October 12, 2009

THE BOARD OF BENTON COUNTY COMMISSIONERS AGENDA PACKET

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
October 5, 2009, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Max E. Benitz, Jr. Chairman
Commissioner Leo Bowman
Commissioner James Beaver
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Personnel Manager Melina Wenner; Facilities Manager Roy Rogers; Larry Moser, Steve Becken, Bryan Thorp, Norm Childress, and Malcolm Bowie, Public Works; DPA Ryan Brown; Keith Mercer, Sheriff's Office; Pat Powell, Van Petty, and Brenda Chilton, Auditor's Office; Mike Shuttleworth, Planning Manager; Nick Kooiker, and Ehriza Rivera, Treasurer's Office;

Approval of Minutes

The Minutes of September 28, 2009 were approved.

Consent Agenda

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

Commissioners
- a. Letter of Support to the Benton Franklin Community Health Alliance
- b. Appointment to the Benton County Mosquito Control District Board

District Court
- c. Lease / Purchase Agreement w/Xerox Corporation
- d. Contract w/Washington Collectors for Collection Services

Facilities
- e. Blanket Service Agreement w/Perfection Glass, Inc.
- f. Blanket Service Agreement w/Total Energy Management for HVAC Services

Fairgrounds
- g. Transfer of Funds, Fund No. 0124-101, Dept. 000

Human Services
- h. Agreement, #09/10-DD-AWI-00, w/Ambitions of Washington, Inc.

i. Agreement, #09/10-PREV-VISTA-00, w/Vista Youth Center

j. Service Agreement, #PSA-2009/2010-IFD-00, w/Institute for Family Development

Juvenile

k. Agreement w/The Confederated Tribes of the Umatilla Indian Reservation

Public Works

l. Authorization to Purchase De-Icer Flow Controls

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

Finance Team Presentation

Linda Ivey, Pat Powell, Keith Mercer, and Nick Kooiker gave a Powerpoint presentation of the Benton County Financial Analysis for the month ending August 31, 2009. The presentation included the following information:

- Current Expense, Quarterly Revenue and Cumulative Revenue Comparison
- Current Expense, Quarterly and Cumulative Expenditures Comparison
- Current Expense, Fund Balance Trends, Analysis, and Comparison
- 2009 Revenue Budget to Actuals
- 2009 Expenditure Budget to Actuals
- Retail Sales & Use Tax, Prior Year Comparison, Annual Local Revenue Distribution, 1% Local Collection, Local 1/10% Criminal Justice, Budget to Actuals
- Jail Contract Housing, Actuals vs. Projections
- Contract Agencies Bed Usage
- Local Municipalities, Bed Day Rate, Benton County Local Bed Usage, and Jail Usage by Agency
- Contract and Local Agency Usage and Actuals 2008 v. 2009
- Update on Protective Inspection Services Fund, Veterans Assistance Fund, and Capital Projects Fund

2010 Benton County Road Program

The Board reviewed the proposed 2010 Benton County Road Program including revenue, expenditures, purchases, and equipment rental and revolving fund. The Board agreed the budget could be prepared for final approval.

The Board discussed whether it was appropriate for the Road Department to go into "maintenance mode" instead of new construction and start to grow the fund balance. The Board agreed it was time to complete maintenance projects and safety issues, and build the fund balance.

Steve Becken briefly discussed an issue with the right of way purchase on Hanks Road and Chairman Benitz requested they get the subcommittee involved in that process.

The Board briefly recessed, reconvening at 10:05 a.m.

Columbia River Crossing

Commissioner Beaver discussed the letter received from Benton-Franklin Council of Governments requesting Benton County increases its contribution by an additional $2,500 for the Columbia River Crossing study. The Board stated it was not in favor of increasing the amount and requested a letter be sent back stating that Benton County would be contributing $10,000.

