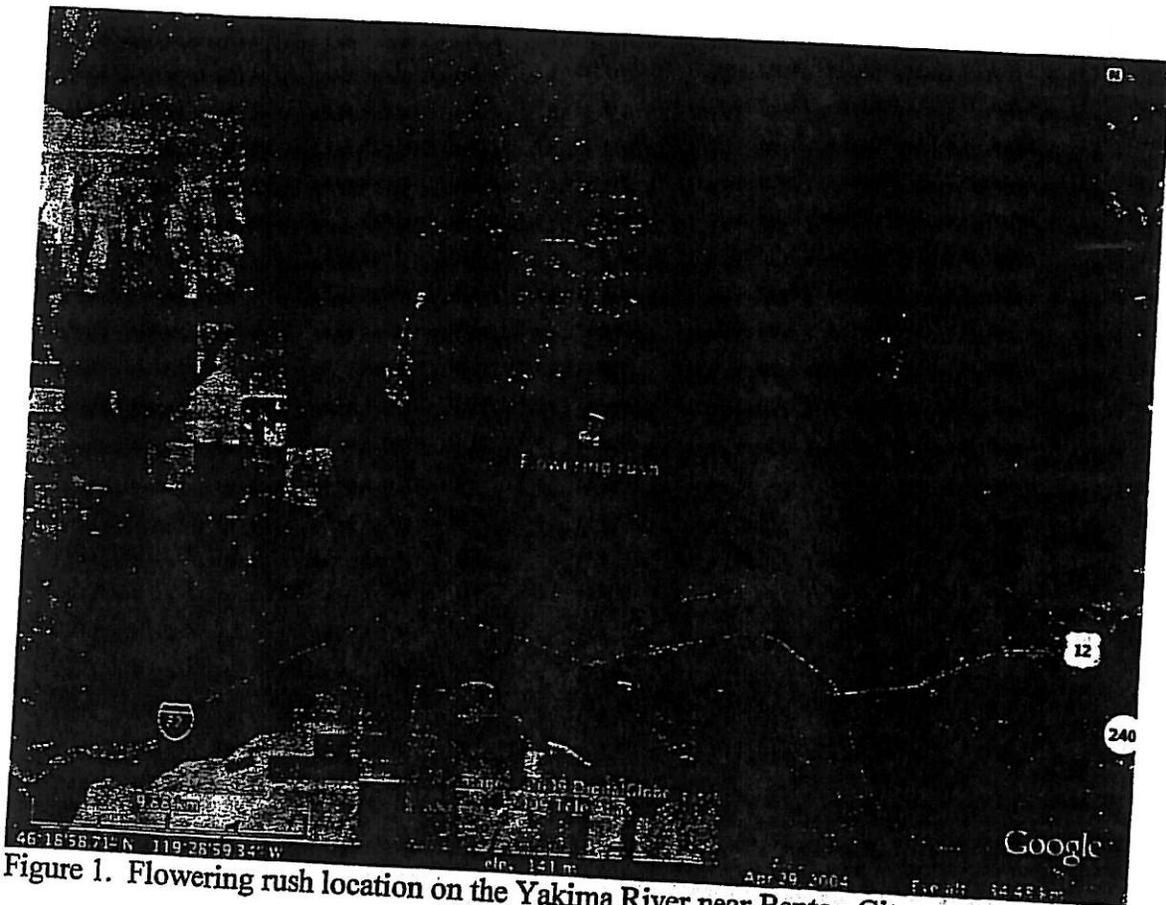


Figure 1. Flowering rush location on the Yakima River near Benton City.

Flowering rush is an early successional pioneer species and can easily invade areas that are not occupied by other plants. Drops in water level can expose new sites for its establishment. Varying water levels along the Yakima River may favor this species' ability to spread.

Once established, populations increase and tend to persist. Delisle *et al.* (2003) states that, "*B. umbellatus* required less than 17 years (1905-22) to establish scattered colonies between Montréal and Québec City. Seeds may disperse over longer distances than vegetative fragments; this characteristic may further increase the rate at which this species spreads." Flowering rush can displace native riparian vegetation, and can be an obstacle to boat traffic. Muskrats use parts of the plant and contribute to its local spread. Boaters can also transport flowering rush on their equipment. Water and ice movements can easily carry *B. umbellatus* to new areas of a water body.

Plants bloom from June to September and some of the plants along the Yakima River were in flower when observed in mid July. It can produce viable seed, but this is not a common means of reproduction. If the population along the Yakima River does produce viable seed then there is also a possible seed bank making control even more difficult. Plants have been submitted for chromosome testing to determine if the population is diploid (seed viable) or triploid (seed sterile), but the results are not yet available (Jenifer Parsons, personal communications).

Flowering rush is difficult to control. Mechanical control has not been successful (Jensen 2008). Hand digging can be used to remove isolated plants that are located downstream of larger infestations. Extreme care must be taken to remove all root fragments. Any disturbance to the root system will cause small reproductive structures on the roots to break off and spread to other areas of the waterbody. Therefore, methods such as raking or pulling which disturb the root system, but do not remove it, are not recommended control strategies.

Chemical control has also been difficult (Jensen 2008), but recent success has been observed using imazapyr (Habitat) in Washington (Tim Miller, personal communication) and in Montana (Peter Rice, personal communication). We will use Habitat although the herbicide recommendation may change if these researchers find a better chemical. We will maintain communications with both researchers and change our herbicide as suggested.

While we will use chemicals as the control strategy, we will consider the use of shading to provide another level of control. Flowering rush is an early successional species and may be weakened or eliminated by planting taller species that can shade it out. Flowering rush is considered to have low tolerance for shade

(http://www.na.fs.fed.us/fhp/invasive_plants). The level of tolerance or the light level that causes damage was not noted. The sensitivity of flowering rush to shading will be determined under greenhouse conditions. If shading is determined to have a strong effect on flowering rush then another control strategy can be developed to supplement herbicide control and to provide long-term control. Such a control strategy could use tall native plant species planted along the infested shoreline to shade out flowering rush. This potential control strategy may be considered after the trial, but will not be implemented under this proposed contract.

The goal of the proposed work is to eliminate all flowering rush plants and determine if flowering rush is sensitive to shade. Our objectives are to survey the extent of the current infestation, collect plants to conduct the shading trial, establish monitoring plots, implement control, plus survey the rest of the Yakima River in Benton County establishing monitoring plots and implementing chemical control in other populations. In addition, outreach will be by webpage publications, newspaper articles, presentations at conferences, and journal publications.

The effort is divided into four tasks: survey, control and monitoring, shading trial, and outreach.

Methods

Survey

An extensive survey will be made throughout the Yakima River in Benton County. Location and patch size of *B. umbellatus* will be recorded using GPS equipment. This information will be prepared on a map and delivered to the WA Dept. of Ecology and the WA Dept. of Ag, Noxious Weed Control Board.

Control

Imazapyr application will be made after plants have been collected for the shade trial and the monitoring plots assessed. All plants in the known infestation will be treated. Chemical treatments will be applied with a backpack sprayer with a two-nozzle boom. Other populations along the river in Benton County will be treated as they are located.

Monitoring

Monitoring plots will be established in each large population. Six plots will be located in each population. Each plot will consist of at least 30 *B. umbellatus* plants. Plots will be selected to include a range of plant sizes. These plants will be counted and their collective location marked using a GPS device and rebar. These plots will be marked with four, two-foot rebar stakes securely driven into the shoreline. The number of *B. umbellatus* plants will be counted in each plot before herbicide application. These populations will then be recounted in the fall of 2009 at least in the known population. In the summers of 2010 and 2011 all populations will be monitored and retreated as needed.

Shading Trial

Flowering rush will be established in a greenhouse by digging many whole plants from the known population along the Yakima River. We will examine the effect of shading by collecting data across 6 light levels. The light levels will span the range likely to occur along the river. The natural range of lighting experienced in the field will be determined using a light sensor placed under varying canopies. The canopies chosen will cover the range likely to occur with differing species and canopy density. In the greenhouse 5 replicates at each of six light levels will be used to define the light response curve. Growth rates will be measured and the degree of yellowing or vegetative loss will be assessed to determine the response to light. Shading will be created by placing differing layers of shade cloth over the plants.

Expected results

The expected result with herbicide treatment is complete death of treated plants. It is possible that not all plants will be destroyed in the first year's treatment, thus treatments will be repeated for two more years. The expected result of the shading trial is a determination of the amount of shade required to significantly damage flowering rush. If this amount of shade is similar to that of native plant communities then a cultural control strategy can be considered to augment chemical control.

Expected value

The expected value of this control effort is to eliminate flowering rush from the Yakima River in Benton County. A successful control strategy will then be made available to the public. The value of the shading trial is setting the stage for the development of a cultural control strategy that may augment chemical control and provide sustainable control for *B. umbellatus* in riparian zones. Our control strategy may also be useful elsewhere in the Columbia River watershed, along other rivers, and potentially along lakeshores.

Extension of this knowledge

This knowledge will be extended to society by publication on the web (Washington state department of ecology, Washington state department of agriculture, and Benton County noxious weed board web pages), newspapers, peer-reviewed scientific literature. Presentations will be made at the Weed Society meetings in Yakima.

Literature cited

Jensen, D. 2008. Flowering Rush (*Butomus umbellatus*),
<http://www.seagrant.umn.edu/ais/floweringrush>.

Delisle F., C. Lavoie, M. Jean and D. Lachance. 2003. Reconstructing the spread of invasive plants: taking into account biases associated with herbarium specimens. *Journal of Biogeography*, 30, 1033–1042

Timeline

- July-August, 2009**-document known population, set up monitoring plots, collect plants for shading trial, apply herbicide to the known population, conduct survey of the rest of the Yakima River in Benton County documenting location of populations, setting up monitoring plots, and applying herbicide. Initiate shading trial in greenhouse.
- September- November, 2009**-document effects of shading trial. Note effect of herbicide treatment at least at the known population.
- December, 2009-June, 2010**- conduct outreach to the public by webpage documentation, and newspaper articles. Present results at weed society meetings and submit scientific paper on the shading trial.
- July-August, 2010**-document results at monitoring plots, reapply herbicide as needed.
- September, 2010 – June, 2011**- conduct outreach to the public by webpage documentation, and newspaper articles. Present results at weed society meetings.
- July-August, 2011**-document results at monitoring plots, reapply herbicide as needed.
- September, 2011 – June, 2012**- conduct outreach to the public by webpage documentation, and newspaper articles. Present results at weed society meetings. Submit scientific paper or note on the results of the control effort.

“Exhibit B”

Compensation

Sponsor Budget

	A	B	C	D	E	F	G	H	I	J	K	L	
1	SALARIES (FACULTY, A/P, CLASSIFIED STAFF, GRADUATE STUDENT)							SPONSOR BUDGET				CUM	
2		Monthly	Annual	Salary	Months		Benefit		5/15/09	7/1/09	7/1/10	7/1/11	
3	Name/Title	Salary	Salary	Salary Inflation	Per Yr	FTE	Rate****		6/30/09	6/30/10	6/30/11	6/30/12	
4	Steven Link	\$ 8,000.00	\$ 96,000.00	4.00%	12.00	12.7%	40.00%	Salary		6,115	3,180	3,307	
5	PI							Benefits		2,446	1,272	1,323	
6	Steven Link (Task 1 - Survey) 80	\$ 8,000.00	\$ 96,000.00	4.00%	12.00	3.9%	40.00%	Salary		1,848	961	999	
7	PI							Benefits		739	384	400	
8	Steven Link (Task 2- Control and Monitor) 80	\$ 8,000.00	\$ 96,000.00	4.00%	12.00	3.9%	40.00%	Salary		1,848	961	999	
9	PI							Benefits		739	384	400	
10	Steven Link (task 3- Shading trial) 30	\$ 8,000.00	\$ 96,000.00	4.00%	12.00	1.4%	40.00%	Salary		691	359	374	
11	PI							Benefits		276	144	150	
12	Steven Link (Task 4 - Outreach) 85	\$ 8,000.00	\$ 96,000.00	4.00%	12.00	3.6%	40.00%	Salary		1,152	1,198	1,246	
13	PI							Benefits		461	479	498	
14				4.00%			33.00%	Salary	0	0			
15								Benefits	0	0			5,055
16	Master Graduate Student			4.00%		12.7%		Salary	0	0			
17	Step 26							QTR		0			
18								Health		0			
19								1.50%	0	0			
20	Ph.D. Graduate Student			4.00%				Salary	0	0			
21	Step 32							QTR		0			
22								Health		0			
23								1.50%	0	0			
24								Salaries:		6,115	3,180	3,307	
25								Benefits:		2,446	1,272	1,323	
26	WAGES (TIMESLIP/HOURLY)												
27	Name/Title	S Per Hour	Hours Per Week	# of Weeks	Salary Inflation	Benefit Rate							
28					4.0%	2.10%		Wages	0	0			
29	Student (Full-time)							Benefits	0	0			
30	Technician	\$ 21.00	40.00	7.00	4.0%	16.80%		Wages		2,940	1,529	1,590	
31								Benefits		494	257	267	
32					4.0%	18.00%		Wages	0	0			
33	Non Student**							Benefits	0	0			
34					4.0%	60.60%		Wages	0	0			
35	Non Student***							Benefits	0	0			
36													
37	Name/Title			Monthly Stipend	# of Months	Benefit Rate							
38	Cell Phone Stipend					9.70%		Wages	0	0			
39								Benefits	0	0			
40	* No PERS, No Health (less than 70 hrs a month)							Wages:	0	2,940	1,529	1,590	
41	** PERS with No Health (more than 70 hours for 5 mths)							Benefits:	0	494	257	267	
42	*** PERS, Health, Med (6 consecutive mths PT work, 480 hour rule)												
43	**** Benefit rate for salaries is an estimated rate of 33%, for a more accurate rate use							Total Salaries:	0	6,115	3,180	3,307	
44	the benefit worksheet tab at the bottom of this spreadsheet							Total Wages:	0	2,940	1,529	1,590	

RESOLUTION

W

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A CONTRACT WITH ATTORNEY LUKE P SWINNEY, DESIGNATED AS BCDC0810LPS002, FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT.

WHEREAS, with the recent departure of attorney Brian Anderson there is a need for an additional full-time equivalent contract to provide indigent defense services in Benton County District Court;

WHEREAS, based on an analysis and forecast of anticipated caseloads in Benton County District Court it appears to be in the best interests of Benton County to award two 50% equivalent contracts for indigent defense services instead of one full-time contract so that these attorneys will be available to cover overflow contracts as needed without exceeding State recommended maximum caseload limits;

WHEREAS, attorney Luke P Swinney is well qualified, conditioned upon his participation in a formal, structured, mentoring program, to receive an award for one of these two 50% equivalent contracts and it appears to be in the best interests of Benton County to contract with her for indigent defense services;

NOW THEREFORE, BE IT RESOLVED THAT the attached Contract, designated with the identifier: BCDC0810LPS002, be executed as presented.

Dated this day of, 2009.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners, Benton County
Washington

Attest:
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT PERSONS IN
BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC0910LPS001**

THIS AGREEMENT is entered into by and between **Luke P Swinney**, attorney at law, Washington State Bar Association # 41936 ("Attorney"); , and **BENTON COUNTY**, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the Benton County District Court.
- C. Attorney needs some additional direct experience litigating cases involving persons charged with criminal offenses, and Attorney and the Counties recognize the need to create an opportunity and process for Attorney to gain that experience without compromising the rights and interests of represented indigent clients via limiting the number and types of cases appointed to Attorney for a period of time and via having an experienced attorney also under contract with the County to provide criminal defense services in District Court directly and independently mentor Attorney and supervise and report on Attorney's performance and progress under this Agreement.

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 the **execution date stated below**, and shall continue thereafter through and including the **31st day of December 2010**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **8797 Gage Blvd, Suite B, Kennewick, WA 99336**. Attorney's current local office telephone and fax numbers are **(509) 783-**

9635 and (509) 783-7269 respectively; and Attorney's current office/work e-mail address is lswinney@law.villanova.edu.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton-Franklin Indigent Defense Coordinator ("IDC"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has not been subject to a termination proceeding involving a previous personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. In order to qualify to represent indigent defendants in any appeals to Superior Court pursuant to RALJ, Attorney shall verify that he/she meets the standards for such representation as promulgated by the Washington State Bar Association in its Standards for Indigent Defense (Standard 14). Verification shall be in such form as reasonably required by the IDC. Failure to complete such verification will disqualify Attorney from being appointed to RALJ appeals cases.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys, and also employs in-house staff attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the IDC to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the IDC shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

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

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.
- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.
- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.
- Provided that Attorney is qualified to do so and provides verification as provided in 3(g) above, Attorney may be appointed to represent indigent defendants in RALJ appeals to Superior Court.

Compliance unit assignment: Upon written direction from the IDC, Attorney may be assigned to the *compliance unit* provided that the IDC, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. Attorneys assigned to the *compliance unit* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination

or other court proceedings, any conflict cases or any civil contempt cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *compliance team* attorneys shall be responsible, as a team, for providing representation for the following:

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

6. CONTINUED REPRESENTATION.

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

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

a) In the case of termination of this Agreement at the election of either party by providing 90 days notice of desire to do so (as provided by Article 17 below), provided that Attorney provides the IDC with accurate documentation of caseload including: case title, case type, case status and next appearance date both contemporaneously with providing such notice of termination (or, if notice is provided by County, within 5 business days of such notice) and 30 days prior to the effective date of such termination, Attorney shall be responsible for providing continued legal representation to clients with

cases that remain unresolved as of the effective date of the termination, for no more than 30 days after the effective date of such termination.

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

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

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

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court up to a maximum of one hundred eighty (180) total case equivalents per calendar year (proratable for any partial calendar year) for calendar years 2009 and 2010. Furthermore, in the event that, by August, 2010, the total appointed cases for 2010 is forecasted in any way to exceed that number of cases that may be contractually assigned to other attorneys providing contractual indigent defense services in Benton County District Court, then Attorney shall have first right of refusal for receiving appointments on 50% of the excess cases up to a maximum of 125 such cases.

The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted. The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the *compliance unit*. Provided, however, that if Attorney is assigned, during any full calendar year, to the *compliance unit* for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be

credited with thirty-two (32) case equivalents for each month when Attorney is assigned to the *compliance unit*.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the third pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- RALJ appeals shall not count as a case equivalent of any sort.

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

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

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

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the IDC in a format acceptable by the IDC, including an electronic format if required, for all cases assigned for the calendar year up to and including the preceding month.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any

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

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

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all

stages of District Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

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

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

- (i) Any felony sex offense as defined in RCW 9A.44.030 and RCW 9A.44.130;

- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030.

12. COMPENSATION.

a. During calendar year 2009, Attorney's monthly compensation hereunder shall be **\$2,015.00 per month** (proratable for any partial month), payable on the last business day of the month for handling **180 total case equivalents** during the calendar year.

b. During calendar year 2010, Attorney's monthly compensation hereunder shall be **\$2,135.50 per month**, (proratable for any partial month), payable on the last business day of the month for handling **180 total case equivalents** during the calendar year up to and including the month of June. Thereafter, and for the remaining of the year 2010, providing that, in the sole discretion of the Indigent Defense Coordinator, Attorney satisfactorily completes the period of supervision contemplated by Section 33 herein, Attorney's monthly compensation shall be **\$2,535.50 per month**. If, pursuant to the provisions in Paragraph 33 herein, Attorney's supervision period is terminated earlier than by the end of June, 2010, then effective immediately upon such termination, Attorney's compensation shall be **\$2,535.50 per month**. Additional cases, up to a maximum of 100, appointed to Attorney above and beyond the stated maximum of 180 case equivalents, shall be compensated individually at the rate of \$169.03 per case as a flat rate.

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

d. In addition to the stated monthly compensation, during calendar year 2009, Attorney shall receive \$200 per day for each full day of trial and \$100 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Commencing in calendar year 2010, Attorney shall receive \$300 per day for each full day of trial and \$150 for each partial day of trial.

e. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2009, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would

not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2009, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

f. RALJ appeals to Superior Court shall be compensated during calendar year 2009 at the rate of \$400 per case as a flat rate. Thereafter, compensation shall be increased for calendar year 2010 by the percentage increase that equals the cost of living increase percentage allotted to non-bargaining Benton County employees for that year. Provided that if a cost of living increase is allotted to Benton County employees at a time other than at the beginning of the calendar year, then the increase contemplated by this paragraph shall be effective as of the same time the cost of living increase is paid, and shall not be retroactive to the beginning of the year under any circumstances.

g. In the event that the holder of contract BCDC0810ATH002 ("Holder") elects to voluntarily terminate her contract then, provided that County continues have a need for the services that the Holder would have otherwise provided, Attorney shall have first right of refusal to thereafter receive all case appointments that Holder would otherwise be appointed. If Attorney exercises such first right of refusal, Attorney would be responsible for taking over any cases initially handled by Holder that remain unfinished. Furthermore, if Attorney exercises such first right of refusal, Attorney would also be entitled to increased compensation of \$5,070 per month to handle the equivalent of 360 cases per year and Attorney's contractual ability to handle an additional 125 excess cases shall be reduced to 30 additional excess cases.

13. COSTS AND EXPENSES.

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

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses

directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to employees of the Benton County District Court under then-existing employee travel-related policies and rules.

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

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers,

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

15. **INSURANCE**. Prior to commencement of services under this Contract, Attorney shall submit to Benton County certificates of insurance or certified copies of insurance policies and endorsements, if requested by the County, for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for the life of this Contract. Attorney shall maintain at Attorney's sole expense unless otherwise stipulated, the insurance coverages as listed below.

The Attorney shall not commence work under this Contract until the Attorney has obtained all insurance required under this paragraph and such insurance has been approved by the County.

a. **Professional Liability Insurance**. The Attorney shall secure and maintain at its own expense Professional Liability Insurance in the amount of not less than \$1,000,000 each claim and in the aggregate. If coverage is Claims Made, the retroactive date shall be prior to or coincident with the date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims Made form coverage shall be maintained by the Attorney for a minimum of three (3) years following the termination of this Contract, and the Attorney shall annually provide the County with proof of renewal.

b. **Commercial General Liability Insurance**. The Attorney shall maintain, during the life of the Contract, Commercial General Liability Insurance Policy Form (CG0001) or equivalent to protect the Attorney from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this contract whether such operations

be by the Attorney or by anyone directly employed by or contracting with the Attorney. The minimum Commercial General Liability Insurance limits are 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 Insurance policy shall contain an endorsement naming the Benton County, its elected and appointed officials, employees and agents as Additional Insured and an endorsement that specifically states the Attorney's Commercial General Liability Insurance shall be primary, and not contributory, with any other Insurance maintained by the County.

Commercial General Liability Insurance 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.

Specific wording for Additional Insured shall read:

Benton County, its elected and appointed officials, employees and agents

c. **Stop Gap Employer's Liability Insurance.** Attorney shall 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. **Worker's Compensation Insurance.** Attorney shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Attorney shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to the commencement of work.

All Liability coverages, except Professional Liability, shall be written on an Occurrence form. If coverage is Claims Made form, the Retroactive Date shall be prior to or coincident with the date of this contract, and the policy shall state that coverage is Claims Made, and state the Retroactive Date. Should Claims Made be the only option, a minimum of three (3) year tail coverage shall be maintained after the expiration of the contract.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Washington and have a Best's rating of at least A-VII. All insurance other than Professional Liability and Workers' Compensation to be maintained by the Attorney shall specifically include Benton County, its elected and appointed officials, employees and agents as "Additional Insured". All insurance shall not be reduced or canceled without thirty (30) days written prior notice to the County. The Attorney's insurance coverage shall be primary insurance to any insurance policies or policies of self-insurance maintained by Benton County.

Sub-Attorneys. Attorney shall include all Sub-Attorneys as Additional Insureds under its policies or shall furnish separate certificates and endorsements for each Sub-Attorney. All coverages for subcontracts shall be subject to all of the requirements stated herein.

Certificates of Liability Insurance are to be provided to the following:

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

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County District Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County Court Administrator and the IDC.

a. Upon receiving such complaint, the IDC, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the IDC within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The IDC shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The IDC then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair

the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

17. TERMINATION.

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

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

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The

County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

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

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

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County District Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best

professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's IDC, nor the Benton County District Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

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

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

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

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

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

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

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

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

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any court other than Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and

would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. NOTICES.

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's following address:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Jacki Lahtinen
Benton County District Court Administrator

7122 West Okanogan Place, Building A
Kennewick, WA 99336

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

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2a. above.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "the County" with certain information or notice, such information or notice shall be provided to the County's Board of Commissioners or the Board's designee unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

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

32. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has established and employed the IDC to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC to assume and fulfill various roles and functions under this Agreement. Though the IDC will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate

and promptly comply with reasonable requests from the IDC to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

33. **SUPERVISING ATTORNEY REQUIREMENT.** . Consistent with, and to implement and effectuate, the provisions of paragraph D on page one (1) of this Agreement, the following special provisions and requirements shall be applicable to this Agreement:

a. During the term of this Agreement and for purposes of this Agreement, Attorney shall be mentored and supervised by an experienced attorney (the "Supervising Attorney") designated by the IDC in his absolute discretion. Attorney understands and agrees that such mentoring and supervision shall be provided only by and through the Supervising Attorney, and Attorney shall not seek or obtain advice or guidance from any other attorney or person regarding how to perform the legal representation services required from Attorney under this Agreement except as may be otherwise previously approved by the Supervising Attorney in writing. **Attorney shall be authorized, unless later directed in writing otherwise, to also seek mentoring, direction and counsel as to his indigent defense duties, from Attorney Nicole Preszler, WSBA #36053.**

Attorney understands and acknowledges that the restrictions imposed by the foregoing sentence are necessary and intended to preclude the potential of Attorney consulting with other attorneys who may not possess sufficient knowledge and/or direct experience in District Court matters. Notwithstanding any time-lines and parameters established below, Supervising Attorney shall sit "second chair," and be available for consultation, during the entirety of Attorney's first two jury trials as well as Attorney's first bench trial if it occurs before any jury trials.

b. During the period starting from the execution of this Agreement and ending February 28, 2010:

(i) Attorney shall spend an average of 28 hours per month being directly supervised and mentored by the Supervising Attorney to include, without limitation, case process reviews, case staffing, and consultation.

(ii) At the IDC's written direction, Attorney shall observe dockets and trials conducted by other District Court defense attorneys that may include, without limitation, pre-trial dockets, sentencing dockets, arraignment dockets, and compliance dockets. Provided that if Attorney has questions about issues observed at such dockets, such questions shall be directed to Supervising Attorney and not such other attorneys as Attorney may observe.

(iii) Supervising Attorney shall attend, observe, and monitor Attorney's performance under this Agreement during Attorney's court dockets for purposes of providing Attorney with constructive critique, guidance, and recommendations regarding Attorney's performance for at least the first full month. Thereafter, Supervising Attorney shall attend at least one of Attorney's dockets each month.

c. During the period starting March 1, 2010 and ending April 30, 2010:

(i) Attorney shall spend an average of 20 hours per month being directly supervised and mentored by the Supervising Attorney to include, without limitation, case process review, case staffing, and consultation.

(ii) Attorney shall periodically attend and observe the Supervising Attorney's court docket, and the Supervising Attorney shall periodically attend, observe, and monitor Attorney's performance under this Agreement during Attorney's court dockets for purposes of providing Attorney with constructive critique, guidance, and recommendations regarding Attorney's performance.

d. During the period starting May 1, 2010 and ending June 30, 2010:

(i) Attorney shall continue to participate in being directly supervised and mentored by the Supervising Attorney on a level and frequency to be determined and directed by the Supervising Attorney after recommendation to, and consultation with, the IDC.

(ii) Attorney shall continue to seek and obtain the Supervising Attorney's advice and guidance on an as-needed and/or as-requested basis.

e. During the term of this Agreement, the Supervising Attorney shall provide periodic written reports to the IDC which reports shall, without limitation, set forth the Supervising Attorney's assessment of Attorney's performance under this Agreement, the number of hours spent by the Supervising Attorney supervising and mentoring Attorney, and the method and manner in which the supervision and mentoring of Attorney occurred. Attorney fully recognizes, understands, and agrees that the County will be reviewing, considering, and relying on said periodic reports for purposes of the Counties assessing whether or not Attorney's performance has reached a sufficient and sustained level to warrant the continuation of this Agreement for its entire term.

f. During the supervision period, in other words through June, 2010, Attorney shall attend any mandatory meetings called by the IDC for purposes of conferring with Attorney and Supervising Attorney about Attorney's progress.

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

DATE: _____

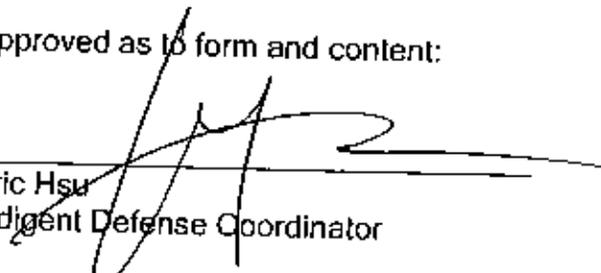
BENTON COUNTY

Chairman

Commissioner

Commissioner

Approved as to form and content:



Eric Hsu
Indigent Defense Coordinator

DATE: 12/09/09

ATTORNEY



Luke P Swinney

RESOLUTION



BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A CONTRACT WITH ATTORNEY ALLISON T HEWITT, DESIGNATED AS BCDC0810ATH001S, TO PROVIDE ATTORNEY SUPERVISION SERVICES TO ATTORNEY LUKE P SWINNEY.

WHEREAS, with the recent departure of attorney Brian Anderson there is a need for an additional full-time equivalent contract to provide indigent defense services in Benton County District Court;

WHEREAS, based on an analysis and forecast of anticipated caseloads in Benton County District Court it appears to be in the best interests of Benton County to award two 50% equivalent contracts for indigent defense services instead of one full-time contract so that these attorneys will be available to cover overflow contracts as needed without exceeding State recommended maximum caseload limits;

WHEREAS, while attorney Luke P Swinney appears to be an excellent candidate for one of these contracts, he does not have the equivalent of one or more year's experience as a criminal trial attorney and therefore presently needs specific guidance and oversight from a more experienced attorney in many areas of local District Court practices;

WHEREAS, attorney Allison Hewitt has agreed to provide formal, structured mentoring to attorney Luke Swinney as outlined in the attached mentoring agreement and such formal, structured mentoring serves the interests of Benton County;

NOW THEREFORE, BE IT RESOLVED THAT the attached Contract, designated with the identifier: BCDC0810ATH001S, be executed as presented.

Dated this day of, 2009.

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 ATTORNEY
SUPERVISION SERVICES IN
BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC0910ATH001S**

THIS AGREEMENT is entered into by and between **ALLISON T HEWITT**, attorney at law, Washington State Bar Association #40130 ("Attorney") dba **Rodriguez & Associates, P.S.**; and **BENTON COUNTY**, a state of Washington political subdivisions ("County"), for and on behalf of the Benton County District Court

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

- A. County has the legal responsibility to provide legal defense services to indigent persons charged with criminal offenses alleged to have been committed within County's respective jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law and has over one year of direct experience as a criminal trial attorney in Benton County District Court.
- C. Attorney has previously contracted with, and is presently under a professional services agreement with, the County to provide legal services to indigent persons in District Court.
- D. County is contemporaneously entering into a professional services agreement with a recently-graduated and recently-licensed Washington attorney by the name of Luke P Swinney ("New Attorney") to provide legal services to indigent persons charged with criminal offenses in Benton County District Court.
- E. Because New Attorney presently has limited experience in litigating cases involving persons charged with criminal offenses, New Attorney and the County have recognized the need to create an opportunity and process for New Attorney to gain that experience without compromising the rights and interests of represented indigent clients via having Attorney directly and independently mentor and supervise New Attorney.
- F. Attorney is willing and duly-qualified to mentor and supervise New Attorney, and Attorney desires to contract with the County for that purpose.

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 the **date of full execution of this agreement** and shall continue thereafter

through and including the 30th day of June, 2010, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in District Court. Attorney further acknowledges that New Attorney must represent indigent persons she is appointed to represent in District Court with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of indigent defendants in the state of Washington and generally exercised by members of the Washington State Bar Association. Without limitation in that regard, Attorney acknowledges that New Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom New Attorney is appointed to represent in District Court.

a. This Agreement shall be subject to termination pursuant to paragraph 7 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. Attorney shall notify the County within one (1) business day if any event specified in this paragraph 2.a occurs or if any bar association complaint/grievance is filed against Attorney.

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

3. **ATTORNEY'S DUTIES.** Consistent with the provisions of paragraph E on page one (1) of this Agreement, the following special provisions and requirements shall be applicable to this Agreement:

a. During the period starting from the execution of this Agreement and ending on February 28, 2010, Attorney shall mentor and supervise the New Attorney in the following manner:

(i) Attorney shall spend an average of 28 hours per month directly supervising and mentoring the New Attorney to include, without limitation, case process review, case staffing, and consultation.

(ii) Attorney shall attend, observe, and monitor New Attorney's performance under this Agreement during New Attorney's court dockets for purposes of providing New Attorney with constructive critique, guidance, and recommendations regarding New Attorney's performance for at least the first full month. Thereafter, Attorney shall attend at least one of New Attorney's dockets each month.

b. During the period starting March 1, 2010 and ending April 30, 2010:

(i) Attorney shall spend an average of 20 hours per month directly supervising and mentoring the New Attorney to include, without limitation, case process review, case staffing, and consultation.

(ii) Attorney shall periodically attend the New Attorney's Court dockets to observe and monitor the New Attorney's performance for purposes of providing the New Attorney with constructive critique, guidance, and performance improving recommendations.

c. During the period starting May 1, 2010 and ending June 20, 2010:

(i) Attorney shall continue to directly supervise and mentor the New Attorney on a level and frequency to be determined and directed by Attorney after recommendation to, and consultation with, the Benton-Franklin Indigent Defense Coordinator ("IDC").

(ii) Attorney shall continue to provide advice and guidance to the New Attorney on an as-needed and/or as-requested basis.

d. Without limiting Attorney's duty and obligation to promptly report any and all problems or concerns over the New Attorney's performance to the IDC, Attorney shall provide four (4) written reports to the IDC that comply with the following report timing and content requirements:

(i) The first written report shall be due and provided on or about December 31, 2009, and shall set forth and describe Attorney's assessment of the New Attorney's initial month of performance and set forth and describe any areas of deficiency or concern to be addressed during the next two months.

(ii) The second written report shall be due and provided on or about February 28, 2010, and shall set forth an accounting of the hours spent by Attorney providing direct supervision, mentoring, and guidance to the New Attorney; shall specifically identify any issues or concerns that Attorney has over the New Attorney's performance that require attention and correction; and shall set forth Attorney's assessment as to whether or not the New Attorney has made sufficient progress and gained sufficient direct experience to allow and warrant a reduction in supervision.

(iv) The third written report shall be due and provided on or about April 30, 2010, and shall set forth an accounting of the hours spent by Attorney providing direct supervision, mentoring, and guidance to the New Attorney; shall specifically identify any issues or concerns that Attorney has over the New Attorney's performance that require attention and correction; and shall set forth Attorney's assessment as to whether or not the New Attorney has made sufficient progress and gained sufficient direct experience to allow and warrant that the supervision and mentoring of the New Attorney over the balance of the supervision period only occur on an as-needed and/or as-requested basis.

(v) The fourth written report shall be due and provided on June 15, 2010, and shall specifically identify any new or remaining unresolved issues or concerns that Attorney has over the New Attorney's performance; and shall set forth Attorney's assessment as to whether or not the New Attorney has made sufficient progress and gained sufficient direct experience to allow and warrant the supervision of the New Attorney to only occur on an as-needed and/or as-requested basis

e. Upon consultation with the IDC, and in the IDC's sole discretion, the period of supervision contemplated herein may be shortened, or the intensity of supervision may be reduced. If the decision is made to shorten the period or reduce the intensity, then the IDC shall provide written notice of such to both Attorney and New Attorney. In the case of any reduction in the period of supervision, the new ending date for the supervision period shall become the new expiration date of this Agreement and shall, for all intents and purposes, over-ride the provisions of Paragraph 1 herein, for purposes of the agreement term. Furthermore, in the event that the period of supervision is reduced, and a new ending date is established, compensation, as set forth in Paragraph 4 herein, shall also cease as of that new ending date.

4. MONTHLY COMPENSATION.

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of **\$400 per month** (proratable for any partial month), payable on the last business day of the month.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above.

5. INDEMNIFICATION AND HOLD HARMLESS. Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed

representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's acts, defaults, errors and/or omissions of whatsoever nature in the performance of services under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to 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 County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to 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.

6. INSURANCE.

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount 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 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 6.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

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

(ii) The insurance policies required by this paragraph 6.b shall require that the Insurance company provide 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 6.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 County through its IDC with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 6, and Attorney shall annually provide the Risk Managers with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

7. **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. This Agreement shall automatically terminate upon the termination of the New Attorney's professional services agreement to provide legal services to indigent persons charged with criminal offenses in District Court.

8. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of County for any type of purpose or situation whatsoever (including, without

limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional judgment to determine the manner and means of providing the services required under this Agreement; and neither County, nor County's Indigent Defense Coordinator, shall have any authority or duty to directly control the actual performance of Attorney's services hereunder and no direction from County or County's IDC should be interpreted as an attempt to exercise such authority.

9. **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.

10. **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. (PST) 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. (PST) 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.

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

12. **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.

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

14. **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.

15. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration in the Tri-Cities, Washington. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Benton-Franklin Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in superior court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in superior court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

16. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to County under this Agreement shall be in writing and shall be personally delivered to the County Board of Commissioners or mailed to the County Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's address as follows:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Jacki Lahtinen
Benton County District Court Administrator
7122 W Okanogan Pl, Bldg A
Kennewick, WA 99336

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

b. Any notices required or permitted to be given by County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in Attorney's other existing professional services agreement with County to provide legal representation in District Court.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "County" with certain information or notice, such information or notice shall be provided to County's Board of Commissioners unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

17. **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, 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.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

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

DATE: _____

DATE: 12-02-09

BENTON COUNTY

ATTORNEY

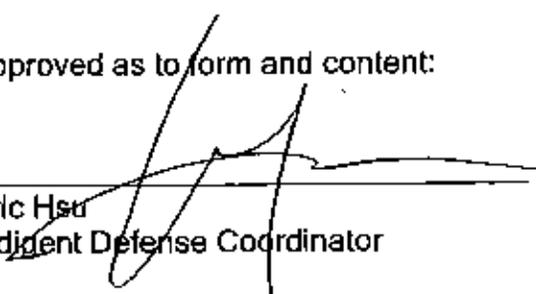
Chairman

Allison T Hewitt 40130
Allison T Hewitt

Commissioner

Commissioner

Approved as to form and content:



Eric Hsu
Indigent Defense Coordinator

RESOLUTION

Y

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A CONTRACT WITH ATTORNEY ALLISON T HEWITT, DESIGNATED AS BCDC0810ATH002, FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT.

WHEREAS, with the recent departure of attorney Brian Anderson there is a need for an additional full-time equivalent contract to provide indigent defense services in Benton County District Court;

WHEREAS, based on an analysis and forecast of anticipated caseloads in Benton County District Court it appears to be in the best interests of Benton County to award two 50% equivalent contracts for indigent defense services instead of one full-time contract so that these attorneys will be available to cover overflow contracts as needed without exceeding State recommended maximum caseload limits;

WHEREAS, attorney Allison T Hewitt is well qualified to receive an award for one of these two 50% equivalent contracts and it appears to be in the best interests of Benton County to contract with her for indigent defense services;

NOW THEREFORE, BE IT RESOLVED THAT the attached Contract, designated with the identifier: BCDC0810ATH002, be executed as presented.

Dated this day of, 2009.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners, Benton County
Washington

Attest:
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT PERSONS IN
BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC0810ATH002**

THIS AGREEMENT is entered into by and between Allison T Hewitt, attorney at law, Washington State Bar Association # 40130 ("Attorney") dba Rodriguez & Associates, P.S.; and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of the **execution date stated below**, and shall continue thereafter through and including the **31st day of December 2010**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **7502 W Deschutes Pl, Kennewick, WA 99336**. Attorney's current local office telephone and fax numbers are **(509) 783-5551** and **(509) 736-1151** respectively; and Attorney's current office/work e-mail address is **ahewitt@rodriguezlawwa.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s)

to the Benton-Franklin Indigent Defense Coordinator ("IDC"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

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

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

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

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

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

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

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

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

preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. In order to qualify to represent indigent defendants in any appeals to Superior Court pursuant to RALJ, Attorney shall verify that he/she meets the standards for such representation as promulgated by the Washington State Bar Association in its Standards for Indigent Defense (Standard 14). Verification shall be in such form as reasonably required by the IDC. Failure to complete such verification will disqualify Attorney from being appointed to RALJ appeals cases.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys, and also employs in-house staff attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the IDC to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the IDC shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

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

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.
- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.
- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.
- Provided that Attorney is qualified to do so and provides verification as provided in 3(g) above, Attorney may be appointed to represent indigent defendants in RALJ appeals to Superior Court providing that Attorney is amenable to such appointments.

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

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond

the Initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court compliance and failure to pay fine dockets except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

6. CONTINUED REPRESENTATION.

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

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

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

b) In the case of expiration of this Agreement according to its terms, if Attorney provides at least 90 days notice of Intent not to renew the Agreement and further provides the IDC with accurate documentation of caseload including: case title, case type, case status and next appearance date both contemporaneously with providing

such notice of non renewal, and 30 days prior to the effective date of such termination, then Attorney's responsibility for providing continued legal representation shall be the same as provided in paragraph "a)" of this Article.

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

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

7. NUMBER OF APPOINTMENTS. During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court up to a maximum of **one hundred eighty (180) total case equivalents per calendar year** (proratable for any partial calendar year) for calendar years 2009 and 2010. Furthermore, in the event that, by August, 2010, the total appointed cases for 2010 is forecasted in any way to exceed that number of cases that may be contractually assigned to other attorneys providing contractual indigent defense services in Benton County District Court, then Attorney shall have first right of refusal for receiving appointments on 50% of the excess cases up to a maximum of 125 such cases.

The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted. The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the *compliance unit*. Provided, however, that if Attorney is assigned, during any full calendar year, to the *compliance unit* for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with thirty-two (32) case equivalents for each month when Attorney is assigned to the *compliance unit*.

8. CASE EQUIVALENTS.

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the third pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.
- RALJ appeals shall not count as a case equivalent of any sort.

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County District Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., If Attorney was appointed to

represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

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

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

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the IDC in a format acceptable by the IDC, including an electronic format if required, for all cases assigned for the calendar year up to and including the preceding month.

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

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

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

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of District Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

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

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

- (i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030.

12. COMPENSATION.

a. During calendar year 2009, Attorney's monthly compensation hereunder shall be **\$2,415.00 per month** (proratable for any partial month), payable on the last business day of the month for handling **180 total case equivalents** during the calendar year.

b. During calendar year 2010, Attorney's monthly compensation hereunder shall be **\$2,535.00 per month**, (proratable for any partial month), payable on the last business day of the month for handling **180 total case equivalents** during the calendar year. Additional cases, up to a maximum of 100, appointed to Attorney above and beyond the stated maximum of 180 case equivalents, shall be compensated individually at the rate of \$169.03 per case as a flat rate.

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

d. In addition to the stated monthly compensation, during calendar years 2009, Attorney shall receive \$200 per day for each full day of trial and \$100 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Commencing in calendar year 2010, Attorney shall receive \$300 per day for each full day of trial and \$150 for each partial day of trial.

e. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2008, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2008, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

f. RALJ appeals to Superior Court shall be compensated during calendar year 2009 at the rate of \$400 per case as a flat rate. Thereafter,

compensation shall be increased for calendar year 2010 by the percentage increase that equals the cost of living increase percentage allotted to non-bargaining Benton County employees for that year. Provided that if a cost of living increase is allotted to Benton County employees at a time other than at the beginning of the calendar year, then the increase contemplated by this paragraph shall be effective as of the same time the cost of living increase is paid, and shall not be retroactive to the beginning of the year under any circumstances.

g. In the event that the holder of contract BCDC0810LPS002 ("Holder") elects to voluntarily terminate his contract then, provided that County continues have a need for the services that the Holder would have otherwise provided, Attorney shall have first right of refusal to thereafter receive all case appointments that Holder would otherwise be appointed. If Attorney exercises such first right of refusal, Attorney would be responsible for taking over any cases initially handled by Holder that remain unfinished. Furthermore, if Attorney exercises such first right of refusal, Attorney would also be entitled to increased compensation of \$5,070 per month to handle the equivalent of 360 cases per year and Attorney's contractual ability to handle an additional 125 excess cases shall be reduced to 30 additional excess cases.