Vouchers

Check Date: 10/02/2009
Warrant #: 934782-934788
Total all funds: $104.15

Check Date: 10/02/2009
Warrant #: 934601-934781
Total all funds: $1,309,974.69

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

Resolutions

09-665	Appointment to the Benton County Mosquito Control District Board
09-666	Lease / Purchase Agreement w/Xerox Corporation
09-667	Contract w/Washington Collectors for Collection Services
09-668	Blanket Service Agreement w/Perfection Glass, Inc.
09-669	Blanket Service Agreement w/Total Energy Management for HVAC Services
09-670	Transfer of Funds, Fund No. 0124-101, Dept. 000
09-671	Agreement, #09/10-DD-AWI-00, w/Ambitions of Washington, Inc.
09-672	Agreement, #09/10-PREV-VISTA-00, w/Vista Youth Center
09-673	Service Agreement, #PSA-2009/2010-IFD-00, w/Institute for Family Development
09-674	Agreement w/The Confederated Tribes of the Umatilla Indian Reservation
09-675	Authorization to Purchase De-Icer Flow Controls

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

Clerk of the Board

Chairman

a

AGENDA/WORKSHOP ITEM		TYPE OF ACTION NEEDED			
Meeting Date:	12-October-2009	Execute Contract	___	Consent Agenda	x
Subject:	Fujitsu Scanner Maintenance	Pass Resolution	x	Public Hearing	___
		Pass Ordinance	___	1st Discussion	___
		Pass Motion	___	2nd Discussion	___
Prepared By:	J. Randall Reid	Other	___	Other	___
Reviewed By:	Loretta Smith-Kelty				

BACKGROUND INFORMATION

Since the county has been involved in serious document imaging, maintenance contracts or extended warranties have been kept current for all of the scanners that are considered "production" (as opposed to occasional use). In the case of the high volume scanners, this has been Fujitsu ScanCare which includes on site preventive maintenance. Also included in the quotes that were requested was Advance Exchange warranties for some of the lower volume scanners that are important for routine document processing.

SUMMARY

Quotes have been requested for maintenance and extended warranties on Fujitsu scanners currently in service throughout the county. The attached resolution authorizes a vendor selection.

RECOMMENDATION

1ST Pass resolution

2nd

FISCAL IMPACT

None. Included in 2009 Central Services budget.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PURCHASING MAINTENANCE FOR FUJITSU SCANNERS.

WHEREAS, resolution 08-132 requires authorization by the Board of County Commissioners for purchases between $5,000 and $25,000; and

WHEREAS, seven (7) vendors on the Benton County Vendor List were asked to provide quotes for extended warranties and on site maintenance on eighteen (28) Fujitsu scanners used by county departments; and

WHEREAS, three (3) vendors responded with the following quotes:

Image Source	612 Fifth Avenue SW Olympia WA 98501	$24,123
Insight Public Sector	6820 South Harl Avenue Tempe AZ 85283	$23,631
Unisoft Networks	PO Box 2709 Redmond WA 98073	$27,307

of which Insight Public Sector was the lowest quote; NOW THEREFORE,

BE IT RESOLVED, by the Board of Benton County Commissioners, that Central Services be authorized to purchase Fujitsu scanner maintenance from Insight Public Sector for the amount of $23,631 plus tax; and

BE IT FURTHER RESOLVED, that the total purchases with this award are not to exceed $26,000 plus tax.

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 THE NOTICE OF COMPLETION OF THE TREASURER'S OFFICE REMODEL LOCATED AT THE BENTON COUNTY ANNEX BUILDING, KENNEWICK, WA

WHEREAS, as per Resolution 09-496 dated August 3, 2009, Benton County entered into a contract with Fowler General Construction, Inc., Richland, WA - Contractors License No. FOWLEGC9610W for the construction of the Treasurer's Office Remodel located at the Benton County Annex Building, Kennewick, WA; and

WHEREAS, the Benton County Facilities Manager determined the project reached completion on weekending September 25, 2009; **NOW, THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby accepts the Treasurer's Office Remodel project complete.

Dated this _____ day of _____, 2009

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Orig: File - Lisa Small
cc: Auditor; R. Ozuna; Fowler General Construction

Small

C

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED		
MEETING DATE: B/C 10-12-09 F/C 10-19-09	Executive Contract	xx	CONSENT AGENDA xx
SUBJECT: Amendment to Professional Services Agreement for Criminal Defense Panel Attorney Susan D. Henwood	Pass Resolution	xx	PUBLIC HEARING
	Pass Ordinance		1ST DISCUSSION
	Pass Motion		2ND DISCUSSION
	Other		OTHER
Prepared By: Donna A. Lee			
Reviewed By: Sharon A. Paradis			

BACKGROUND INFORMATION

Attached for Board review and approval is the Professional Services Agreement between the Benton-Franklin Counties Juvenile Justice Center (BFJJC) and Defense Panel Attorney, Susan Darden Henwood. Ms. Henwood has practiced law for several years in Washington. This negotiated Professional Service Agreement meets the current Office of Public Defense standards, includes the provision for Ms. Henwood to cover the CDDA docket and clarifies the caseload reporting language.