13. COSTS AND EXPENSES.

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the

expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to employees of the Benton County District Court under then-existing employee travel-related policies and rules.

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

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

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

15. **INSURANCE.** Prior to commencement of services under this Contract, Attorney shall submit to Benton County certificates of insurance or certified copies of insurance policies and endorsements, if requested by the County, for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for the life of this Contract. Attorney shall maintain at Attorney's sole expense unless otherwise stipulated, the insurance coverages as listed below.

The Attorney shall not commence work under this Contract until the Attorney has obtained all insurance required under this paragraph and such insurance has been approved by the County.

a. **Professional Liability Insurance.** The Attorney shall secure and maintain at its own expense Professional Liability Insurance in the amount of not less than \$1,000,000 each claim and in the aggregate. If coverage is Claims Made, the retroactive date shall be prior to or coincident with the date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims Made form coverage shall be maintained by the Attorney for a minimum of three (3) years following the termination of this Contract, and the Attorney shall annually provide the County with proof of renewal.

b. **Commercial General Liability Insurance.** The Attorney shall maintain, during the life of the Contract, Commercial General Liability Insurance Policy Form (CG0001) or equivalent to protect the Attorney from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this contract whether such operations be by the Attorney or by anyone directly employed by or contracting with the Attorney. The minimum Commercial General Liability Insurance limits are 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 Insurance policy shall contain an endorsement naming the Benton County, its elected and appointed officials, employees and agents as Additional Insured and an endorsement that specifically states the Attorney's Commercial General Liability Insurance shall be primary, and not contributory, with any other insurance maintained by the County.

Commercial General Liability Insurance 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.

Specific wording for Additional Insured shall read:

Benton County, its elected and appointed officials, employees and agents

c. **Stop Gap Employer's Liability Insurance.** Attorney shall 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. **Worker's Compensation Insurance.** Attorney shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Attorney shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to the commencement of work.

All Liability coverages, except Professional Liability, shall be written on an Occurrence form. If coverage is Claims Made form, the Retroactive Date shall be prior to or coincident with the date of this contract, and the policy shall state that coverage is Claims Made, and state the Retroactive Date. Should Claims Made be the only option, a minimum of three (3) year tail coverage shall be maintained after the expiration of the contract.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Washington and have a Best's rating of at least A-VII. All insurance other than Professional Liability and Workers' Compensation to be maintained by the Attorney shall specifically include Benton County, its elected and appointed officials, employees and agents as "Additional Insured". All insurance shall not be reduced or canceled without thirty (30) days written prior notice to the County. The Attorney's insurance coverage shall be primary insurance to any insurance policies or policies of self-insurance maintained by Benton County.

Sub-Attorneys. Attorney shall include all Sub-Attorneys as Additional Insureds under its policies or shall furnish separate certificates and endorsements for each Sub-Attorney. All coverages for subcontracts shall be subject to all of the requirements stated herein.

Certificates of Liability Insurance are to be provided to the following:

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

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County District Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County Court Administrator and the IDC.

a. Upon receiving such complaint, the IDC, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the IDC within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The IDC shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The IDC then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

represented, absent a complaint from such person, during the course of representation.

17. TERMINATION.

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

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

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney falls for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive

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

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

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on

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

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

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

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

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

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

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

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any court other than Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

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

24. **CAPTIONS; TIME COMPUTATION.**

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

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PST) 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. (PST) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

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

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

29. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a

third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and Implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. NOTICES.

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's following address:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Jacki Lahtinen
Benton County District Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

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

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage

prepaid, at Attorney's office address specified and set forth in paragraph 2a. above.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "the County" with certain information or notice, such information or notice shall be provided to the County's Board of Commissioners or the Board's designee unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

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

32. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has established and employed the IDC to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC to assume and fulfill various roles and functions under this Agreement. Though the IDC will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the IDC to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

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

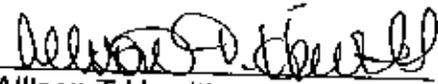
DATE: _____

DATE: 12-02-09

BENTON COUNTY

ATTORNEY

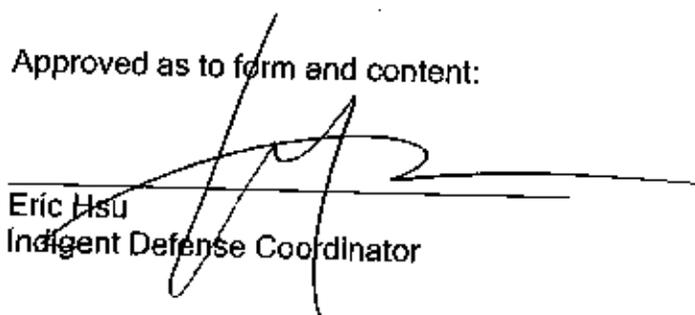
Chairman

 46130
Allison T Hewitt

Commissioner

Commissioner

Approved as to form and content:


Eric Hsu
Indigent Defense Coordinator

RESOLUTION

2

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
DONNA MANNION ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, PLACING ATTORNEY ON PROBATIONARY STATUS AND
CHANGING CERTAIN TERMS RELATING TO CONDITIONS OF TERMINATION.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is;

WHEREAS, in light of recent circumstances, Counties have reason to believe that certain steps must be taken
to ensure that Attorney continues to represent her client in a professional manner as required of the Agreement
and the Rules of Professional Conduct applicable to Washington attorneys;

WHEREAS, the parties have agreed that Attorney shall, until June 30, 2010, be placed on probationary status
on the terms and conditions as stated in the contract amendment, designated as BFSC0709DPM002JA as
present,

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated as
BFSC0709DPM002JA, be executed as presented

Dated this day of, 20....

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:
Clerk of the Board

Attest:
Clerk of the Board

**AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
BFSC0709DPM002J BETWEEN THE COUNTIES OF BENTON & FRANKLIN
AND ATTORNEY DONNA MANNION**

WHEREAS, Benton & Franklin Counties, and Donna Mannion, (Attorney) have executed an agreement, identified as BFSC0709DPM002J, ("Agreement") whereby Attorney provides legal services including dependency and termination defense services to indigent clients in Benton-Franklin Juvenile Court.

WHEREAS, the parties agree that steps need to be taken to ensure that Attorney's professional services provided pursuant to Agreement continue to meet standards established by the Agreement and the Washington State Bar Association

THEREFORE IT IS AGREED by the parties that Agreement is amended as follows:

A new paragraph, designated as 18(e) is added to Section 18 TERMINATION. This paragraph shall contain the following language:

18(e) Notwithstanding any other provision in this Agreement, for the period of time starting from September 30, 2009 and ending on June 30, 2010 at midnight, Attorney shall be considered to be on probationary status. During the period of time when Attorney is on probationary status, Attorney shall strictly abide by all provisions of the Agreement as well as the additional conditions imposed by this Amendment. In the event that Attorney breaches any provision of the Agreement or any of the additional conditions imposed by this Agreement, Agreement is subject to immediate termination at the sole discretion and election of COUNTIES upon 48 hours written notice to Attorney. Such notice shall state the reason for the termination. Attorney specifically agrees to this new provision allowing for termination upon less than 10 days notice and without opportunity for cure.

Section 2(c), Attorney's Office Location shall be stricken in its entirety and replaced with the following language:

ATTORNEY shall maintain a law office in Benton-Franklin County, which shall include a suitable client interview facility where ATTORNEY may reasonably conduct confidential client meetings and receive mail. ATTORNEY shall maintain regular office hours during the ordinary work week reasonably calculated to permit appropriate client access to her law office (approximately 40 hours/week). ATTORNEY shall establish and maintain a phone line dedicated to ATTORNEY's law office. ATTORNEY shall ensure that clients who attempt to reach ATTORNEY via this phone line are able to either immediately speak with ATTORNEY or a staff member, or have the ability to leave a message, which shall be returned within a reasonable period of time that shall not with any consistency exceed 24 hours.

A new paragraph 17(c) shall be added to Section 17 Complaints; Performance Monitoring and shall contain the following language:

17(c) ATTORNEY shall participate in evaluation, contract compliance review and case review processes as directed by the Benton & Franklin Counties Office of Public Defense ("BFOPD") or the Benton & Franklin Counties Juvenile Justice Director ("BFJJD"). The ATTORNEY also cooperate with BFOPD in efforts to improve representation and monitor compliance with the representation standards required by Agreement. Upon request by BFOPD, ATTORNEY shall also facilitate distribution of a Client Survey to ATTORNEY'S clients, allowing clients to provide information to BFOPD about their representation.

A new section, numbered 34 and entitled Probationary Status Conditions, shall be added and shall contain the following language:

During any period of time when ATTORNEY is on probationary status, ATTORNEY shall strictly abide by the following additional conditions:

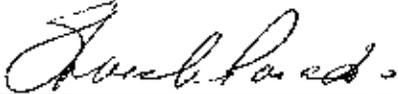
- ATTORNEY shall cooperate fully with site audits by authorized representatives of BFOPD and/or the BFJJD. Such site audits may be conducted with or without advance notice.
- ATTORNEY shall engage in, at least twice weekly, peer support meetings with Parents Representation Program attorney Darin Campbell. During these meetings, ATTORNEY shall demonstrate to attorney Darin Campbell that she is: maintaining a law office in a manner that meets all professional and ethical duties and standards including the generation and maintenance of case files in a secure and organized manner; calendaring court dates as well as client and case related appointments; and arriving on time for all court hearings and case related appointments. ATTORNEY is specifically not expected to, and shall not, share details about individual cases or clients with attorney Darin Campbell during these peer support meetings.

All other terms and conditions of the original AGREEMENT and amendments thereto remain unchanged. In the event of conflicts between the language of the original Agreement and the language contained within this Amendment, the language contained within this Amendments shall prevail. This Amendment shall be designated as BFSC0709DPM002JA.

IN WITNESS WHEREOF: The parties have signed this Amendment below:

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/22/09


Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/22/09


Donna Mannion, Attorney at Law

BENTON COUNTY

Date _____

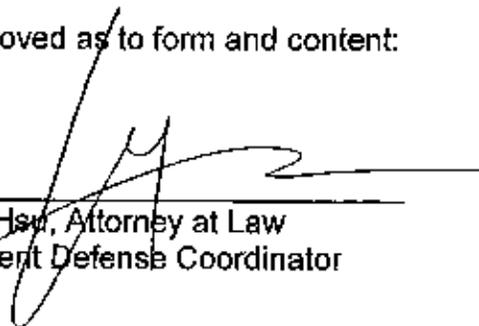
Chairman of the Board

FRANKLIN COUNTY

Date _____

Chairman of the Board

Approved as to form and content:


Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

aa

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
DIANA ANDERSON ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-399 and Franklin County resolution no. 2009-267.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709DLA002J**

Between

**Benton & Franklin Counties and Diana L. Anderson
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709DLA002J, between Benton & Franklin Counties and attorney Diana L. Anderson expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709DLA002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709DLA002J as they presently exist;

THEREFORE Agreement BFSC0709DLA002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 1(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

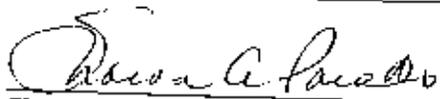
This amendment shall be designated with the following identifier: BFSC0709DLA002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

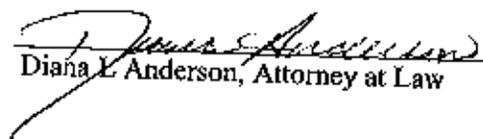
****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 11/13/2009


Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/14/09


Diana Anderson, Attorney at Law

BENTON COUNTY

Date _____

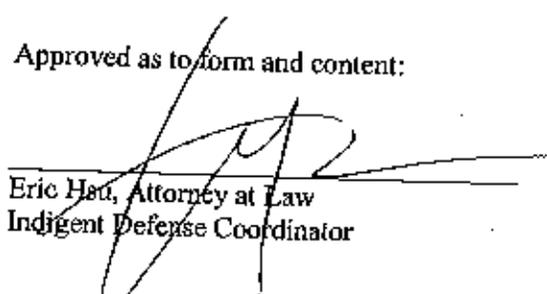
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:


Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

bk

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
DARIN CAMPBELL ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-400 and Franklin County resolution no. 2009-268.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709DRC002J**

Between

**Benton & Franklin Counties and Darin R Campbell
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709DRC002J, between Benton & Franklin Counties and attorney Darin R Campbell expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709DRC002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709DRC002J as they presently exist;

THEREFORE Agreement BFSC0709DRC002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 11(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".
3. The following language in section 11(e) "Compensation": "the additional sum of \$1,800.00 per month" shall be stricken and replaced with: "the additional sum of \$2,383.33 per month".

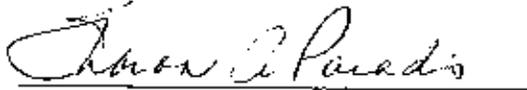
This amendment shall be designated with the following identifier: BFSC0709DRC002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/09



Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10-14-09



Darin R Campbell, Attorney at Law

BENTON COUNTY

Date _____

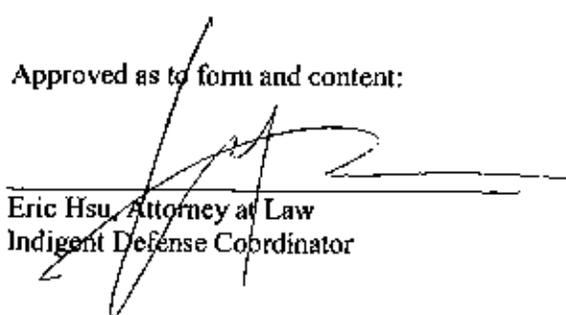
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

CC

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

**BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON**

**IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
SUSAN HENWOOD ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.**

**WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;**

**WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-401 and Franklin County resolution no. 2009-269.**

**WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010**

**NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.**

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709SDH002J**

Between

**Benton & Franklin Counties and Susan D Henwood
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709SDH002J, between Benton & Franklin Counties and attorney Susan D Henwood expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709SDH002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709SDH002J as they presently exist;

THEREFORE Agreement BFSC0709SDH002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 12(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

This amendment shall be designated with the following identifier: BFSC0709SDH002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2009

Sharon Paradis
Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/22/2009

Susan D. Henwood 133847
Susan D Henwood, Attorney at Law

BENTON COUNTY

Date _____

Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:

Eric Hau
Eric Hau, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

dd

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
KEITH HILDE ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-402 and Franklin County resolution no. 2009-270.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709KH002J**

Between

**Benton & Franklin Counties and Keith Hilde
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709KH002J, between Benton & Franklin Counties and attorney Keith Hilde expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709KH002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709KH002J as they presently exist;

THEREFORE Agreement BFSC0709KH002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 12(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

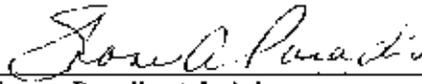
This amendment shall be designated with the following identifier: BFSC0709KH002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

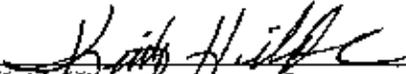
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2007



Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/21/09



Keith Hilde, Attorney at Law

BENTON COUNTY

Date _____

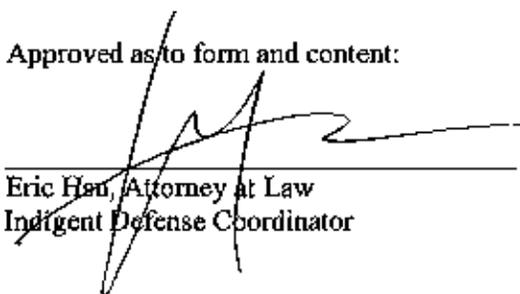
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

ee

RESOLUTION

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
LAURIE MAGAN ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-403 and Franklin County resolution no. 2009-271.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709LLM002J
Between
Benton & Franklin Counties and Laurie L Magan
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709LLM002J, between Benton & Franklin Counties and attorney Laurie L Magan expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709LLM002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709LLM002J as they presently exist;

THEREFORE Agreement BFSC0709LLM002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 12(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

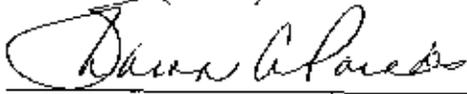
This amendment shall be designated with the following identifier: BFSC0709LLM002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

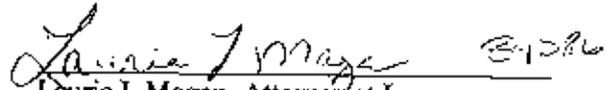
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2009



Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/22/09


Laurie L. Magan, Attorney at Law

BENTON COUNTY

Date _____

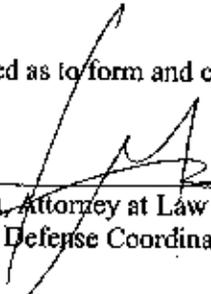
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:


Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

ff

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
DONNA MANNION ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-404 and Franklin County resolution no. 2009-272.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709DPM002J
Between
Benton & Franklin Counties and Donna P Mannion
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709DPM002J, between Benton & Franklin Counties and attorney Donna P Mannion expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709DPM002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709DPM002J as they presently exist;

THEREFORE Agreement BFSC0709DPM002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 11(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

This amendment shall be designated with the following identifier: BFSC0709DPM002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/23/09

Sharon Paradis
Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/22/09

Donna P Mannion
Donna P Mannion, Attorney at Law

BENTON COUNTY

Date _____

Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:

Eric Hsu
Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

99

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY KATHLEEN MORENO ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON & FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County resolution no. 09-409 and Franklin County resolution no. 2009-277.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709KLM00J**

Between

**Benton & Franklin Counties and Kathleen L Moreno
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709KLM002J, between Benton & Franklin Counties and attorney Kathleen L Moreno expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709KLM002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709KLM002J as they presently exist;

THEREFORE Agreement BFSC0709KLM002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 11(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

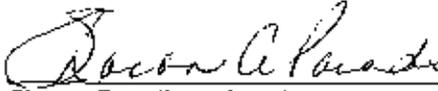
This amendment shall be designated with the following identifier: BFSC0709KLM002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

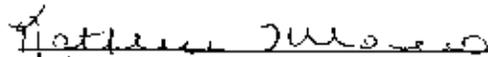
****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2009


Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10-15-09


Kathleen L. Moreno, Attorney at Law

BENTON COUNTY

Date _____

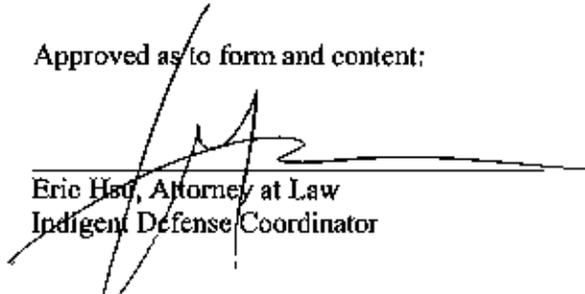
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:


Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

hh

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY KARYN OLDFIELD ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON & FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County resolution no. 09-406 and Franklin County resolution no. 2009-274.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709KKO002J
Between
Benton & Franklin Counties and Karyn K Oldfield
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709KKO002J, between Benton & Franklin Counties and attorney Karyn K Oldfield expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709KKO002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709KKO002J as they presently exist;

THEREFORE Agreement BFSC0709KKO002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 12(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

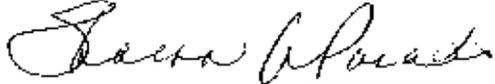
This amendment shall be designated with the following identifier: BFSC0709KKO002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2009


Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/29/09


Karyn K Oldfield, Attorney at Law

BENTON COUNTY

Date _____

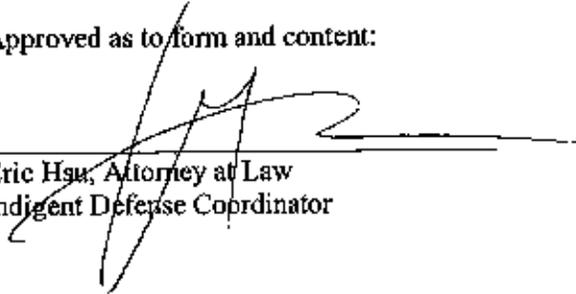
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:


Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
JULIE OVENS ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON & FRANKLIN
JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT FOR A
PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-407 and Franklin County resolution no. 2009-275,

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709JAO002J
Between
Benton & Franklin Counties and Julie A Ovens
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709JAO002J, between Benton & Franklin Counties and attorney Julie A Ovens expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709JAO002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709JAO002J as they presently exist;

THEREFORE Agreement BFSC0709JAO002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 12(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

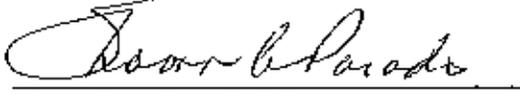
This amendment shall be designated with the following identifier: BFSC0709JAO002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

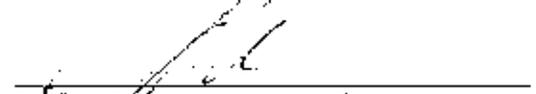
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2009



Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10-14-09



Julie A. Owens, Attorney at Law

BENTON COUNTY

Date _____

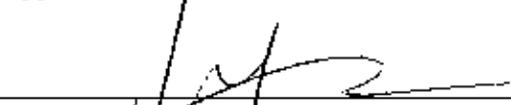
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

jz

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
JARED PAULSEN ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-408 and Franklin County resolution no. 2009-276.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709JDP002J
Between
Benton & Franklin Counties and Jared D Paulsen
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709JDP002J, between Benton & Franklin Counties and attorney Jared D Paulsen expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709JDP002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709JDP002J as they presently exist;

THEREFORE Agreement BFSC0709JDP002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 11(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

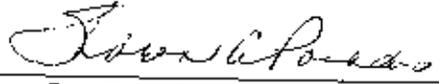
This amendment shall be designated with the following identifier: BFSC0709JDP002JA.