SUMMARY

This Professional Services Agreement to provide legal representation to indigent persons in Benton-Franklin Counties Juvenile Court Division replaces the current contract with Ms. Henwood.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County approve and sign the Professional Services Agreement for Legal Representation of indigent persons in Benton and Franklin Counties Juvenile Court Division, as written.

FISCAL IMPACT

Compensation for the panel attorney is set forth in the Juvenile Court's 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, on behalf of their respective county, the Professional Services Agreement with Ms. Henwood.

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 PROFESSIONAL SERVICE AGREEMENT FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS IN BENTON AND FRANKLIN COUNTIES SUPERIOR COURT, JUVENILE DIVISION, BETWEEN THE JUVENILE JUSTICE CENTER AND SUSAN DARDEN HENWOOD, and,

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Professional Service agreement between the Juvenile Court and the criminal defense panel attorney, to-wit: Susan Darden Henwood, be approved as presented; and

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 Professional Service Agreement between the Juvenile Court and the defense panel attorney, to-wit: Susan Darden Henwood.

DATED this 12th day of October 2009

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this 19th day of October 2009

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (4): 1-BC Commissioners, 1-FC Commissioners, 1-Henwood, 1-Juvenile

JUDGES
Hon. Dennis D. Yule
Hon. Craig J. Matheson
Hon. Vic L. VanderSchoor
Hon. Robert G. Swisher
Hon. Carrie Runge
Hon. Cameron Mitchell

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. SCHNEIDE
JERRI G. POTTS
Court Commissioner

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON-FRANKLIN COUNTIES JUVENILE COURT DIVISION CONTRACT #BFSC0709SDH003J

THIS AGREEMENT is entered into by and between **Susan Darden Henwood**, attorney at law, Washington State Bar Association **#33843** ("Attorney"); and **BENTON COUNTY** and **FRANKLIN COUNTY**, state of Washington political subdivisions (jointly the "Counties"), for and on behalf of the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency ("Juvenile Justice Center").

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

A. The Counties have the legal responsibility to provide legal defense services to indigent persons charged with criminal offenses alleged to have been committed within the Counties' respective jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the Counties to provide legal services to indigent persons subject to various legal proceedings in the Juvenile Division of the Counties' respective Superior Courts (the "Juvenile Court Division" or "Juvenile Court").

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **the 1st day of June, 2007**, and shall continue thereafter through and including the **31st day of December 2009**, 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 **324 W Kennewick Avenue, Kennewick,** WA **99336.** Attorney's current local office telephone and fax numbers are **(509) 582-3291**

and **(509) 582-6484**, respectively; and Attorney's current office/work e-mail address is **sdhenwood@yahoo.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the Counties have an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Juvenile Court Division. 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 juvenile offenders in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony, gross misdemeanor, and misdemeanor criminal defense or criminal prosecution matters; has not been found by a court of competent jurisdiction to have rendered ineffective assistance of counsel to a criminal defendant; has not been censored, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; and has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past.

(i) This Agreement shall be subject to termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively

and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the Counties within one (1) business day if any event specified in paragraph 3.a.(i) above occurs.

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 Counties 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 Counties 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 during 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 JJC Administrator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("WOPD"), and the Counties may provide Attorney's name and address to the WOPD for purposes of the WOPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the JJC Administrator 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 the close of business on the 15th day of each month during the term of this Agreement, Attorney shall provide the

JJC Administrator with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month, the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month, and the reasonably approximate percentage of time spent by Attorney during the preceding month providing legal services in private practice cases versus and in relation to time spent by Attorney during the preceding month providing legal services in appointed cases under this Agreement. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements upon written notice from the Counties to do so. Notwithstanding any other provisions of this Agreement regarding the payment of compensation to Attorney, if Attorney fails to comply with reporting requirements under this paragraph, Attorney acknowledges and agrees that the JJC Administrator shall have the absolute discretion and authority to stop and withhold the processing and submittal of payment voucher requests for Attorney's compensation under this Agreement until such time as Attorney fully complies with reporting requirements.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.**

a. On or about the date of this Agreement, the Counties contemplate entering into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons in the Juvenile Court Division. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Juvenile Court, and the JJC Administrator to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Juvenile Court Criminal Defense Panel"). The JJC Administrator shall have the inherent discretion and authority to monitor and control (and potentially modify/change) such process.

b. Additionally, on or about the date of this Agreement, the Counties also contemplate entering into separate and independent professional services agreements with licensed attorneys to primarily provide legal representation to indigent persons subject to civil proceedings in the Juvenile Court Division (collectively the "Juvenile Court Civil Defense Panel").