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2009


Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10-14-09


Jared D Paulsen, Attorney at Law

BENTON COUNTY

Date _____

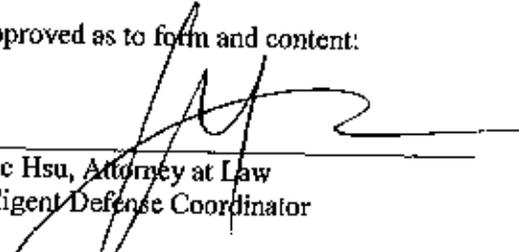
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:


Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

KK

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
MARY POLAND ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-409 and Franklin County resolution no. 2009-277.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
#BFSC0709MSP002J**

Between

**Benton & Franklin Counties and Mary S Poland
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709MSP002J, between Benton & Franklin Counties and attorney Mary S Poland expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709MSP002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709MSP002J as they presently exist;

THEREFORE Agreement BFSC0709MSP002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 11(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

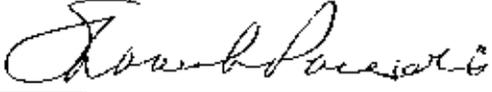
This amendment shall be designated with the following identifier: BFSC0709MSP002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

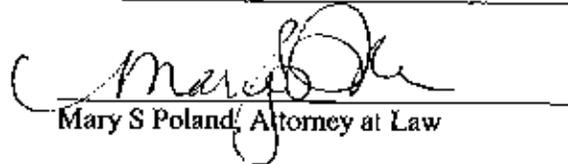
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/13/2009



Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 10/16/2009



Mary S Poland, Attorney at Law

BENTON COUNTY

Date _____

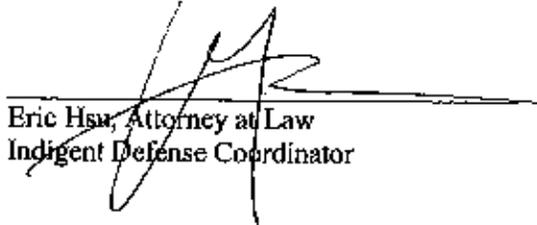
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

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

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, and
FRANKLIN COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES
AGREEMENT BETWEEN BENTON & FRANKLIN COUNTIES ("COUNTIES") AND ATTORNEY
DANIEL STOVERN ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON &
FRANKLIN JUVENILE COURT, EXTENDING THE PROFESSIONAL SERVICES AGREEMENT
FOR A PERIOD OF ONE YEAR.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney
by which Attorney provides indigent defense services in Benton & Franklin Juvenile Court and said
Agreement is, by its terms, to expire on December 31, 2009;

WHEREAS, the original bi-county resolution authorizing the Agreement is the one bearing Benton County
resolution no. 09-410 and Franklin County resolution no. 2009-278.

WHEREAS, in light of the financial difficulties faced by Counties the parties have jointly agreed to postpone
contract renegotiation for one year and extend the Agreement by the corresponding period of time such that it
has a new expiration date of December 31, 2010

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, extending the Agreement by
one year, be executed as presented, and be it further resolved that the above referenced bi-county resolution be
hereby amended to reflect the new expiration date.

Dated this day of, 20

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:
Clerk of the Board

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
BFSC0709DS002J
Between
Benton & Franklin Counties and Daniel Stovern
To Provide Legal Representation to Indigent Juvenile Persons
In Benton & Franklin County Juvenile Courts**

WHEREAS the presently existing Agreement, designed BFSC0709DS002J, between Benton & Franklin Counties and attorney Daniel Stovern expires on December 31, 2009;

WHEREAS the parties desire to continue the contractual relationship they have pursuant to Agreement BFSC0709DS002J but believe that it is not in their mutual best interests to engage in contract negotiations in 2009 given the budgetary difficulties faced by both Benton and Franklin Counties;

WEREAS the parties desire to, instead, engage in contract negotiations in 2010 and implement a new contract by December 31, 2010 and further desire to, in the interim, maintain the terms and conditions of Agreement BFSC0709DS002J as they presently exist;

THEREFORE Agreement BFSC0709DS002J shall be amended as follows:

1. The following language in section 1 "Agreement Term": "through and including the 31st day of December, 2009" shall be stricken and replaced with: "through and including the 31st day of December, 2010."
2. The phrase "2008 and 2009" in section 12(b) "Compensation" shall be stricken and replaced with "2008, 2009 and 2010".

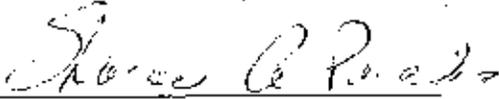
This amendment shall be designated with the following identifier: BFSC0709DS002JA

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

****Signatures on following page****

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date 10/30/09


Sharon Paradis, Administrator
Benton-Franklin Juvenile Court

Date 12/27/09


Daniel Stovern, Attorney at Law

BENTON COUNTY

Date _____

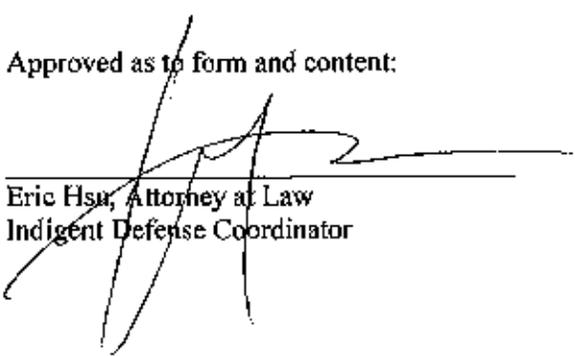
Chairman of the Board

FRANKLIN COUNTY

Date: _____

Chairman of the Board

Approved as to form and content:


Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

mm

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE DISTRICT COURT INDIGENT DEFENSE CONTRACT OF ATTORNEY CATHERINE HARKINS, #BCDC0710CEH002, EXTENDING IT FOR A PERIOD OF 3 YEARS ON EXISTING TERMS AND CONDITIONS.

WHEREAS, the contract for District Court indigent defense services currently effective between Benton County and attorney Catherine Harkins, ("Attorney") designated BCDC0710CEH002 ("Contract") presently is set to expire on December 31, 2010;

WHEREAS, Attorney has offered to extend Contract for an additional three years on the existing terms and conditions and without an increase in compensation such as is often offered to attorneys over time;

WHEREAS, it appears to be in the best interests of Benton County to accept Attorney's offer to extend Contract for three years especially with no increase in compensation over that period of time;

NOW THEREFORE, BE IT RESOLVED THAT the attached Amendment, designated with the identifier: BCDC0810CEH002A2 extending the term of Contract BCDC081CEH002 by three years to expire on December 31, 2013, 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

**Amendment to Professional Services Agreement
#BCDC0710CEH002
Between
Benton County and Catherine E Harkins
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS COUNTY has a continued need for the legal services provided by attorney Catherine E Harkins ("Attorney") pursuant to agreement #BCDC0710CEH002 ("Agreement") and Attorney desires to continue provide such legal services;

WHEREAS the parties wish to extend the expiration of the Agreement by three years while keeping all existing terms and conditions the same;

THEREFORE agreement #BCDC0710CEH002 shall be amended as follows:

1. Section 1 ("Agreement Term") shall be modified in the following manner:

The phrase "31st day of December, 2010" shall be stricken and replaced with "31st day of December, 2013".

2. Section 12 ("Monthly Compensation") shall be modified in the following manner:

A subsection "d." shall be added and shall contain the following language:
"January 1, 2011, to December 31, 2013--\$5843.75 per month"

All remaining provisions in the underlying agreement shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

This amendment shall be designated with the following identifier:
BCDC00710CEH002A2

****Signatures appear on following page****

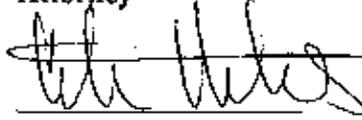
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

Date: _____

Date: 11/10/09

Benton County

Attorney

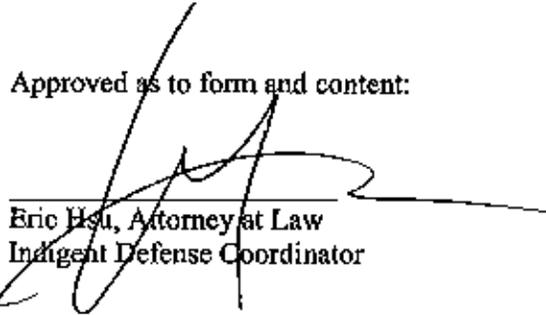


Chairman

Commissioner

Commissioner

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

RESOLUTION

nn

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810SNN002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY SCOTT N NACCARATO ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810SNN002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

Amendment to Professional Services Agreement
BCDC0810SNN002
Between
Benton County and attorney Scott N Naccarato
To Provide Legal Representation to Indigent Persons
In Benton County District Court

WHEREAS the presently existing agreement, designated BCDC0810SNN002 ("Agreement"), between Benton County ("County") and attorney Scott N Naccarato ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810SNN002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810SNN002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

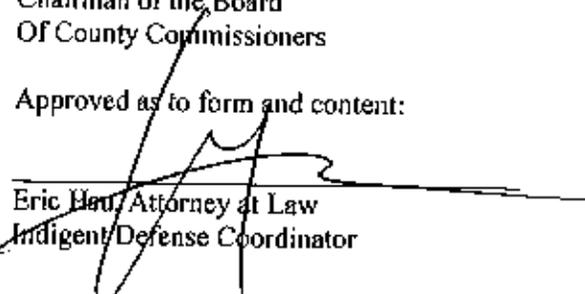
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

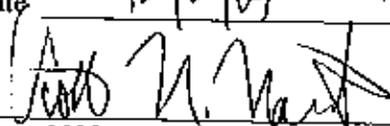
Date _____

Chairman of the Board
Of County Commissioners

Approved as to form and content:


Eric Hart, Attorney at Law
Indigent/Defense Coordinator

Date 12/2/09


Scott N Naccarato, Attorney at Law

RESOLUTION



BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810PY002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY PEYMAN YOUNESI ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810PY002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810PY002**

Between

**Benton County and attorney Peyman Younesi
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810PY002 ("Agreement"), between Benton County ("County") and attorney Peyman Younesi ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810PY002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810PY002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

Date _____

Chairman of the Board
Of County Commissioners

Approved as to form and content:

Eric Hsu, Attorney at Law
Indigent Defense Coordinator

Date 4/10/07 _____

Peyman Younesi, Attorney at Law

RESOLUTION

PP

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810MSP002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY MARY S POLAND ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810MSP002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810MSP002**

Between

**Benton County and attorney Mary S Poland
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810MSP002 ("Agreement"), between Benton County ("County") and attorney Mary S Poland ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810MSP002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810MSP002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

Date _____

Chairman of the Board
Of County Commissioners

Approved as to form and content:

Eric Hsu, Attorney at Law
Indigent Defense Coordinator

Date Nov. 19, 2009

Mary S Poland
Mary S Poland, Attorney at Law

RESOLUTION

99

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810EVR002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY ELISA V RILEY ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810EVR002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810EVR002**

Between

**Benton County and attorney Elisa V Riley
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810EVR002 ("Agreement"), between Benton County ("County") and attorney Elisa V Riley ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810EVR002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810EVR002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

Date _____

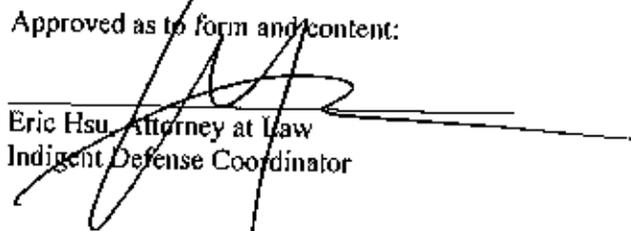
Date 11/18/09

Chairman of the Board
Of County Commissioners



Elisa V Riley, Attorney at Law

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

BFDC0810EVR002A2

RESOLUTION

rr

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810DFK002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY DANIEL F KATHREN ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810DFK002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810DFK002**

Between

**Benton County and attorney Daniel F Kathren
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810DFK002 ("Agreement"), between Benton County ("County") and attorney Daniel F Kathren ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810DFK002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "**340 total case equivalents**" and shall be replaced with: "**360 total case equivalents.**"

This amendment shall be designated with the following identifier: BCDC0810DFK002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

Date _____

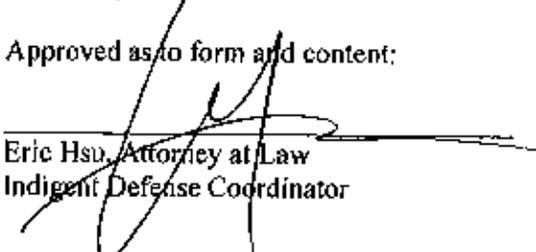
Date 11/23/09

Chairman of the Board
Of County Commissioners



Daniel F Kathren, Attorney at Law

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

BFDC0810DFK002A2

RESOLUTION

SS

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810DEH002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY DAWN E HICKMAN ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010,

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810DEH002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810DEH002
Between
Benton County and attorney Dawn E Hickman
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810DEH002 ("Agreement"), between Benton County ("County") and attorney Dawn E Hickman ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810DEH002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810DEH002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

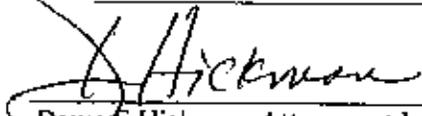
Date _____

Chairman of the Board
Of County Commissioners

Approved as to form and content:

Eric Hay, Attorney at Law
Indigent Defense Coordinator

Date NOV. 19. 2009



Dawn E Hickman, Attorney at Law

RESOLUTION

11

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810AAM002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY ANASTASIA A MCKINLEY ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810AAM002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810AMM002**

Between

**Benton County and attorney Anastasia A McKinley
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810AMM02 ("Agreement"), between Benton County ("County") and attorney Anastasia A McKinley ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810AMM002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810AMM002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

Date _____

Date 11/20/09

Chairman of the Board
Of County Commissioners

Anastasia A McKinley
Anastasia A McKinley, Attorney at Law

Approved as to form and content:

Eric Hsu
Eric Hsu, Attorney at Law
Indigent Defense Coordinator

BFDC0810AMM002A2

RESOLUTION



BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810RGH002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY RAYMOND G HUI ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810RGH002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810RGH002**

Between

**Benton County and attorney Raymond G Hui
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810RGH002 ("Agreement"), between Benton County ("County") and attorney Raymond G Hui ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810RGH002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810RGH002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

Date _____

Date 12-1-09

Chairman of the Board
Of County Commissioners

Raymond G Hui, Attorney at Law

Approved as to form and content:

Eric Hui, Attorney at Law
Indigent Defense Coordinator

BFDC0810RGH002A2

RESOLUTION

VV

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810TJO002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY TRINITY J OROSCO ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810TJO002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

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

**Amendment to Professional Services Agreement
BCDC0810TJO002**

Between

**Benton County and attorney Trinity J Orosco
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810TJO002 ("Agreement"), between Benton County ("County") and attorney Trinity J Orosco ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810TJO002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810TJO002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

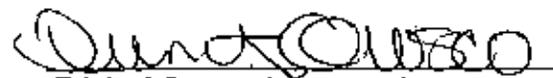
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

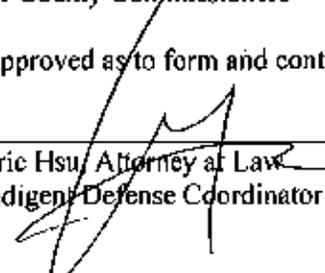
Date _____

Date 11/30/09

Chairman of the Board
Of County Commissioners


Trinity J Orosco, Attorney at Law

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

BFDC0810TJO002A2

RESOLUTION

WW

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, #BCDC0810JAC002, BETWEEN BENTON COUNTY ("COUNTY") AND ATTORNEY JASON A CELSKI ("ATTORNEY") FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT, AMENDING THE MAXIMUM CASELOAD PROVISIONS OF THE CONTRACT FOR 2010.

WHEREAS, Counties presently are party to a professional services agreement ("Agreement") with Attorney by which Attorney provides indigent defense services in Benton County District Court;

WHEREAS, the Agreement has provisions relating to the maximum number of cases that may be assigned to Attorney in a given calendar year and that number has been set at 360 for 2009 and 340 for 2010.

WHEREAS, in light of the fact that Attorney will be receiving an increase in his based contractual compensation for 2010, the parties agree that the maximum number of cases that may be assigned to Attorney in 2010 should stay level with the number designated for 2009, or 360 cases;

NOW THEREFORE, BE IT RESOLVED THAT the attached amendment, designated BCDC0810JAC002A2, designating 360 case equivalents as the maximum number of cases that may be assigned to Attorney in 2010, be executed as presented. Be it further resolved that upon approval of this resolution, the Chairman of Board is authorized to sign the amendment on behalf of the entire Board of Commissioners.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member
Consulting the Board of County Commissioners,
Benton County, Washington

Attest:
Clerk of the Board

**Amendment to Professional Services Agreement
BCDC0810JAC002**

Between

**Benton County and attorney Jason A Celski
To Provide Legal Representation to Indigent Persons
In Benton County District Court**

WHEREAS the presently existing agreement, designated BCDC0810JAC002 ("Agreement"), between Benton County ("County") and attorney Jason A Celski ("Attorney") provides for a maximum of 340 cases to be assigned to Attorney in calendar year 2010;

WHEREAS, in addition to this reduced caseload Agreement also provides for an increase in compensation;

WEREAS Attorney and County agree that, in light of the increase in compensation, it would be fair and equitable for 360 cases to be assigned in calendar year 2010 instead of the reduced caseload of 340 cases;

THEREFORE Agreement BCDC0810JAC002 shall be amended as follows:

1. The following language in 12(c) Compensation shall be stricken: "340 total case equivalents" and shall be replaced with: "360 total case equivalents."

This amendment shall be designated with the following identifier: BCDC0810JAC002A2

All remaining provisions in the underlying agreement, including those previously amended by unrelated to the provisions referenced in this amendment, shall remain the same. Any conflict between the provisions of this Amendment and the provisions of the underlying agreement shall be resolved in favor of the language contained in this Amendment.

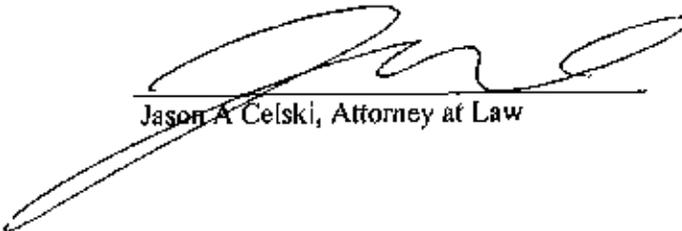
IN WITNESS WHEREOF, the parties hereto have entered into and executed this Amendment on the latest date set forth below:

BENTON COUNTY

Date _____

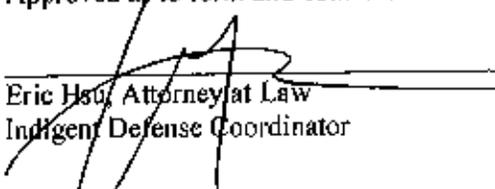
Date 12/2/09

Chairman of the Board
Of County Commissioners



Jason A Celski, Attorney at Law

Approved as to form and content:



Eric Hsu, Attorney at Law
Indigent Defense Coordinator

BFDC0710JAC002A2

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 14 Dec 2009 Subject: Badger Mountain Memo Date: 09 Dec 2009 Prepared By: AJF Reviewed By: LSK	Execute Contract X Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

XX

SUMMARY

This will conclude the process of adding 25 acres known as the "Wagner Property" to the Badger Mountain Centennial Preserve.

BACKGROUND

The Badger Mountain Centennial Preserve was created in June 2005 by purchasing 570 acres of popular hiking/horse riding land. Benton County paid \$25,000 of the original \$695,000 purchase price.

The Friends of Badger Mountain organization (Friends) has been our primary stewardship partner for the Preserve, building and maintaining the trails there. As the Board is aware, Friends has stated for a long time that they would like to acquire and add to the Preserve, three 25-acre parcels on the south face of Badger Mountain to complete the Preserve (see map). These three parcels are collectively referred to as the "south parcels".

Friends has made it clear that they intend to raise all funds needed to complete the purchases and associated expenses.

The three south parcels have three separate owners. Friends has established a relationship with Mr. Tyler Wagner, owner of the middle parcel, and so they decided to pursue that parcel first. We refer to this parcel as the "Wagner Property". In the previous discussions leading up to today's agenda item, this is the property staff has been discussing with the Board.

Friends has reached an agreement with Mr. Wagner on a purchase price (\$30,000), and both parties are ready to proceed with the transaction.

One of the requirements the County has before it will purchase/accept property is the completion of an environmental site assessment (ESA). This report lets us know if there are any pollution/contamination or other concerns with the property. This report was completed in October by Richland-based "Environmental Compliance Associates". As expected, the report came out clean (summary attached), as the property's only previous use has been rangeland.

The ESA was very thorough and did note two items, and the Prosecutor, upon review of the document, mentioned in a memo (11/23/2009) that we may want to follow-up on those two items:

1. Issue – There were about a dozen or so vehicle tires on the property. Follow-up – *current owner has removed the tires.*
2. Issue – Ownership of underlying mineral rights is unclear. Follow-up – *Assessor's Office staff stated that their records indicated that the "Yakima Sheep Company" is the owner of gas and mineral rights on this property. YSC also owns the gas and mineral rights on the existing Preserve. Since there are no plans for this property for anything more than a foot trail, access to gas and mineral rights would not be encumbered. Further clarification has been requested from Chicago Title Company.*

Three documents have been prepared:

1. A resolution authorizing the purchase of the Wagner Property.
2. An Agreement between Benton County and Friends of Badger Mountain stating the obligations of each party. Namely, that Benton County will incorporate the property into the existing Preserve and that Friends will pay all of the costs of acquisition.
3. An Agreement for the Sale of Real Property between Benton County and Tyler & Lindsey Wagner.

FISCAL IMPACT

There are no costs incurred by the County. The environmental site assessment was paid to the contractor by the County because the contractual relationship was between those two parties, but Friends of Badger Mountain is reimbursing that full amount back to the County. All other costs related to the purchase including escrow expenses, title insurance, and any other fees and closing costs are being paid directly by Friends.

ATTACHMENTS

- Resolution for the Wagner Property
- Agreement – Benton County / Friends of Badger Mountain (tan)
- Agreement – Benton County / Tyler & Lindsey Wagner (gray)
- Map
- Summary from the environmental site assessment
- Original request letter from Friends of Badger Mountain
- Original Resolution creating Badger Mountain Centennial Preserve

#

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF BADGER MOUNTAIN CENTENNIAL PRESERVE – ACQUISITION OF ADDITIONAL PROPERTY

WHEREAS, Benton County created the "Badger Mountain Centennial Preserve" (Preserve) in 2005 (Resolution 05 273) to provide for passive recreation, habitat preservation, aesthetic values, and a "bank" for mitigation of future shrub-steppe habitat disturbance; and,

WHEREAS, Benton County has been asked by the "Friends of Badger Mountain" organization to accept a donation toward the acquisition of additional property that is adjacent to the existing Preserve; and,

WHEREAS, the terms of said donation and property acquisition are detailed in an Agreement between Benton County and the Friends of Badger Mountain and in an Agreement for the Sale of Real Property between Benton County and Tyler & Lindsey Wagner, respectively. In summary, Friends of Badger Mountain will pay all costs associated with the purchase of said property by Benton County, and Benton County will thereafter combine said property into the existing Badger Mountain Centennial Preserve; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners that the acquisition of property owned by Tyler & Lindsey Wagner, totaling 25 acres with parcel identification number 1-2898-300-0002-002 is approved, and that the Chairman is authorized to sign the Agreement for the Sale of Real Property; and,

BE IT FURTHER RESOLVED, that the Agreement between Benton County and the Friends of Badger Mountain regarding funding and administration obligations is also approved, and that the Chairman is authorized to sign the Agreement; and,

BE IT FURTHER RESOLVED, that when received by Benton County, the three new parcels will be combined into the Badger Mountain Centennial Preserve and administered by the Benton County Facilities and Parks Department in their "natural condition" as part of the Preserve. The additional acreage will be "banked" by Benton County for use as possible mitigation for future shrub-steppe disturbance, bringing the total banked acreage of the Preserve to 599 acres.

Dated this _____ day of _____, 2009.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

original: file
cc: Auditor, Parks, Park Board, Prosecutor (Ozuna),
Friends of Badger Mountain, Tyler & Lindsey Wagner

Prepared by: A.J. Fyall

FRIENDS OF BADGER MOUNTAIN (FOBM)
AND
BENTON COUNTY WASHINGTON
AGREEMENT
FOR
BADGER MOUNTAIN SOUTH PARCEL AQUISITION

1.0 PARTIES TO THE AGREEMENT

This Agreement (Agreement) is made by and between the **FRIENDS OF BADGER MOUNTAIN (FOBM)**, a non-profit Washington State corporation, and **BENTON COUNTY (the COUNTY)**, a municipal corporation and political subdivision of the State of Washington.

2.0 PURPOSE

The purpose of this Agreement is to memorialize the understandings and commitments of the parties concerning the acquisition and preservation by the COUNTY of one parcel of land totaling 25 acres total area located within Benton County on the South slope of Badger Mountain, more particularly described by the legal description on "Exhibit A" attached and incorporated herein (the "Badger Property").

This acquisition by the COUNTY of the Badger Property is hereinafter referred to as "the Acquisition."

The purchase price for the Badger Property is \$30,000.00. FOBM agrees to contribute the full amounts set forth below related to the costs associated with the Acquisition. Upon completion of the Acquisition, the COUNTY will be the owner of the Badger Property and assume full responsibility for ownership, operation, and maintenance of the Badger Property.

The Acquisition by the COUNTY is at the request of FOBM, which has an interest and desire to have the Badger Property transferred from private ownership to public ownership so that it may be retained for use by the public in its natural state for park purposes.

NOW, THEREFORE, FOBM and the COUNTY agree as follows:

3.0 DUTIES OF THE PARTIES

A. BADGER PROPERTY ACQUISITION CONTRIBUTIONS

1. **FOBM agrees to pay \$30,000.00 to an escrow holder designated by the COUNTY to satisfy the total purchase price of the Badger Property.**
2. **FOBM agrees to pay sufficient funds to an escrow holder designated by the COUNTY to pay in full the cost of the title insurance the COUNTY requires prior to the Acquisition and all escrow closing fees for this Acquisition.**
3. **FOBM agrees to pay to the COUNTY \$1,750.00 as reimbursement for the Phase I Environmental Assessment on the Badger Property within thirty (30) days of receiving an invoice indicating this work has been completed.**

B. PAYMENT, USE OF FOBM FUNDS, AND RETURN OF FOBM FUNDS

After the Agreement of Sale of Real Property has been signed by the COUNTY and Mr. Wagner with respect to the Badger Property, FOBM agrees to deliver to the designated escrow holder funds in the amount of \$30,000 promptly upon request by the COUNTY. Upon request by the COUNTY, FOBM also agrees to promptly deliver to the designated escrow holder funds sufficient to pay in full the title insurance and escrow closing fees for this Acquisition. Such funds are to be used solely for the purpose of acquiring full fee simple absolute title to the Badger Property, subject to all standard rights and reservations stated in the commitment for title insurance; and preserving it in accordance with a "natural park" designation as now or hereafter defined by the Benton County Comprehensive Land Use Plan (natural park purposes). If the Acquisition is not completed by December 31, 2009 in accordance with Section 3.0(C) below and such funds are released from escrow or if the filing required by Section 3.0(D) below is not completed after the close of the Acquisition and within seven (7) days of written request by FOBM for such filing to be made, the COUNTY will return FOBM's contribution of \$30,000 to FOBM. The COUNTY will also return the funds paid by FOBM for title insurance and escrow fees if such fees have not been earned by the providers of such services and are released by the designated escrow holder. The COUNTY is under no obligation under any circumstances to return the funds paid by FOBM to the COUNTY as reimbursement for the Phase I Environmental Assessment of the Subject Property.

C. BADGER PROPERTY OWNERSHIP

The COUNTY, at the conclusion of the Acquisition, will become the sole owner of the Badger Property. The COUNTY, working cooperatively with FOBM, the escrow/title companies, and others as appropriate, will take all reasonable steps to complete such actions and filings as required to finalize the Acquisition and acquire title to the Badger Property by December 31, 2009.

D. PRESERVATION AND USE OF BADGER PROPERTY

As a condition of assuming ownership of the Badger Property, the COUNTY shall incorporate the Badger Property into the Benton County Badger Mountain Centennial Preserve and use the Badger Property exclusively for natural park purposes. During its ownership, the COUNTY will not make and will take reasonable efforts to prevent others from making any use of the Badger Property, or any part of it, which is inconsistent with natural park purposes, unless FOBM consents in writing to an inconsistent use.

Furthermore, the COUNTY agrees to file the "Agreement Regarding Preservation and Use of Real Property," which is attached as Exhibit B and incorporated herein, with and at the same time as it files the appropriate title papers with the Benton County Auditor's Office, to restrict the use of the Badger Property, in perpetuity, for natural park purposes.

E. OWNERSHIP, OPERATION AND MAINTENANCE

The COUNTY, as the owner of the Badger Property, will take full responsibility for the ownership, operation and maintenance of the Badger Property.

4.0 PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement will be from the date of execution through January 31, 2010, unless the parties otherwise agree in writing in accordance with Section 7.0.

5.0 CHANGES AND MODIFICATIONS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be valid and binding unless they are in writing and signed by the parties hereto.

6.0 CONTRACT MANAGEMENT

The individuals listed below shall be considered key personnel for the administration of the Agreement:

FOBM/BENTON COUNTY AGREEMENT
CONTRACT Title: Badger Mountain South Parcel Acquisition

COUNTY:

Adam J. Fyall,
Community Development Coordinator

FOBM:

Sharon Grant,
FOBM President

7.0 TERMINATION

The COUNTY may terminate this Agreement upon thirty (30) calendar days prior written notification to FOBM. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

8.0 GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the law of the State of Washington.

9.0 ENTIRE AGREEMENT

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

10.0 SURVIVAL

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive, including but not limited to the section titled Section 3.0 (Duties of the Parties).

11.0 FILING WITH COUNTY AUDITOR

Upon the closing of the Acquisition, the COUNTY agrees to file the "Agreement Regarding Preservation and Use of Real Property," which is attached as Exhibit B and incorporated herein, with the Benton County Auditor's Office, to restrict the use of the Badger Property, in perpetuity, for natural park purposes.

12.0 RECAPTURE

In the event that the COUNTY fails to expend FOBM funds under this Agreement in accordance with state law and this Agreement, FOBM reserves the right to recapture \$30,000 of such funds to compensate FOBM for the noncompliance. Such right of recapture shall exist for a period not to exceed six years following the expiration or termination of this Agreement.

FOBM/BENTON COUNTY AGREEMENT
CONTRACT Title: Badger Mountain South Parcel Acquisition

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year specified below.

FRIENDS OF BADGER MOUNTAIN

By: Sharon A. Grand

Title: President

Date: Oct 15, 2009

BENTON COUNTY

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Ryan L. Brown
Deputy Prosecuting Attorney

EXHIBIT A

That real property located in Benton County Washington, consisting of the following described tax parcel:

Parcel ID Number: 1-2898-300-0002-002

Legal Description of Subject Property:

128983000002002 - THE EAST 832.72 FEET OF THE WEST 1726.39 FEET OF THE FOLLOWING DESCRIBED PROPERTY: THAT PORTION OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING SOUTHERLY AND WESTERLY OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID SECTION TO A POINT 2,000 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M. EXCEPT THAT PORTION OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE TRUE POINT OF BEGINNING WHICH IS THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; THENCE NORTH 00 DEGREES 19' 19" WEST ALONG THE WEST LINE OF SAID SECTION 28 A DISTANCE OF 860.62 FEET; THENCE SOUTH 57 DEGREES 51' 20" EAST A DISTANCE OF 305.45 FEET; THENCE SOUTH 64 DEGREES 51' 20" EAST A DISTANCE OF 1584.41 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 09' 21" WEST ALONG SAID SOUTH LINE A DISTANCE OF 1688.24 FEET TO THE TRUE POINT OF BEGINNING; AND EXCEPT ANY PORTION THEREOF LYING WITHIN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON. (ALSO KNOWN AS PARCEL "B" OF SURVEY NO. 3147). RESERVING UNTO THE GRANTOR, THEIR HEIRS, SUCCESSORS AND/OR ASSIGNS A 30 FOOT EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY: THE SOUTH LINE OF SAID EASEMENT IS DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF PARCEL B OF SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAE 3147, THENCE SOUTH 89 DEGREES 09' 26" WEST 37.46 FEET; THENCE NORTH 64 DEGREES 05' 20" WEST 880.09 FEET TO THE TERMINUS OF SAID EASEMENT. SAID EASEMENT IS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL "A" OF SURVEY NO. 3147, RECORDED UNDER AUDITOR'S RECORDING NO. 2003.002441, DESCRIBED AS FOLLOWS: THE WEST 893.67 FEET OF THE FOLLOWING DESCRIBED PARCEL: THAT PORTION OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING SOUTHERLY AND WESTERLY OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID SECTION TO A POINT 2,000 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; EXCEPT THAT PORTION OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE TRUE POINT OF BEGINNING WHICH IS THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; THENCE NORTH 00 DEGREES 19' 19" WEST ALONG THE WEST LINE OF SAID SECTION 28 A DISTANCE OF 860.62 FEET; THENCE SOUTH 57 DEGREES 51' 20" EAST A DISTANCE OF 305.45 FEET; THENCE SOUTH 64 DEGREES 51' 20" EAST A DISTANCE OF 1584.41 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 09' 21" WEST ALONG SAID SOUTH LINE A DISTANCE OF 1688.24 FEET TO THE TRUE POINT OF BEGINNING; AND EXCEPT ANY PORTION THEREOF LYING WITHIN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON. SWD, ADDITOR'S FILE NO. 2003-022172 (05/14/2003).

FOBM/BENTON COUNTY AGREEMENT
CONTRACT Title: Badger Mountain South Parcel Acquisition

EXHIBIT B

AGREEMENT REGARDING PRESERVATION AND USE OF REAL PROPERTY

PARTIES

This Agreement is entered into by and between the Friends of Badger Mountain (FOBM), a non-profit Washington State corporation, and Benton County (the County), a municipal corporation and political subdivision of the State of Washington, for the purpose of preserving in accordance with a "natural park" designation as now or hereafter defined by the Benton County Comprehensive Land Use Plan (natural park purposes) in perpetuity one parcel of land totaling 25 acres total area in Benton County, referred to in this Agreement as "the Subject Property", more particularly described as follows:

That real property located in Benton County, Washington, consisting of the following described tax parcel:

Parcel ID Number: 1-2898-300-0002-002

Legal Description of the Subject Property:

128983000002002 - THE EAST 832.72 FEET OF THE WEST 1726.39 FEET OF THE FOLLOWING DESCRIBED PROPERTY: THAT PORTION OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING SOUTHERLY AND WESTERLY OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID SECTION TO A POINT 2,000 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M. EXCEPT THAT PORTION OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE TRUE POINT OF BEGINNING WHICH IS THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; THENCE NORTH 00 DEGREES 19' 19" WEST ALONG THE WEST LINE OF SAID SECTION 28 A DISTANCE OF 860.62 FEET; THENCE SOUTH 57 DEGREES 51' 20" EAST A DISTANCE OF 305.45 FEET; THENCE SOUTH 64 DEGREES 51' 20" EAST A DISTANCE OF 1584.41 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 09' 21" WEST ALONG SAID SOUTH LINE A DISTANCE OF 1688.24 FEET TO THE TRUE POINT OF BEGINNING; AND EXCEPT ANY PORTION THEREOF LYING WITHIN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON. (ALSO KNOWN AS PARCEL "B" OF SURVEY NO. 3147). RESERVING UNTO THE GRANTOR, THEIR HEIRS, SUCCESSORS AND/OR ASSIGNS A 30 FOOT EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY: THE SOUTH LINE OF SAID EASEMENT IS DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF PARCEL B OF SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAE 3147, THENCE SOUTH 89 DEGREES 09' 26" WEST 37.46 FEET; THENCE NORTH 64 DEGREES 05' 20" WEST 880.09 FEET TO THE TERMINUS OF SAID EASEMENT. SAID EASEMENT IS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL "A" OF SURVEY NO. 3147, RECORDED UNDER AUDITOR'S RECORDING NO. 2003.002441, DESCRIBED AS FOLLOWS: THE WEST 893.67 FEET OF THE

FOBM/BENTON COUNTY AGREEMENT

CONTRACT Title: Badger Mountain South Parcel Acquisition

FOLLOWING DESCRIBED PARCEL: THAT PORTION OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING SOUTHERLY AND WESTERLY OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID SECTION TO A POINT 2,000 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; EXCEPT THAT PORTION OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE TRUE POINT OF BEGINNING WHICH IS THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; THENCE NORTH 00 DEGREES 19' 19" WEST ALONG THE WEST LINE OF SAID SECTION 28 A DISTANCE OF 860.62 FEET; THENCE SOUTH 57 DEGREES 51' 20" EAST A DISTANCE OF 305.45 FEET; THENCE SOUTH 64 DEGREES 51' 20" EAST A DISTANCE OF 1584.41 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 09' 21" WEST ALONG SAID SOUTH LINE A DISTANCE OF 1688.24 FEET TO THE TRUE POINT OF BEGINNING; AND EXCEPT ANY PORTION THEREOF LYING WITHIN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON. SWD, AUDITOR'S FILE NO. 2003-022172 (05/14/2003).

RECITALS

WHEREAS, FOBM and the County have entered into an agreement to facilitate the acquisition of the Subject Property by the County, and

WHEREAS, pursuant to such agreement FOBM agreed to contribute \$30,000 to Benton County to pay for the purchase of the Subject Property in full, and

WHEREAS, in consideration of FOBM's contribution of \$30,000 and as a condition of assuming ownership, Benton County agreed to own and incorporate the Subject Property into the Benton County Badger Mountain Centennial Preserve, and take reasonable steps to restrict use of the Subject Property in perpetuity for natural park purposes.

NOW THEREFORE, FOBM and the County agree as follows:

1. During its ownership, the County will not make or permit to be made any use of the Subject Property or any part of it that is inconsistent with the use of the property for natural park purposes. In particular, the County shall not allow the Subject Property to be used for residential, commercial or industrial purposes. Public access to all or a portion of the Subject Property may be permitted, subject to reasonable restrictions on time, number and frequency of such access.
2. The County may only transfer ownership of the Subject Property via an instrument that expressly incorporates the restrictions set forth in this Agreement, and only to an organization or entity that can demonstrate a commitment to own and manage the Subject Property for the uses and purposes set forth above and in compliance with the terms and conditions of the agreement between FOBM and the County cited above.
3. In enforcing this Agreement, the parties shall have all remedies available under law or equity, including the right of specific performance.

FOBM/BENTON COUNTY AGREEMENT
CONTRACT Title: Badger Mountain South Parcel Acquisition

4. This Agreement shall be construed and interpreted in accordance with the law of the State of Washington. The venue of any action arising from or related to this Agreement shall be exclusively in the Superior Court of Benton County.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

FRIENDS OF BADGER
MOUNTAIN

BENTON COUNTY

By: Sharon K. Grant By: _____

Title: President Title: _____

Date: Oct 15, 2009 Date: _____

AGREEMENT OF SALE OF REAL PROPERTY

MR. TYLER WAGNER AND MRS. LINDSAY WAGNER

And

COUNTY OF BENTON, WASHINGTON

This Agreement for Sale of Real Property is made this _____ day of November, 2009, between BENTON COUNTY, a political subdivision of the State of Washington, ("Buyer"), MR. TYLER WAGNER and MRS. LINDSAY WAGNER (the Wagners are collectively referred to hereafter as "Seller").

RECITALS

A. The addresses and telephone numbers of the parties to this agreement are as follows. Telephone numbers are indicated for information only.

BUYER:

BENTON COUNTY
Benton County Commissioners' Office
7122 West Okanogan Place, Building A
Kennewick, WA 99336-2359

Attn: Adam Fyall
Tel: (509) 736-3053

SELLER:

Tyler and Lindsay Wagner
PO Box 4292
West Richland, WA 99353
Cell: (509) 713-0990

B. Seller is the owner of certain real property located in Benton County, Washington, more particularly, a twenty five acre parcel on the south slope of Badger Mountain and described on Exhibit A attached hereto and hereby incorporated by this reference.

C. Said real property described on Exhibit A, together with any rights, title, and interest in and to any rights, licenses, privileges, reservations, easements, pertinent to said real property, improvements, fixtures, timber, water, and minerals located thereon, and any and all rights appurtenant thereto owned or hereafter acquired by Seller, including but not limited to timber rights, water rights, grazing rights, access rights and mineral rights, shall be referred to in this Agreement as "the Subject Property."

D. Buyer wishes to purchase the Subject Property from Seller and Seller wishes to sell the Subject Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS

1. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Subject Property on the terms and conditions set forth herein.

2. **Purchase Terms.**

(a) **Price.** The purchase price for the Subject Property shall be thirty thousand dollars (\$30,000) for the purchase of the Subject Property.

(b) **Method of Payment.** The purchase price shall be payable in cash, which cash shall be deposited in escrow at or prior to the close of escrow. Friends of Badger Mountain shall deliver to the Escrow Holder funds in the amount of \$30,000 to pay the purchase price in full.

(c) **Deed.** Seller shall deposit into escrow the duly executed and acknowledged deed referenced in Section 6; a duly executed and acknowledged Real Estate Excise Tax Affidavit; and a non-foreign affidavit pursuant to Section 1445 of the Internal Revenue Code.

3. **Condition Precedent to Buyer's Obligation to Purchase Subject Property.**

Buyer shall have no obligation to purchase the Subject Property under this Agreement unless and until:

(a) Buyer shall have received, reviewed and approved a copy of the Phase I environmental site assessment of the Subject Property performed by a qualified independent environmental consultant retained by Buyer;

(b) The Friends of Badger Mountain, a non-profit Washington State corporation, has delivered to the Escrow Holder funds in the amount of \$30,000 to pay the purchase price in full and funds necessary to purchase the title insurance required by Section 7 and to satisfy all escrow fees as stated in Section 11 below;

(c) All of Seller's representations and warranties set forth herein are true and correct as of the closing date;

(d) Seller has paid all real estate excise taxes due as a result of this sale, if any, and all ad valorem taxes, penalties and interest due and owing on the Subject Property; and

(e) Buyer has received approval from the Benton County Board of Commissioners to purchase the Subject Property.

4. **Condition of the Subject Property.**

Buyer acknowledges that it has had or will have the opportunity to conduct an investigation or inspection of the Subject Property, and agrees to accept the same "as is" in its present condition, except (i) as such condition may be affected by the representation and warranties made by the Seller to Buyer with regard to the Subject Property in Section 9 of this Agreement, and (ii) as such condition may be affected by the warranties arising under the deed conveying title from the Seller to Buyer.

5. **Escrow.** Upon execution of this Agreement, or as soon thereafter as is convenient, the parties shall open an escrow account with Benton Franklin Title Company ("Escrow Holder") for the purpose of closing the purchase and sale of the Subject Property. Escrow shall close on or before December 31, 2009, provided that closing will be subject to Seller being in a position to convey title to the Subject Property and subject to the satisfaction of the conditions precedent set forth in Section 3 above.

6. **Title.** Fee simple title shall be conveyed to Buyer by delivery of a duly executed and acknowledged statutory warranty deed, free and clear of all title defects, liens encumbrances, deeds of trust, and mortgages except the standard printed exceptions on the form of title insurance policy issued pursuant to Section 7. If the title cannot be made so insurable prior to the closing date, then Buyer may elect to terminate the Agreement with a full refund to the Buyer of all monies paid into escrow prior to such termination.