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 Juvenile Court Division in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony, gross misdemeanor, or misdemeanor matter filed or otherwise pending under RCW Title 13 (and/or under any other applicable Washington law) in the Juvenile Court Division.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any diversion referral consultation and/or diversion revocation proceeding.

- Any material witness or truancy matter (limited to only those truancy matters scheduled on first-appearance dockets).

- Any case or matter returned to the Juvenile Court Division from any higher court.

- Any other type of Juvenile Court Division case or matter (regardless of whether criminal-based or civil-based) in which another Juvenile Court Criminal Defense Panel member and/or a Juvenile Court Civil Defense Panel member is unable to handle due to a conflict of interest.

- Any matter involving a Chemical Dependency Disposition Alternative ("CDDA") case review

At Attorney's request, Attorney may be appointed to any of the following matters:

- Juvenile truancy Court dockets

- Truancy Board representation

6. **CONTINUED REPRESENTATION.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded during the term of this Agreement, and Attorney's obligation to fully complete all cases encompassed by this Agreement following its termination date shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a non-homicide crime after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a homicide after the termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued, post-termination representation is specified in paragraph 13 below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Juvenile Court civil-

based proceedings shall be limited to the sixty (60) day period following the termination date.

7. **NUMBER OF APPOINTMENTS.** During each calendar year during the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Juvenile Court Division up to a maximum of **two hundred twenty-five (225) total case equivalents per calendar year** (proratable for any partial calendar year). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted. Truancy docket and Truancy Board representation, being separately compensated, shall not count toward this maximum caseload.

8. **CASE EQUIVALENTS.**

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

- A felony appointment shall be counted as one (1) case equivalent.
- A misdemeanor appointment shall be counted as one-half (½) of a case equivalent.
- An appointment to a dependency case shall count as three (3) case equivalents per year.
- An appointment on a mental or alcohol commitment shall count as one-third (1/3) of a case equivalent.
- An appointment on a Child In Need of Services (CHINS), Alternative Residential Placement (ARP), or a Youth at Risk Petition (YARP) shall count as two-thirds (2/3) of a case equivalent.
- An appointment on a declination hearing shall count as one (1) case equivalent (in addition to the applicable case equivalent for the underlying offense if the case is disposed of in Juvenile Court; i.e., jurisdiction retained by Juvenile Court).
- An appointment to a termination case shall count as three (3) case equivalents per year.
- Assignment to miscellaneous rotating "attorney of the week" matters including, without limitation, contempts, probation violations, diversion counsels, material witness matters, and truancies, shall count as one-third (1/3) of a case equivalent per matter.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the court shall retain

discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- An appointment to a CDDA case review shall not count as any case equivalent

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 Juvenile Court and Attorney continues representing the same person in such matter (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

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

d. Throughout the term of this Agreement, the JJC Administrator shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The JJC Administrator shall provide copies of such records to the Counties and Attorney on a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the JJC Administrator in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Juvenile Court Division (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly-provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court Division of such possibility for purposes of the Juvenile Court Division (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive

publicly-provided representation. If the Juvenile Court Division (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Juvenile Court Division's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Juvenile Court Division to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile Court Division to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Juvenile Court aware of such development for purposes of the Juvenile Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Juvenile Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (including the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

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

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder (except for miscellaneous attorney-of-the-week matters, including, but not limited to probation violations, contempts, and review hearings). Attorney shall retain such case records in their entirety (or a complete and legible copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded, until the represented person reaches the age of twenty-one (21) years, or until an incarcerated represented person is released from incarceration, whichever date/event occurs last.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the JJC Administrator 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.

e. Without limitation to Attorney's other duties to represented indigent persons under this Agreement, Attorney's representation duties within the specific context of CDDA case reviews shall generally include representation of the indigent person at all scheduled review hearings and participation in any CDDA case staffing proceedings prior to review hearings.