7. **Title Insurance.** Buyer shall be provided with a standard owner's policy of title insurance in the full amount of the purchase price insuring that title to the Subject Property is vested in Buyer upon close of escrow subject only to the exceptions noted in Section 6. The policy shall be dated as of the closing date and paid for by the Friends of Badger Mountain, a non-profit Washington State corporation. Buyer shall receive a preliminary commitment for said insurance at least seven (7) days before closing.

8. **Possession.** Possession shall be delivered to Buyer on close of escrow.

9. **Seller's Representations.** Seller makes the following representations and will notify the Buyer in writing prior to closing if any such representations later become not true:

(a) Seller has full power and authority to enter into this Agreement and the persons signing the Agreement for Seller have full power and authority to sign for Seller and to bind them to this agreement and, at closing, will have full power and authority to sell, transfer and convey a right, title and interest in and to the Subject Property in accordance with this Agreement.

(b) Seller is not a "foreign person" and is not otherwise subject to back-up withholding of tax under Section 1445 of the Internal Revenue Code.

(c) The conveyance of the Subject Property in accordance with this Agreement will not violate any provisions of state or local subdivision laws.

(d) Within Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Subject Property, or any portion thereof, affect the value of the Subject Property, or any portion thereof, or subject an owner of the Subject Property, or any portion thereof, to liability.

(e) Within the Seller's knowledge, there is no:

- (i) Intended public improvements or private rights which will result in the creation of any liens upon the Subject Property securing an obligation to pay money.
- (ii) Uncured notices which have been served upon Seller from any government agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Subject Property or any portion thereof.
- (iii) Actual or impending mechanics liens against the Subject Property or any portion thereof.
- (iv) Notices or other information giving Seller reason to believe that any conditions existing on the Subject Property or in the vicinity of the Subject Property or in ground or surface waters associated with the Subject Property may have a material effect on the value of the Subject Property or subject the owner of the Subject Property to potential liability under environmental laws.
- (v) Buildings or other improvements located on the Subject Property, nor any written or oral leases affecting any part of it.

(f) There is no lease, license, permit, option or right of first refusal which affects the Subject Property or any portion thereof which will not be terminated by closing.

(g) Within Seller's knowledge, and except for those matters identified in the Phase I Environmental Site Assessment described above, there is no condition at, on, under or related to the Subject Property presently or potentially posing a hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any hazardous substance on the Subject Property nor any release or threatened release of any hazardous substance, pollutant or contaminant into, upon or over the Subject Property or into or upon ground or surface water at the Subject Property. Within Seller's knowledge, no hazardous substance is now or ever has been stored on the Subject Property in underground tanks,

pits or surface impoundments. "Hazardous substance" means any hazardous or toxic substance, material or waste, including but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101), or by the United States Environmental Protection Agency as hazardous substances (40 CFR pt 302 and amendments thereto), or in the Washington Hazardous Waste Management Act (Ch.70.105D RCW), or the Model Toxics Control Act (Chs.70.105D RCW, 82.21 RCW) petroleum products and their derivatives.

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give written notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Seller shall be obligated to remedy the problem before the close of escrow. If the problem is not remedied before the close of escrow, Buyer or Seller may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property, or (b) defer the closing date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. **Buyer's Representations**. Buyer makes the following representations:

(a) Buyer has all requisite authority and power to enter into this Agreement.

(b) Neither Buyer's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any City, County, State or Federal Codes or Ordinances, or other governmental regulations.

The representations and warranties of Buyer contained herein shall be effective through the close of escrow.

11. **Closing Expenses and Fees**. The escrow fee shall be paid by the Friends of Badger Mountain. Friends of Badger Mountain will pay the premium on the title policy referred to in Paragraph 7. Real estate excise taxes, if any, with respect to this sale and all ad valorem taxes, penalties and interest due on the Subject Property shall be paid by Seller as of the close of escrow. Any other fees and charges in connection with this sale, if any, shall be allocated in accordance with the customary practices in Benton County, Washington.

12. **Notices**. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier or Express Mail, or by first class mail,

postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

13. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.

14. **Time of the Essence.** Time is of the essence of this Agreement.

15. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

16. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

17. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Seller and Buyer pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

19. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

20. **Governing Law.** This Agreement shall be governed by the construed in accordance with the laws of the State of Washington.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

BUYER:

BENTON COUNTY

By: _____

Title: _____

Date: _____

SELLER:

Tyler J Wagner

By: TJ Wagner

Title: SELLER

Date: 7/17/09

State of Washington
County of Benton

Signed and sworn to before me on 17th of July
by Tyler J. Wagner.

I certify that I know or have satisfactory evidence that Max Benitz, Jr. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chairman of the Board of Benton County Commissioners to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

[Signature]

NOTARY PUBLIC
Appt. Exp. May 23, 2012



SELLER:

Lindsay Wagner

By: Lindsay Wagner

Title: Seller

Date: 7/17/09

Dated: _____

NOTARY PUBLIC
Appt. Exp. _____

Signed and sworn to before me on
17th of July by Lindsay Wagner.

[Signature]

NOTARY PUBLIC
Appt. Exp. May 23, 2012



EXHIBIT A

That real property located in Benton County Washington, consisting of the following described tax parcel:

Parcel ID Number: 1-2898-300-0002-002

Legal Description of Subject Property:

128983000002002 - THE EAST 832.72 FEET OF THE WEST 1726.39 FEET OF THE FOLLOWING DESCRIBED PROPERTY: THAT PORTION OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING SOUTHERLY AND WESTERLY OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID SECTION TO A POINT 2,000 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M. EXCEPT THAT PORTION OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE TRUE POINT OF BEGINNING WHICH IS THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; THENCE NORTH 00 DEGREES 19' 19" WEST ALONG THE WEST LINE OF SAID SECTION 28 A DISTANCE OF 860.62 FEET; THENCE SOUTH 57 DEGREES 51' 20" EAST A DISTANCE OF 305.45 FEET; THENCE SOUTH 64 DEGREES 51' 20" EAST A DISTANCE OF 1584.41 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 09' 21" WEST ALONG SAID SOUTH LINE A DISTANCE OF 1688.24 FEET TO THE TRUE POINT OF BEGINNING; AND EXCEPT ANY PORTION THEREOF LYING WITHIN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON. (ALSO KNOWN AS PARCEL "B" OF SURVEY NO. 3147). RESERVING UNTO THE GRANTOR, THEIR HEIRS, SUCCESSORS AND/OR ASSIGNS A 30 FOOT EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY: THE SOUTH LINE OF SAID EASEMENT IS DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF PARCEL B OF SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAE 3147, THENCE SOUTH 89 DEGREES 09' 26" WEST 37.46 FEET; THENCE NORTH 64 DEGREES 05' 20" WEST 880.09 FEET TO THE TERMINUS OF SAID EASEMENT. SAID EASEMENT IS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL "A" OF SURVEY NO. 3147, RECORDED UNDER AUDITOR'S RECORDING NO. 2003.002441, DESCRIBED AS FOLLOWS: THE WEST 893.67 FEET OF THE FOLLOWING DESCRIBED PARCEL: THAT PORTION OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING SOUTHERLY AND WESTERLY OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID SECTION TO A POINT 2,000 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; EXCEPT THAT PORTION OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE TRUE POINT OF BEGINNING WHICH IS THE SOUTHWEST CORNER OF SAID SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M.; THENCE NORTH 00 DEGREES 19' 19" WEST ALONG THE WEST LINE OF SAID SECTION 28 A DISTANCE OF 860.62 FEET; THENCE SOUTH 57 DEGREES 51' 20" EAST A DISTANCE OF 305.45 FEET; THENCE SOUTH 64 DEGREES 51' 20" EAST A DISTANCE OF 1584.41 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 09' 21" WEST ALONG SAID SOUTH LINE A DISTANCE OF 1688.24 FEET TO THE TRUE POINT OF BEGINNING; AND EXCEPT ANY PORTION THEREOF LYING WITHIN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON. SWD, AUDITOR'S FILE NO. 2003-022172 (05/14/2003).



BENTON COUNTY
GEOGRAPHIC
INFORMATION
SYSTEMS
DEPARTMENT

Legend



Boundary
Holding
Road

Parcel
Road

Orthophoto from April 2004

Parcel # 12885300000002
WAGNER, TYLER J &
LINDSAY (25 Acres)



2.0 Summary

During October 17-18, 2009, ECA performed the site reconnaissance portion of a Phase 1 ESA regarding all accessible areas of the land contained within the boundaries of Tax Parcel 128983000002002 located in Benton County, Washington. The Property consists of 25 acres of undeveloped land.

At the time of the site reconnaissance, the Property comprised a rhombus-shaped parcel of undisturbed grass and sage-covered, treeless open land. Interviews with prior / current owners and county officials, as well as reviews of historical maps and aerial photographs, reveal that the Property has always been undeveloped land.

Operations in the general vicinity of the Property include ridge top communications towers, hiking trails, apple orchards and unpaved access roads.

This report summarizes independent conclusions representing the best professional judgment of ECA, based upon conditions and information available at the time of this assessment. All information pertaining to the past and present condition of the Property is assumed to be correct and complete.

2.1 Findings and Conclusions

Adjacent Properties

No adjacent properties were identified that are anticipated to have an adverse impact upon the environmental integrity of the Property (Section 4.2).

No further action or investigation is recommended regarding adjacent properties at the Property.

Physical Setting

No topographic, wetlands, flood zone, soils, geologic or hydrogeologic issues were identified that are anticipated to have an adverse impact upon the environmental integrity of the Project (Section 4.3).

No further action or investigation is recommended regarding adjacent properties at the Property.

Historical Review

The review of the historical data available for the Property revealed no evidence of any recognized adverse environmental conditions or environmental liens (Section 5.0).

No additional action or investigation is recommended regarding the historical use of the Property.

Operational Activities

The Property is undeveloped land and does not have operational activities of any kind (Section 6.1).

No further action or investigation is recommended regarding the operational activities at the Property.

Hazardous Materials

The Property is undeveloped land and does not utilize hazardous materials of any kind (Section 6.2).

No further action or investigation is recommended regarding hazardous materials at the Property.

Waste Generation

The Property is undeveloped land and is therefore not involved in the generation, treatment, storage, or disposal of hazardous or medical wastes (Section 6.3).

No further action or investigation is recommended regarding the storage and disposal of wastes generated at the Property, with the exception of the recommendation in Section 2.2.

Polychlorinated Biphenyls (PCBs)

The Property does not currently have any utility-owned transformers on its electric power line, nor does it have any other electrical equipment with the potential to contain dielectric or hydraulic fluid (Section 6.4).

No further action or investigation is recommended regarding PCBs at the Property.

Storage Tanks and Pipelines

No evidence of onsite aboveground or underground storage tanks or evidence of above or below ground transmission pipelines was observed in the vicinity of the Property.

No further action or investigation is recommended regarding storage tanks and pipelines at the Property.

Surface Areas

No significant issues associated with surface areas were identified on the Property (Section 6.8).

No further action or investigation is recommended regarding surface areas at the Property.

Business Environmental Risk

No factors were observed onsite or in the vicinity of the Property that could adversely impact the value, usability or environmental integrity of the Property (Section 6.11).

No further action or investigation is recommended regarding business environmental risk at the Property.

Regulatory Review

The review of all available regulatory databases, concerning properties identified within the radius areas researched, indicated that the Property is not located on any of the databases evaluated and that none of the listed sites are anticipated to have an adverse impact upon the Property. In addition, the review did not identify the Property as being involved in the generation, treatment, storage, or disposal of hazardous waste (Section 7.0).

No further action or investigation is recommended regarding regulatory review at the Property.

2.2 Recommendation

The following recommendation pertains to the abandoned vehicle tires that were found primarily within the east ravine of the Property.

ABANDONED VEHICLE TIRES – Safely remove the abandoned tires described in Section 6.3 and identified by photographs (Appendix B) and transport them to the nearest municipal solid waste landfill for proper disposal.

3.0 Survey Methodology, Purpose and Limitations

Brett D. Smith PE, LG, conducted a Phase I ESA of the Property, which included a reconnaissance of the entire property, as well as interviews with pertinent local and State agency representatives. Additionally, ECA reviewed available Federal, State, and local records, in an effort to identify facilities having known or suspected hazardous waste activity located at or near the Property that could have an adverse impact thereon. In an attempt to determine whether historical uses of the Property and adjacent properties have had any adverse environmental impacts, ECA interviewed individuals knowledgeable about the Property and reviewed available pertinent records and documents. This assessment is based upon the evaluation of the information gathered and was performed utilizing generally accepted industry standards in accordance with ASTM Standard E 1527-05 and 40 CFR 312, the most recent final rule promulgated by the United States Environmental Protection Agency (EPA) in November 2005 and made effective November 1, 2006.

The scope of work included consideration of the following subject areas:

1. **The Property history** in an attempt to identify any possible ownership or use that would indicate an adverse impact to the environmental integrity of the Property as identified through a review of reasonably ascertainable standard historical sources.
2. **Physical characteristics of the Property** as identified through a review of reasonably ascertainable topographic, wetlands, floodplain, soils, geology and groundwater data.
3. **Current site conditions**, including compliance with appropriate regulations as they pertain to the presence or absence of:
 - a. Aboveground or underground storage tanks, drums or containers,
 - b. Electrical transformers and equipment which utilize fluid potentially containing PCBs,

RECEIVED

JUN 12 2008

BENTON COUNTY COMMISSIONERS



Friends of BADGER MOUNTAIN

For Today...For Our Future

Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Claude	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	<i>A. Giall</i>

Advisory Council

- Frank Armijo
- Bob Ferguson
- Bill Lampson
- Mike Lawrence
- Sandy Matheson
- Kris Watkins

Dear Commissioners:

The Friends of Badger Mountain are pleased to announce, with the approval of our Board of Directors, that we have opened discussions with Mr. Tyler Wagner on the possibility of purchasing 25 acres Mr. Wagner owns adjacent to the Badger Mountain Centennial Preserve. Mr. Wagner's property is one of a trio of nearly identical parcels at this location.

Advisory Council
 Frank Armijo
 Bob Ferguson
 Bill Lampson
 Mike Lawrence
 Sandy Matheson
 Kris Watkins

BADGER MOUNTAIN

FOBM's long-term plan is to eventually purchase all three 25-acre parcels adjacent to the south side of the Preserve that the previous owner of Preserve property, Sheldon Shore, sold off a few years prior to the sale of the remaining larger parcels to Benton County. Mr. Wagner's property is the middle parcel of this three-parcel set and directly borders both of the other parcels (see attached Preserve and Adjacent Lands map).

Acquisition of these properties will expand the Preserve along its natural mountain boundary and further help Benton County and the surrounding communities preserve our scenic ridgelines. It will also afford us the opportunity to expand our trail system, which has become very popular with Benton County and Tri-City residents (see attached SkyLine Trail Hiker Count for April and May).

FOBM's immediate plan is to negotiate a final purchase price with Mr. Wagner in the form of a sales agreement by the end of June 2008. We expect the purchase price range will be \$1000 - \$1200 per acre, which is comparable to the price per acre Benton County paid Mr. Shore for the current Preserve property. FOBM currently has these funds available from the many generous donations we have received from the public over the past few years. For the other two adjacent properties, FOBM is currently conducting a fund-raising campaign to raise money for the purchase of these properties. Depending on the success of this fund-raiser, we plan to approach the other two owners within the next six months.

Prior to purchase, FOBM will conduct a "Phase I Environmental Site Assessment", an appraisal, and a title search; all in accordance with Benton County property procurement standards, and all at FOBM's expense.

Once we purchase this property, we would like to donate it to the Benton County Centennial Preserve under the same provisions the County established when it bought the original property from Mr. Shore: to be held in perpetuity as a non-motorized access for the recreational use of the public.

FOBM will continue improvement projects on the Preserve, such as those we have done over the past several years to build and maintain trails, improve public access, and protect habitat (see attached Project Summary).

FOBM is pleased that the Benton County Parks Board resolved to support the acquisition of these three parcels in February of 2007 (see attached Resolution). We now need full concurrence from the County that it will accept these three properties as new additions to Badger Mountain Centennial Preserve if purchased and donated by Friends of Badger Mountain.

We respectfully request your acceptance of our offer.

Regards,

A handwritten signature in cursive script, appearing to read "Sharon Grant".

Sharon Grant
President
Friends of Badger Mountains

RESOLUTION 05 279

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF CREATION OF "BADGER MOUNTAIN CENTENNIAL PRESERVE"

WHEREAS, the landscape of Benton County is defined as much by its ridges and buttes as any other physical feature; and,

WHEREAS, citizens and the community have long used these ridges for passive recreation, appreciation of the natural environment, solitude, and as a visual beacon; and,

WHEREAS, the success and subsequent economic and population growth of the Tri-City area is having a consequence of expanding residential growth that is putting pressure on the landscape, manifested by encroachment of residential development onto ridges and buttes such as Badger Mountain; and,

WHEREAS, Badger Mountain, as the most prominent ridge in the metro area, is a popular exercise area for hikers, an important refuge for shrub-steppe flora and upland birds, and the best vantage point in the Tri-Cities to see the extent and impacts of the "ice age floods" on a landscape scale; drew the attention of concerned citizens who mounted a campaign to purchase a portion of the mountain for permanent preservation as public property; to preserve recreational, ecological, and aesthetic values of the mountain; and,

WHEREAS, this effort to preserve Badger Mountain has been praised and endorsed throughout the Tri-City community by business and economic development interests, the tourism industry, local governments, recreation groups, and the media; and,

WHEREAS, the community organization known as "Friends of Badger Mountain" developed a plan for purchase of 574 acres of property held by Badger, Incorporated. Said acreage encompasses most of the slopes and ridgelines of Badger Mountain and is comprised of all of the property described in the following eight tax parcel numbers:

- 1-2998-201-1930-001
- 1-2998-201-1930-002
- 1-2998-201-1930-003
- 1-2998-201-1930-004
- 1-2998-100-0002-001
- 1-2998-100-0001-000
- 1-2898-200-0002-002
- 1-2898-400-0000-000; and,

WHEREAS, Friends of Badger Mountain coordinated with The Trust for Public Land to develop funding of said purchase and subsequent transfer of then-acquired properties to Benton County to be held permanently in the public trust. The Trust for Public Land purchased an option on the 574 acres from Badger, Incorporated to secure the properties for later execution of the sale as described in this resolution. Said funding scheme included state and local governments, as well as private fundraising conducted by Friends of Badger Mountain; and,

WHEREAS, all needed monies for said purchase from Badger, Incorporated have been raised and authorized as of the time of this resolution, including:

- \$485,000.00 from the Energy Facility Site Evaluation Council,
- \$100,000.00 from the City of Richland,
- \$75,000.00 from the Friends of Badger Mountain,
- \$25,000.00 from Benton County, via the Park Development Fund,

for a total of \$685,000.00 total purchase price for the subject properties; and,

Orig: Fels

cc: Adam Fjall, Auditor, R. Offner

WHEREAS, all necessary conditions have been met so that the buyer, Benton County, may acquire the subject properties, including:

- an approved independent "Member Appraisal Institute" appraisal of the subject properties; as well as a review of the appraisal;
- an approved "Phase One" environmental site assessment of the subject properties;
- an approved "grant agreement" with the Energy Facility Site Evaluation Council, whereby the Energy Facility Site Evaluation Council will contribute \$485,000.00 toward the purchase price of the subject properties;
- an approved "purchase and sale agreement" with The Trust for Public Land that establishes the terms and mechanisms for the actual transfer of fee title for the subject properties; and,

WHEREAS, the Benton County Park Board has endorsed this project from the beginning and has demonstrated its enthusiasm in receiving the 574 acres of Badger Mountain properties into the Benton County Parks System, and in allocating \$25,000.00 from the Park Development Fund for said purchase; NOW THEREFORE,

BE IT RESOLVED, by the Board of Benton County Commissioners that the purchase and retention of the 574 acres of real property known commonly as "Badger Mountain" by Benton County is approved and authorized per terms of the "purchase and sale agreement", attached hereto, which the Chair is authorized to execute; and,

BE IT FURTHER RESOLVED, Benton County accepts the grant from the Energy Facility Site Evaluation Council in the amount of \$485,000.00, which will be placed into the escrow account; and that the Chair is authorized to sign such "grant agreement" to accept the grant; and

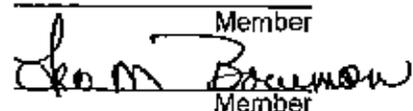
BE IT FURTHER RESOLVED, that Benton County's share (\$25,000.00) of the purchase price for said properties shall be paid into an escrow account administered by Chicago Title Company per the terms of the "purchase and sale agreement", and shall be paid from the Park Development Fund #0110-102;

BE IT FURTHER RESOLVED, that when received by Benton County, the said properties will be administered by the Benton County Facilities and Parks Department in its "natural condition" as to adhere to the intent of the community preservation effort, with no imposition of user fees and with only the most minor and modest improvements made to the properties. These 574 acres will be "banked" by Benton County as use for possible mitigation for future shrub-steppe disturbance. To recognize Benton County's centennial that is occurring in 2005, to honor the preservation intent of the acquisition, and to help avoid confusion with the nearby City of Richland facility known as "Badger Mountain Park"; the subject property will be known formally as "Badger Mountain Centennial Preserve".

Dated this 1st day of June, 2005.



Chairman of the Board
MAX E. BENTZ, JR. - OPPOSED



Member
Member

Constituting the Board of County
Commissioners of Benton County
Washington.

Attest..... 
Clerk of the Board

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: December 14, 2009 Subject: Contract Amendment Prepared by: <u>Melina Wenner</u>	Execute Contract Pass Resolution <u> X </u> Pass Ordinance Pass Motion Other	Consent Agenda <u> X </u> Public Hearing 1st Discussion 2nd Discussion Other

W

BACKGROUND INFORMATION

Please see the attached Personal Services Contract Amendment with Penser North America, Benton County's Third Party Administrator for our Workers' Compensation program.

SUMMARY

See above.

RECOMMENDATION

Pass resolution.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN TO SIGN THE PERSONAL SERVICES AGREEMENT AMENDMENT WITH PENSER NORTH AMERICA APPROVED BY RESOLUTION 09-561

BE IT RESOLVED that the Chairman of the Board of Benton County Commissioners is hereby authorized to sign the attached Personal Services Agreement Amendment.

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

PERSONAL SERVICES CONTRACT AMENDMENT

THIS AMENDMENT, is made and entered into this _____ day of _____ 2009 by and between **BENTON COUNTY**, a political subdivision, with its principal offices at 620 Market Street, Prosser, Washington 99350 (hereinafter "COUNTY") and **PENSER NORTH AMERICA, INC.** with their principal offices at 1818 Terminal Drive, Richland, WA 99354 and Corporate Offices at 700 Sleater-Kinney Road SE, Ste. B, #170, Lacey, WA 98503 (hereinafter "CONTRACTOR").

WHEREAS the parties entered into a Personal Services Contract dated August 31, 2009 (the "CONTRACT") for the Workers' Compensation Third Party Administration Services for the following amounts: A one-time takeover fee in the amount of \$5,500 and ongoing claims administration cost in the amount of \$1,512.50 per month.

WHEREAS, the CONTRACT was approved by the Board of Commissioners per Resolution 09-561 dated August 31, 2009.

WHEREAS, Section 5.a., of the CONTRACT, referenced Exhibit A which accurately detailed the compensation the parties agreed should be paid to the CONTRACTOR, and Section 5.b. referenced monthly installments of \$1,970.83, which inadvertently included the one-time takeover fee of \$5,500; and

WHEREAS, Section 5.b. is inconsistent with the parties' agreement and an amendment is necessary to correct Section 5.b. so that it is consistent with the parties' agreement as properly memorialized within Section 5.a. and page 17 of Exhibit A to the CONTRACT (copy attached to this amendment).

IT IS THEREFORE AGREED by the parties that all provisions of their CONTRACT remain in effect except for the following amendments:

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

The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall be: 1) a one-time takeover fee for file conversion, tape transfer, and management of future re-opened claims in the amount of \$5,500 flat fee; and 2) ongoing claim administration fee structure of \$1,512.50 per month not to exceed \$18,150 annually; provided billings for allocated loss expense items set forth on page 17 of Exhibit A, may be in addition to this monthly charge and annual maximum amount.

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

BENTON COUNTY

PENSER NORTH AMERICA, INC.

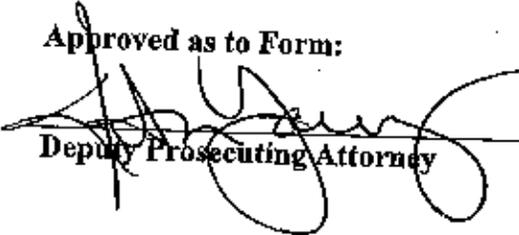
Max E. Benitz, Jr., Chairman

Barrett G. Parks, President

Date: _____

Date: _____

Approved as to Form:



Deputy Prosecuting Attorney

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: December 14, 2009 Subject: Red Cross Contract Prepared by: <u>Melina Wenner</u>	Execute Contract Pass Resolution <u>X</u> Pass Ordinance Pass Motion Other	Consent Agenda <u>X</u> Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

Please see the attached Personal Services Contract with the Benton-Franklin Chapter of the American Red Cross and Benton County. The Red Cross will provide training for Benton County employees in First Aid, CPR, and for use of Automatic External Defibrillators (AED).

SUMMARY

See above.

RECOMMENDATION

Having been reviewed by the Personnel/Risk Manager and Civil DPA, we recommend the resolution be passed and the personal services contract signed.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE PERSONAL SERVICES CONTRACT BETWEEN THE AMERICAN RED CROSS AND BENTON COUNTY TO PROVIDE FIRST AID, CPR, AND AED TRAINING SERVICES TO BENTON COUNTY EMPLOYEES.

WHEREAS, the effective date of this agreement shall begin immediately upon execution by Benton County; and

BE IT RESOLVED that the Board of Benton County Commissioners is hereby authorized to sign the Personal Services Contract between Benton County and the American Red Cross.

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

**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 The American Red Cross, a Federally Chartered Instrumentality of the United States of America with its corporate and political body in the District of Columbia, and doing business in Benton County as the Benton-Franklin Chapter of the American Red Cross, with its principal offices at 7202 West Deschutes Avenue, 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 December 21, 2009 and shall expire on December 21, 2011. 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. EXHIBITS

- a. [Contract Terms and Conditions]

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. Instruction and certifications for Standard First Aid and CPR/AED Adult refresher and initial training for Benton County employees at Benton County job sites.
- 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: Katrine Smith
 Benton-Franklin Chapter of the
 American Red Cross
 7202 West Deschutes,
 Kennewick, WA 99336
 (509) 783-6195

- b. For COUNTY: Bryan Perry, Benton County
 Safety and Training Coordinator
 7122 W. Okanogan Place Bldg. A
 Kennewick, WA 99336
 (509) 222-3727

5. COMPENSATION

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

- a. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$35.00 per employee for Adult CPR and First Aid Refresher Class and \$42.00 per employee for Workplace Standard First Aid and CPR Initial Class

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

- c. The CONTRACTOR may submit invoices to the COUNTY 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 COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual deliver 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, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this

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

- 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. **Workers Compensation:** 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 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.

- b. **Commercial General Liability and Employers Liability Insurance:** CONTRACTOR shall maintain commercial general liability coverage for, bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The general commercial liability policy will contain an endorsement naming the COUNTY as an additional insured (CG2010) and an endorsement that specifically states that CONTRACTOR's 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. Specialized forms specific to the industry of the CONTRACTOR will be deemed acceptable; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

d. **Other Insurance Provisions:**

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

- (2) The 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. Professional liability insurance on a Claims Made form shall have a retroactive date prior to or coincident with the effective date of this Contract.
- (8) The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.

e. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or

better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing 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) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered Acord form certificates of insurance and, if requested, a signed policy endorsement(s) which shall clearly evidence all required insurance prior to commencing work under this Contract. The certificates will, at a minimum, list limits of liability and coverage. For any professional liability insurance, the CONTRACTOR agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the COUNTY by the CONTRACTOR. For other insurance policies, CONTRACTOR shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the COUNTY. CONTRACTOR shall also instruct the insurer to give the COUNTY forty-five (45) days advanced written notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the COUNTY as an additional insured of cancellation.
- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
- (4) If the CONTRACTOR or any subcontractor or sub-subcontractor has any employees, CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.

- (5) All written notices under this Section [8] and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Benton County Risk Manager/Personnel Dept.
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

- (6) 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.
- (7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

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 therefrom 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 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 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: 12-8-09

BENTON COUNTY BOARD OF COMMISSIONERS

CONTRACTOR
American Red Cross, Benton-Franklin Chapter

Chairman

Jeanne M. Jelke, Executive Director
for Katrine Smith

Member

Jeanne Jelke
Print name

Member

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

Attest: _____
Clerk of the Board

Approved as to Form:

[Signature], Civil
Deputy Prosecuting Attorney

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	<u>ooo</u>
Meeting Date: December 14, 2009 Subject: Animal Control Officer I, II & III Prepared by: <u>Meilna Wenner</u>	Execute Contract Pass Resolution <u>X</u> Pass Ordinance Pass Motion Other	Consent Agenda <u>X</u> Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

Per Resolution 09-254, the County Administrator has evaluated the new positions entitled Animal Control Officer I, II & III. Based on the criteria set forth in Resolution 09-254, the County Administrator deems it appropriate to bring forward to the Board of Benton County Commissioners the request for approval of the new positions entitled Animal Control Officer I, II and III.

It is not the intent at this time to fill the Animal Control Officer I and II. It is the intent to hire two Animal Control Officer III positions the first part of January 2010. These positions have been budgeted for in 2010 and approved.

SUMMARY

See above.

RECOMMENDATION

Pass resolution.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ESTABLISHING SALARY GRADES FOR AN ANIMAL CONTROL OFFICER I, II, AND III

WHEREAS, the Board of Benton County Commissioners approved Resolution 09-254, Establishing Procedures and Guidelines for Requesting and Evaluating and Approving County and Bi-County Non-Bargaining Positions and Limiting Reclassifications; and

WHEREAS, that Resolution includes guidelines for the County Administrator's evaluation and approval of new positions which include new positions funded or supported through a fee-based process; and

WHEREAS, the Animal Control Officer I, II and III positions are new positions within the Commissioners' Office, under the direction of the Sheriff's Office, and the positions provide an essential service to the Citizens of Benton County; and

WHEREAS, the Benton County Administrator deems it appropriate to bring forward to the Benton County Board of Commissioners the request for the new non-bargaining positions based on the circumstances presented and in accordance with the guidelines set in Resolution 09-254; **NOW THEREFORE**,

BE IT RESOLVED that the Board of Benton County Commissioners hereby establishes a temporary Grade 8 on the non-bargaining salary schedule to the Animal Control Officer I; a temporary Grade 10 on the non-bargaining salary scheduled to the Animal Control Officer II; and a temporary Grade 12 on the non-bargaining salary schedule to the Animal Control Officer III; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FUTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

NOW THEREFORE, BE IT RESOLVED that the County Commissioners of Benton County do hereby approve the Animal Control Officer I position established at a Grade 8 on the non-bargaining salary scale; Animal Control Officer II position established at a Grade 10 on the non-bargaining salary scale; and an Animal Control Officer III position, established at a Grade 12.

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

bbb

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF DRAINAGE IMPROVEMENT DISTRICT BUDGET AND LEVY FOR 2010

WHEREAS, in accordance with RCW 85.16.020, the Supervisors of the following listed Drainage Improvement District in Benton County, State of Washington, propose the Budget and Levy as shown below; and

WHEREAS, they respectfully request the Board of Commissioners of Benton County, Washington to approve the proposed Budget and Assessment Levy and certify them to the Benton County Treasurer and Assessor;

<u>D.I.D. No.</u>	<u>Construction Cost</u>	<u>Levy</u>	<u>Amount</u>
4 Sub A 6	(Dissolved per Benton County Ordinance No. 441) (Dissolved per Benton County Ordinance No. 454)		
10	\$ 35,555.15	5%	\$1,777.76
11 11 Sub A 12	(Dissolved per Benton County Ordinance No. 447) (Dissolved per Benton County Ordinance No. 447) (Dissolved per Benton County Ordinance No. 444)		

NOW, THEREFORE,

BE IT RESOLVED, that the Budget and Assessment for the Drainage Improvement District of Benton County, Washington for 2010 is hereby approved by the Board of County Commissioners.

Dated this 14th day of December 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

RBD:LJM:dlh

Assessor; Treasurer

CCC

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: <u>December 14, 2009</u> Subject: <u>Intergovernmental Agreement for State Purchasing Cooperative</u> Prepared by: <u>ljm</u> Reviewed by: <u>Steve</u>	Execute Agreement _____ Pass Resolution <u>XX</u> _____ Pass Ordinance _____ Pass Motion _____ Other _____	Consent Agenda <u>XX</u> _____ Public Hearing _____ 1st Discussion _____ 2nd Discussion _____ Exec Session _____

BACKGROUND INFORMATION

The Intergovernmental Agreement to purchase equipment, materials, and supplies from the Washington State contract system will expire December 31, 2009. A new Intergovernmental Agreement allowing Benton County to use the State contract system for a two year period (2010-2011) has been received and reviewed and is hereby submitted to the Board for approval.

The previous agreement had a membership fee of \$4,000.00 and was shared equally between Current Expense and Public Works. The new agreement has a membership fee of \$8,000.00 based on the County's total expenditure information the State receives from the State Auditors Office.

RECOMMENDATION

The Board of County Commissioners approve the two year Intergovernmental Agreement with the State of Washington.

FISCAL IMPACT

A membership fee of \$8,000.00 for the two year period shall be shared equally between Current Expense and Public Works.

MOTION

Approve the two year Intergovernmental Agreement with the State of Washington.

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: INTERGOVERNMENTAL AGREEMENT FOR STATE PURCHASING COOPERATIVE WITH THE STATE OF WASHINGTON, DEPARTMENT OF GENERAL ADMINISTRATION, OFFICE OF STATE PROCUREMENT

WHEREAS, pursuant to Chapter 39.34 RCW Benton County and the State of Washington, Department of General Administration, Office of State Procurement hereby enter into an Intergovernmental Agreement with the State Purchasing Cooperative for the purpose of governmental purchasing activity; NOW, THEREFORE,

BE IT RESOLVED that the Intergovernmental Agreement for State Purchasing Cooperative be and hereby is approved and the Chairman is authorized to sign said Agreement on behalf of Benton County; and

BE IT FURTHER RESOLVED that the membership fee be shared equally between Current Expense and Public Works.

Dated this 14th day of December, 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

SWB:LJM:slc



State of Washington
OSP PAR-Non/Prof Fund:422 04 02 000214
Room 303 General Administration Bldg.
P.O. Box 41008
Olympia, WA 98504-1008

**STATE OF WASHINGTON
INTERGOVERNMENTAL AGREEMENT FOR
STATE PURCHASING COOPERATIVE**

Pursuant to Chapter 43.19 RCW, Chapter 39.34 RCW and WAC 236-49-060, the State of Washington, Department of General Administration, Office of State Procurement, ("Office of State Procurement" or "OSP"), and BENTON CO ("Cooperative Member") agree to enter into this Intergovernmental Agreement ("Agreement"), for the purpose of the Cooperative Member participating in the State Purchasing Cooperative Program ("Cooperative") under the following terms and conditions:

- 1) Washington State political subdivisions (e.g. local governments and school districts) and public benefit nonprofit corporations are eligible for membership in the Cooperative and must be subject to audit by Washington State Auditor's Office (SAO). Offices, departments, divisions, or other sub-units ("subdivisions") within Washington State political subdivisions and public benefit nonprofit corporations may join the Cooperative. However, the subdivision's membership fee will be assessed at the rate of the associated Washington State political subdivision or public benefit nonprofit corporations. Washington state agencies and their subdivisions are automatically Cooperative Members and do not need to apply for membership or pay a membership fee.
- 2) The Office of State Procurement is required to recover the costs of administering the State Purchasing Cooperative Program from Cooperative Members. The Membership Fee Schedule below sets forth the fee structure for Cooperative Members, which are not Washington State agencies. The Membership Fee Schedule is based on the Cooperative Member's total expenditures, less debt service and inter-fund transfers, as reported in the Cooperative Member's last audited financial statement.
- 3) The term of this Agreement and Cooperative membership is January 1, 2010 through December 31, 2011. This Agreement may be canceled in writing by either party. However, if the Cooperative Member has used state contracts during the current membership period, the Cooperative Member remains liable to pay any unpaid balance of the membership fee for the entire term. Fees are not based on the level of contract usage. Refunds will not be given to members due to lack of contract usage.
- 4) The Office of the Superintendent of Public Instruction (OSPI) financial reporting information will be used to verify fee amounts for public school districts, and Educational Service Districts, (ESD's).
- 5) Any Cooperative Member not reported in the OSPI or State Auditor's financial reporting information, must submit a copy of its most recent audited financial statements to OSP upon request. When a Cooperative Member does not have audited financial statements, the Cooperative Member shall provide internal budgets or financial statements. Once membership fees are verified through such authoritative sources, OSP will issue quarterly invoices for remittance due and payable within 30 days of receipt or due date shown on invoice whichever is sooner. After initial verification and at the beginning of each calendar quarter thereafter, invoices will be sent via electronic mail to the contact listed below.
- 6) This executed Agreement entitles the Cooperative Member access to state contracts for goods and services as viewed on www.os.wa.gov <<http://www.os.wa.gov>>. Cooperative Members may only access Western States Contracting Alliance (WSCA) contracts where Washington is the lead state, or has a signed participating addendum (PA). Cooperative Members are not authorized to enter into separate WSCA participating addenda with vendors. Cooperative Members are also entitled to use Oregon Purchasing Contracts.
- 7) If a Washington State political subdivision or public benefit nonprofit corporation or a subdivision thereof that is not a current Cooperative Member is found to have used a state contract, WSCA contract, or Oregon Purchasing Contract; that Washington State political subdivision or public benefit nonprofit corporation shall be liable for payment of a full year membership fee. Failure to pay such fee may be reported to the State Auditor's Office and result in audit findings against the entity.
- 8) The Office of State Procurement, in contracting on behalf of the State of Washington for the purchase of goods and services according to the laws and regulations governing such purchases, agrees to also contract on behalf of the Cooperative Member, to the extent permitted by law. The Cooperative Member accepts responsibility for compliance with any additional laws and regulations applicable to the Cooperative Member.

- 9) The Office of State Procurement agrees to comply with its statutory requirements regarding notice for bids or proposals for goods or services subject to this Agreement, and will either: a) post the bid or solicitation notice on a web site established and maintained by OSP for the purposes of posting public notice of bid or proposal solicitations, or b) provide an access link on the State of Washington's web portal to the notice.
- 10) When the Office of the State Procurement has entered into a contractual agreement for the purchase of goods or services on behalf of Cooperative Member, the Cooperative Member may purchase goods and services covered by the contract on the same terms and conditions as the State of Washington, except that the contractor has the right to modify payment terms based on its credit assessment of the Cooperative Member. Purchases by the Cooperative Member may be made by a purchase order issued by the Cooperative Member to the contractor. The Cooperative Member is solely responsible for payment for any goods and services it purchases under contracts pursuant to this Agreement or services it purchases directly from OSP. The Cooperative Member agrees to be responsible for limited contract monitoring related to their use of these contracts.
- 11) The Cooperative Member reserves the right to contract independently for the purchase of any particular class of goods or services, with or without notice being given to OSP.
- 12) In the event that either the Office of the State Procurement or the Cooperative Member is abolished, this Agreement shall continue in operation as to any entity succeeding to the powers and duties of the abolished party, except as canceled or modified by operation of law.
- 13) The Cooperative Member agrees to use only those OSP, WSCA, or Oregon Purchasing contracts authorized under the terms of this Agreement and to comply with those contracts' terms and conditions. The Cooperative Member further agrees that all purchases from OSP, WSCA, or Oregon Purchasing contracts will be made only for the direct use of the Cooperative Member's programs and no purchases will be made on behalf of or for the use of other entities or jurisdictions.
- 14) It is not the intention of the parties, nor shall this Agreement be interpreted, to create a separate legal entity for the performance of this Agreement. Instead, the Office of State Procurement shall be responsible for administering this Agreement.
- 15) In accordance with RCW 39.34.040, the Cooperative Member shall be responsible for filing the executed copy of this Agreement with its county auditor's office, or filed in such manner as required by law, to meet public disclosure requirements. This may include listing on the Cooperative Member's internet site or any other electronically retrievable public source.
- 16) By its signature below, the Office of State Procurement confirms it approves of this Agreement as required by RCW 39.34.050 and it is authorized to enter into this Agreement pursuant to RCW 39.34.030 and RCW 39.34.080. Similarly, by its signature below, the Cooperative Member confirms it is authorized to enter into this Agreement pursuant to RCW 39.34.030 and RCW 39.34.080.
- 17) **PAYMENT and NOTICES:** Payment shall be made to OSP at the address provided below. Further, any notice, demand or other communication required or permitted to be given under this Agreement shall be made to the parties at the addresses provided below. The Cooperative Member agrees to pay the membership fee as a part of this Agreement. Late payments may be subject to statutory interest and collection related costs. First time Cooperative Members joining after June 30th may have their fee prorated, if the member has not previously accessed state contracts. Pro-rated fees will be based on 6-month intervals, January - June, July - December.

Mail the signed Agreement and payment to: State of Washington, OSP PAF-Non/Prof Fund: 422 04 20 000214, Room 303 General Administration Bldg., P.O. Box 41008, Olympia, WA 98504-1008

Cooperative Member contact information:

Contact Person to whom contract documents and related communications are to be mailed or faxed.

Cooperative Member Agency Name: BENTON COUNTY

Agency Federal TIN #: 91-6001296

Contact Name: Larry Moser, Financial Administrator, Public Works Department

Address: P O Box 1001

City, St, Zip Prosser, WA 99350-0954

Phone Number: 509-786-5611 Fax Number: 509-786-5627

Email Address: larry.moser@co.benton.wa.us

Secondary Contact: Name: Steve Becken Email: steve.becken@co.benton.wa.us

Two-Year Membership Fee Schedule

Note: Total expenditures listed below are minus of debt service and inter-fund transfers

Annual expenditures of more than	Annual expenditures of less than	Two-Year Membership Fee	Verified Fee Level
\$0.00	\$3,000,000	\$400	
\$3,000,001	\$7,500,000	\$1,000	
\$7,500,001	\$30,000,000	\$2,000	
\$30,000,001	\$68,000,000	\$4,000	
\$68,000,001	\$90,000,000	\$6,000	
\$90,000,001	\$150,000,000	\$8,000	
\$150,000,001	and over	\$10,000	

According to the most recent authoritative information; BENTON CO, your annual operating expenditures were \$95,858,462 making your two-year fee \$8,000.

The undersigned has read, understands and agrees to the terms and conditions of this Agreement, certifies that he/she is the Authorized Signatory for the Cooperative Member, and certifies under penalty of perjury under the laws of Washington State that the verified expenditure in the Membership Fee Schedule above is true and correct.

Cooperative Member Authorized Signature:

Signature: _____ Date Signed: _____

Print Name: MAX E. BENITZ, JR Title: Chairman, Board of County Commissioners

Address (if not the same as above): P O Box 190, Prosser, WA 99350-0190

Phone Number(s): 509-796-5600

Approved as to form: _____ Date: _____

Benton County Deputy Prosecuting Attorney

FOR OSP USE ONLY (Completed by OSP, this page will be returned to you in executed copy)			
Approved as to form: AAG Date: 10/16/2009 (signature on file)			
Your assigned Co-op member number is _____ . Please provide this number to vendors when ordering from contracts or communicating with OSP.			
OSP AUTHORIZED SIGNATURE			
Name	Title	Date	Verification Used: _____

ddd

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE
CONTRACT AMENDMENT BETWEEN BENTON COUNTY AND DR. W. THOMAS
COOPER M.D., FOR INMATE PHYSICIAN SERVICES LOCATED AT THE BENTON
COUNTY JAIL FACILITY, CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF
CUSTODY DEPARTMENT 120

WHEREAS, the Board awarded and authorized the Chairman to sign the contract between Benton
County (hereinafter "COUNTY") and Dr. W. Thomas Cooper M.D. (hereinafter "CONTRACTOR")
for inmate physician services, via Resolution 08-893; and

WHEREAS, the contract was extended for the calendar year 2009 via Resolution 08-998; and

WHEREAS, the total amount payable by the COUNTY to the CONTRACTOR for the calendar year
2009 is not to exceed seventy five thousand dollars and zero cents (\$75,000.00); and

WHEREAS, the total amount payable by the COUNTY to the CONTRACTOR has been exhausted
and the COUNTY anticipates the need for further inmate physician services prior to the December
31, 2009 contract expiration; and

WHEREAS, the COUNTY wishes to amend the contract and increase the total amount payable to
eighty seven thousand dollars and zero cents (\$87,000.00); and

BE IT RESOLVED, the Benton County Commissioners hereby approve the attached Contract
Amendment between Benton County and Dr. W. Thomas Cooper M.D. and authorize the Chairman
of the Board to sign the same.

Dated this _____ day of _____, 2009.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest _____
Clerk of the Board

Orig
cc: Sheriffs Office
Auditor, R. Ozuna, Cooper

Prepared by: K Mercer

bbb

CONTRACT AMENDMENT

THIS CONTRACT AMENDMENT, made and entered into this _____ day of _____, 2009 by and between BENTON COUNTY, WASHINGTON hereinafter called "COUNTY" and Dr. W. Thomas Cooper M.D., hereinafter called "CONTRACTOR".

WHEREAS, per Resolution 08-893 the parties entered into a Contract for 2008, whereby the contractor would provide physicians services in 2008 for the Benton County Sheriff's Office in Kennewick, Washington operated by the County; and

WHEREAS, the Contract was extended for the calendar year 2009 via Resolution 08-996; and

WHEREAS, the total amount payable by the COUNTY to the CONTRACTOR for the calendar year 2009 is not to exceed seventy five thousand dollars and zero cents (\$75,000.00); and

WHEREAS, the total amount payable by the COUNTY to the CONTRACTOR will be exhausted before the end of the year; and

WHEREAS, the COUNTY wishes to amend the contract and increase the total amount payable to eighty seven thousand dollars and zero cents (\$87,000.00); and

BE IT RESOLVED, In consideration of the provisions and agreements set forth herein, the parties agree as follows:

1. The 2009 Billings section located in Paragraph 16 of the Agreement for the Provision of Physician Services shall be replaced with the following:
2009 BILLINGS: Billings for services shall be submitted to the Benton County Sheriff's Office on a monthly basis. The bill shall detail the numbers of hours worked, number of calls received and number of on-call visits made. Payments for the year 2009 will be based on a rate of \$140.00 per hour and an additional \$10.00 per telephone call received while on-call. Total amount paid to Contractor during calendar year 2009 shall be no more than \$87,000.00.
2. All other terms and conditions of the "CONTRACT" shall remain the same.

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

Date: _____

Date: 12-9-09

Benton County

Dr. W. Thomas Cooper M.D.

Max Benitz Jr., Chairman
Benton County, Commissioner

W. Thomas Cooper M.D.
Signature

Approved as to Content

Larry D. Taylor
Sheriff

Dr. W. Thomas Cooper M.D.

Approved as to Form

Jonathan Young, Civil
Deputy Prosecuting Attorney

RESOLUTION

eee

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING THE PERSONAL SERVICE CONTRACT TO WASHINGTON COMMUNICATIONS LLC, DOING BUSINESS AS DAY WIRELESS SYSTEMS, FOR SERVICES AND SUPPORT TO COUNTY COMMUNICATION AND PUBLIC SAFETY SYSTEMS, CURRENT EXPENSE FUND NUMBER 0000-101, DEPARTMENTS 118, 120, 121, AND 126, AND WORK CREW REPLACEMENT FUND NUMBER 0151-101

WHEREAS, per resolution 04-534, "...that for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but shall 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, Washington Communications LLC, doing business as Day Wireless Systems, provides services to electronic items installed in vehicles and hand held devices such as radios to several local law enforcement agencies; and

WHEREAS, Benton County Sheriff's Office solicited a quote from Washington Communications LLC; and

- \$90.00/hour for vehicle work and field travel time
- \$90.00/hour for all other technical service work
- \$120.00/hour Senior Tech
- \$150.00/hour for engineering design work
- All products and supplies quoted as required; and

WHEREAS, Benton County Sheriff's Office has utilized Washington Communications LLC for many years to perform installation and maintenance of electronic equipment in vehicles as well as the hand held equipment carried by our deputies and corrections officers and hereby recommends the Board of Benton County Commissioners to enter into an agreement with Washington Communications LLC to provide service and support of County's communication and public safety systems; NOW THEREFORE,

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the Sheriff's Office recommendation and hereby awards the personal service contract to Washington Communications LLC at the above rates with a total amount not to exceed \$130,000; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman to sign the attached Personal Service Contract; and

BE IT FURTHER RESOLVED the term of the attached contract commences January 1, 2010 and expires on December 31, 2010.

Dated this _____ day of _____, 2009

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

Orig: Sheriff's Office
cc: Auditor, R. Ozuna, Day Wireless.

**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 Washington Communications LLC, a limited liability company authorized to do business in the State of Washington, doing business as Day Wireless Systems with its principal offices at 2608 W. Sylvester, Pasco WA 99301 (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, 2010 and shall expire on December 31, 2010. 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. Provision of services and equipment in support of County's communication and public safety systems.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COUNTY.
- c. The CONTRACTOR shall perform the work specified in the 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:

David Kraal
2608 W. Sylvester,
Pasco WA 99301
509-547-8502

- b. For COUNTY:

Julie Thompson,
Administrative Assistant
7122 W. Okanogan Place Bldg. A
Kennewick, WA 99336
509-735-6555 ext 3273

5. COMPENSATION

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

- a. Service Rates:

\$90.00/hour for vehicle work and field travel time
\$90.00/hour for all other technical service work
\$120.00/hour Senior Tech
\$150.00/hour for engineering design work
All products and supplies quoted as required

- b. No payment shall be made for any work performed by the

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

- c. The CONTRACTOR may, in accordance with services and equipment provided, submit invoices to the COUNTY 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 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.
- d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- f. Unless otherwise provided for 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, modification or renewal 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, personal or advertising injury, infringement upon intellectual property rights or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.
- 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. 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.

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

8. INSURANCE

- a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. 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 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.

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

Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000). CONTRACTOR shall further procure and maintain employer's liability stop-gap coverage that affords coverage of no less than \$1 million for injury or disease of employees.

The CONTRACTOR will provide commercial general liability coverage which does not exclude any activity to be performed in fulfillment of this Contract and does not exclude contractual liability as contemplated in Section 7 above. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

c. **Other Insurance Provisions:**

- (1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- (2) The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.
- (3) The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
- (4) Any failure to comply with reporting provisions of the policies shall not affect coverage

provided to the COUNTY, its officers, officials, employees or agents.

- (5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (6) 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.
- (7) 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.
- (8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the CONTRACTOR'S liability coverage is written as a claims made policy, then the CONTRACTOR must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

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

- (1) The CONTRACTOR shall furnish the COUNTY with

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

- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
- (4) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.
- (5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Julie Thompson
Benton County Sheriff's Office
7122 W. Okanogan Pl. Bld. A
Kennewick, WA 99336

- (6) 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.
- (7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

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 terminate this Contract, 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 the 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.

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 Five (5) of this Contract, and the CONTRACTOR is not 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 race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

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 therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.
- b. All design work done by the CONTRACTOR shall be done on AutoCAD, release 12 or higher or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the end of the job. Should a construction project result from the work of the CONTRACTOR, the record drawings from the CONTRACTOR shall be transposed onto the electronic design drawings and submitted to the COUNTY.
- c. 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

Differences 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, 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 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.

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. CUSTODY OF VEHICLES

The parties understand that in order to accomplish the work required by this agreement, CONTRACTOR will have the need to take temporary custody of marked law enforcement patrol cars for periods of time. Accordingly, the parties agree that the custody of the patrol cars will be subject to the following conditions:

- a. All patrol cars that are left in the custody of CONTRACTOR shall not contain firearms or ammunition of any sort - representatives of the Benton County Sheriff's Office have responsibility to ensure that firearms and ammunition are removed from the cars when they are left in CONTRACTOR's custody. Additionally, CONTRACTOR shall immediately notify the Benton County Sheriff's Office if it discovers any firearms or ammunition within the cars while work is being done;
- b. CONTRACTOR shall ensure that only those trusted, full-time employees who are required to do work under this contract shall have access to the patrol cars or to the keys which access same and shall not permit any third parties or sub-contractors to have access to patrol cars or keys without prior written permission from COUNTY;
- c. During all times when CONTRACTOR is not actively working on patrol cars, said patrol cars shall be fully locked, any available alarm or anti-theft systems shall be activated, and the cars shall be stored in a secure location protected by, at a minimum, locked fencing, and the keys which access same shall be in a locked, secured location;
- d. If CONTRACTOR or any of its employees discovers that any patrol cars in its custody are missing, it shall immediately notify the Sheriff's Office patrol lieutenant by paging same at 737-5533 and ensuring contact and notification is made;
- e. CONTRACTOR and its employees shall not operate any patrol car in its custody anywhere outside of CONTRACTOR's property for any reason whatsoever. The only exception is for incidental traveling along a portion of a roadway for purposes of moving patrol cars from one portion of CONTRACTOR's premises to another portion of CONTRACTOR's premises as necessitated by the work being done pursuant to this agreement;

28. 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.

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

The parties specifically certify that the provisions contained within paragraph 7(b) are mutually negotiated.

Date: _____

Date: 12/09/09

Benton County

Washington Communications LLC

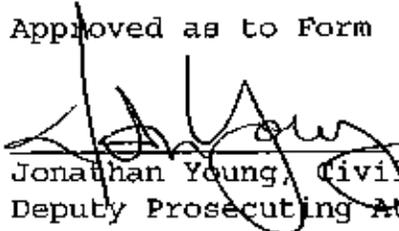
Max Benitz Jr., Chairman
Benton County Commissioner



Signature

Approved as to Form

DAVID C KEANE AREA MANAGER
Print Name and Title


Jonathan Young, Civil
Deputy Prosecuting Attorney

Steven W. Becken
Asst. Director/Asst. County Engineer
Malcolm Bowie
County Engineer

Benton County

Department of Public Works

Post Office Box 1001 - Courthouse
Prosser, Washington 99350-0954

9:05
Benton County 309
Prosser 786-5611
Tri-Cities 36-3084
Box 504
786-5627

December 7, 2009

BOARD OF COUNTY COMMISSIONERS

Benton County Courthouse
Prosser, WA 99350

RE: Application for Franchise: Benton Irrigation District

Commissioners:

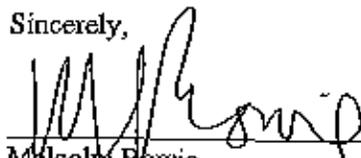
Benton Irrigation District has filed a petition for a nonexclusive franchise for irrigation lines within Benton County road right of way in Sections 12 and 24, T 9 N, R 25 E, W.M.; and Sections 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 25, 25, and 36 of T 9 N, R 26 E, WM; and Sections 6, 7 and 18, T9N, R 27 E, W.M.

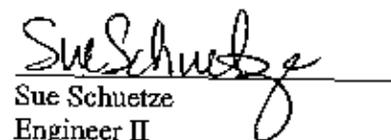
This office has reviewed the request and based upon our current franchise requirements recommends approval of the request subject to the following conditions:

1. The term of the franchise continue for a ten (10) year period.
2. The Grantee is to carry liability insurance with Benton County named as an insured with a minimum limit of \$500,000.00. A copy of the proof of insurance is to be provided to Benton County.
3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way.
4. Should Benton County require utility relocation work because of road reconstruction or maintenance, said work shall be at the Grantee's expense.
5. The franchise is nonexclusive.
6. The Grantee sign the Order and Agreement for Nonexclusive Franchise, which will be prepared based upon the requirements set forth at the public hearing.

If you have any questions, please contact this office.

Sincerely,


Malcolm Bowie
County Engineer


Sue Schuetze
Engineer II

9:10 am

Historical Document Preservation Fund

D Davidson

9:20

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 14 Dec 2009 Subject: Park Board report Memo Date: 09 Dec 2009 Prepared By: AJF Reviewed By: LSK	Execute Contract Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion 2nd Discussion Other X

SUMMARY & BACKGROUND

Bert Lake, Benton County Park Board Chair, will give a year-end slideshow presentation on Parks partnerships, events, and projects.

#

9:45 am

Certifying Petitions Process

Commissioner Benitz

10:30

From: Ginny Waltman <waltmang@sao.wa.gov>
To: Marilu Flores <marilu_flores@co.benton.wa.us>
Date: 12/8/2009 11:42 AM
Subject: RE: exit conference confirmation

Hi Marilu,

10:30 am is great. Thank you!

Ginny

-----Original Message-----

From: Marilu Flores [mailto:marilu_flores@co.benton.wa.us]
Sent: Tuesday, December 08, 2009 11:27 AM
To: Ginny Waltman
Subject: Re: exit conference confirmation

Hi Ginny:

Have you down on the 14th; however, let's do 10:30 am. Would that still be ok?.....Marilu

Marilu Flores
Administrative Secretary
Benton County Commissioners Office
PO Box 190
Prosser WA 99350
(509) 786-5600 - office
(509) 786-5625 - fax

>>> Ginny Waltman <waltmang@sao.wa.gov> 12/8/2009 11:08 AM >>>
Hi Marilu,

We wanted to confirm the exit conference for Benton County to be at the Prosser Courthouse in the Board Room on the third floor on Monday, December 14th at 10:55 a.m. Please confirm. Thank you.

Ginny

Ginny Waltman
Assistant Audit Manager
Washington State Auditor's Office
(509) 734-7104
waltmang@sao.wa.gov<mailto:waltmang@sao.wa.gov>



RECEIVED
DEC 04 2009
BENTON COUNTY
COMMISSIONERS

**Washington State Auditor
Brian Sonntag**

Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Jim	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

December 4, 2009

Benton County Elected Officials and Representatives
Benton County
620 Market Street
Prosser, WA 99350

Dear Benton County Elected Officials and Representatives:

We have completed our audit of Benton County for the audit period January 1, 2008 through December 31, 2008 and wanted to share our preliminary results of our audit with you. We have scheduled an exit conference with your staff and would like to invite you to attend. The conference will be held at 10:55 a.m. on December 14, 2009 at the Prosser Courthouse in the Board Room.

We believe participation at the exit conference by you and others charged with the management and governance of the County is an essential part of our audit process. It gives you an opportunity to hear our conclusions and discuss with us the resolution of any audit issues.

Please note that if a quorum of Commissioners attend the exit conference, the County is responsible for ensuring requirements of the Open Public Meetings Act are met.

We hope you can participate in the exit conference. If you have any questions, feel free to contact us at (509) 734-7104 or by email at waltmang@sao.wa.gov.

Sincerely,

Ginny Waltman
Assistant Audit Manager

10:50 am

Executive Session – Union Negotiations

David Sparks/Sarah Perry

Steven W. Becken
Public Works Manager
Malcolm Bowle, P.E.
Benton County Engineer

FILE # 1:00

Benton County

Department of Public Works

Post Office Box 1001 - Courthouse
Prosser, Washington 99350-0954

Area Code 509
Prosser 786-5611
City 786-5984
Ext. 5664
Fax 786-5627

RECEIVED

DEC 03 2009

BENTON COUNTY
COMMISSIONERS

Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Jim	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

December 3, 2009

Board of County Commissioners
Benton County Courthouse
Prosser, WA 99350

RE: 1986 KID Agreement

Commissioners:

December 1, 1982 the County entered into an agreement with the Kennewick Irrigation District (KID) allowing the KID to take pit run material out of the Owens Pit, located South of Kennewick, at a cost of \$0.25 per cubic yard. At that time the KID estimated that they needed approximately 5,000 cubic yards. The agreement expired on May 30, 1985.

January 13, 1986 the County renewed the agreement with different terms. The KID was allowed to take out 420 cubic yards per year at no charge. If more than 420 cubic yards was taken, the KID was to pay \$0.25 per additional cubic yard. The County was to be allowed to take 30,000 gallons of water out of the canal at no charge with each additional 1,000 gallons costing \$3.50. The agreement has no termination date.

While this agreement may have worked in the past, now there is concern about "water spreading" and the KID has refused to allow the County to withdraw water from the district canals. In the last three years the KID has taken 54,950 cubic yards of material out of the pit. We just became aware of the amount of material being taken and the fact that it was not being reported as required per the agreement. We are currently attempting to verify that we have not billed the KID for any of the material taken in the last three years. If we haven't, they will be billed approximately \$13,500.00 for the material.

The material being taken does not meet specifications for use on County roads. It does meet KID requirements for their use.

Item 6 of the agreement allows the agreement to be terminated by either party with a 60 day notice. We would like to receive concurrence from the Board to terminate the agreement and prepare a new agreement with current values of the material and a termination date or a renewal clause with price escalators for the value of materials to be taken as they increase in value.

If the Board concurs with our request, a resolution will be prepared authorizing the Chairman of the Board to sign a letter notifying the KID of termination of the agreement. A new agreement to replace the 1986 agreement would then be prepared for signature by both parties. A copy of the 1986 agreement is attached for your review.

Sincerely,



Steven W. Becken
Public Works Manager

copy

ORIGINAL

RESOLUTION

86 10

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN AGREEMENT WITH KENNEWICK IRRIGATION DISTRICT EXCHANGING ROCK FOR WATER

WHEREAS, Kennewick Irrigation District has a continuing need for materials from the County owned pit located along Owens Road in the vicinity of Kennewick, (aka the Olympia Street Pit), and

WHEREAS, the Benton County Road Department has a continuing need for water for road maintenance activities, and

WHEREAS, the parties are desirous of permitting the exchange of rock for water and have prepared an agreement covering the details of the exchange, and

WHEREAS, it appearing to be in the public interest to approve said Agreement, a copy of which is attached, and the County Engineer recommends approval of said Agreement,

NOW, THEREFORE, BE IT RESOLVED, that said agreement be and hereby is approved and that the Board of County Commissioners execute same for and on behalf of Benton County

Dated this 13th day of January, 1986

[Signature] Chairman of the Board,
[Signature] Member,
[Signature] Member.

Attest: VERNER MILLER
County Auditor and Exofficio Clerk of the Board

By *[Signature]*
Deputy Auditor

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

EXCHANGE AGREEMENT

THIS AGREEMENT made and entered into this 13TH day of *January*, 1986, by and between the KENNEWICK IRRIGATION DISTRICT by and through its Board of Directors, hereinafter referred to as "District", and BENTON COUNTY by and through the Board of County Commissioners, hereinafter referred to as "County",

W I T N E S S E T H:

WHEREAS, County owns and controls a certain quarry pit commonly referred to as the Olympia Street Pit in Benton County, and the Kennewick Irrigation District has control and operation of certain irrigation facilities located in Benton County; and,

WHEREAS, periodically the District requires quarry rock for the operation and maintenance of District facilities and the County requires water for road maintenance and spray activities by the County; and,

WHEREAS, the parties are desirous of permitting the exchange of quarry rock required by the District for irrigation water from certain Kennewick canals, required by the County for road maintenance and spray activities on a free exchange basis; and,

WHEREAS, the parties believe that such a free exchange agreement is in the best interests of the District and the County and the respective publics which each entity serves, NOW, THEREFORE,

IN CONSIDERATION of the terms, covenants and conditions of this Agreement, and other valuable consideration, the parties agree as follows:

1. The parties agree to freely exchange quarry rock from the Olympia Street pit owned and operated by the County for irrigation water from certain District canals for road maintenance and spray activities by the County.

2. Attached hereto and marked Exhibit "A", and by this reference incorporated herein, are two map copies with the District's canals highlighted in red and blue. The County shall have the privilege of pumping water from the canals highlighted in blue on the attached Exhibit "A" at any time convenient to the County, provided such pumping shall not interfere with the District's operation and use of the canal. However, those canals highlighted in red, being extremely small with a heavy demand placed upon them and because any pumping from these canals would create a delivery slump in the canal causing inadequate water deliveries, those canals highlighted in red cannot and are not to be used by County for any pumping withdrawal activity.

3. The District shall have the privilege of removing quarry rock from the Olympia Street pit at times, in the manner and in such quantity as is convenient to the District, provided such removal shall not interfere with the County's operation and use of the pit.

4. The parties agree that for the purposes of this agreement the value of water pumped from District canals by the County shall be \$3.50 per thousand gallons and the value of quarry rock removed from the County pit by the District shall be 25 cents per cubic yard. It is agreed that in the event the County pumps more than 30,000 gallons from the District canals in any calendar year, the County shall pay the District for all water pumped during the calendar year in excess of 30,000 gallons at the rate of \$3.50 per thousand gallons, and in the event the District removes more than 420 cubic yards of quarry rock from the County pit in any calendar year, the District shall pay the County for all quarry rock removed during the calendar year in excess of 420 cubic yards at the rate of 25 cents per cubic yard.

Each party agrees to maintain an accurate record of the water or rock which it removes and, on the first business day of January of each year of this agreement provide the other party with a report of the water or rock removed and any payment therefor required by this section for the preceding calendar year.

5. The parties do each respectively agree to indemnify and hold the other harmless from any claim or causes of action for property damage, personal injury or otherwise related to said respective parties activities on the other's facilities.

6. This Agreement shall remain in full force and effect until otherwise terminated in writing, and each party reserves the right to terminate this Agreement by giving the other 60 days written notice of said termination.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

KENNEWICK IRRIGATION DISTRICT

BENTON COUNTY, WASHINGTON

1-13-86

By: John C. Pring
President

W. H. Seberson
Chairman

By: Paul C. Lasco
Secretary

[Signature]
Member

[Signature]
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: VERNER MILLER
County Auditor and Ex-Officio Clerk of the Board

Approved as to Form:

[Signature]
Dennis D. Yule, Chief Deputy
Prosecuting Attorney, Benton County

By: [Signature]
Deputy Auditor

11:05 am

**Executive Session – Pending Litigation
Update**

K Galoto