12. **COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during 2007, the Counties shall pay Attorney, as professional service attorney fees and not as employment salary/wages,

the sum of **$4,990.52 per month** (proratable for any partial month), payable on the last business day of the month.

b. During calendar years 2008 and 2009, Attorney's monthly compensation hereunder shall be equal to Attorney's monthly compensation during December of the preceding calendar year plus any cost-of-living-adjustment ("COLA") percentage increase (if any) received by the Juvenile Justice Center's non-bargaining employees during 2008 and/or 2009, as the case may be.

(i) For example, if the non-bargaining employees received a 3% COLA increase for 2008, Attorney's monthly compensation for 2008 would be $5,140.23 (i.e., Attorney's December 2007 monthly compensation of $4,990.52 increased by 3%).

(ii) By way of further example, if the non-bargaining employees received a 3% COLA increase effective as of July 1, 2008 (rather than January 1, 2008), Attorney's monthly compensation would also increase by 3% to $5,140.23, with such increase being prospectively effective as of July 1, 2008.

c. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective August 31, 2007, the above-stated $4,990.52 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 Counties; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney is reasonable and equitable and that (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) such compensation shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total of 225 case equivalents.

e. For representation during Truancy Court dockets and Truancy Boards, Attorney shall be provided additional compensation as follows:

(i) A flat fee of $450 per Truancy Court docket;

(ii) A flat fee of $200 per Truancy Board

f. In addition to the above-stated compensation to Attorney, Attorney shall be paid, as professional service attorney fees and not as employment salary/wages, the additional sum of **$125.00 per month** (pro-ratable for any partial month) for Attorney's representation of persons in CDDA case reviews under this Agreement. Provided that, however, in the event that public funding for the CDDA program is lost or reduced and the Counties do not then decide to terminate such program (in which case such additional compensation to Attorney would correspondingly also terminate), the parties agree to negotiate in good faith a reduced compensation amount to Attorney for CDDA

case reviews. In the event that the parties fail to reach a negotiated and agreed reduction in Attorney's compensation, the issue will be resolved by the parties pursuant to the provisions of paragraph 31 below.

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

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

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

14. **COSTS AND EXPENSES.**

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

b. The Counties recognize, 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 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 Counties would be obligated to pay and reimburse to employees of the Juvenile Justice Center 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 Counties 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 Counties. 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 JJC Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the Counties shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE**. Attorney may from time-to-time be appointed to handle certain Class-A felony matters hereunder in the Juvenile Court Division that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of

the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the Counties and their elected/appointed representatives, officers, employees, and agents; and to hold the Counties and their 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 Counties or any of their 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 Counties) 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 Counties or any of their 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 Counties only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

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

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

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

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

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

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

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

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the Counties and their respective then-designated Risk Managers with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the Risk 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).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the Counties or the Juvenile Justice Center receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the person that describes and

details the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the Counties and the JJC Administrator.

a. Upon receiving such complaint, the JJC Administrator, without limitation to any other action the Counties 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 Counties, the JJC Administrator, and the represented person within five (5) business days). The JJC Administrator shall immediately forward copies of the complaint and Attorney's response to the Juvenile Court's Supervising Judge and Court Commissioners ("Juvenile Court Bench") for their review and action they may deem necessary with Attorney and/or the represented person to address and resolve the complaint, and the resolution and disposition of the complaint shall be promptly communicated to the represented person. The JJC Administrator shall follow-up with the Juvenile Court Bench within five (5) business days thereafter to confirm that the complaint was addressed and resolved.

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 Counties may deem necessary/appropriate, Attorney acknowledges that the Counties have the right to periodically ask, without limitation, the Juvenile Court Bench and/or the JJC Administrator and/or other attorneys and/or persons represented by Attorney to provide the Counties with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement.

19. **TERMINATION.**

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the Counties and/or the Juvenile Justice Center 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 Juvenile Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the Counties and/or the Juvenile Justice Center relating to such substitute appointment(s).

b. In addition to the above-referenced automatic termination provisions, the Counties 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) 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 Counties right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the Counties.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last fifteen (15) calendar days of said sixty (60) day notice period.

d. In any event, consistent with the provisions of paragraph 12.c. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the Counties 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.

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

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

a. Attorney and any of the other Juvenile Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis provided the substitution is authorized by the court and approved by the particular person(s) being represented by Attorney. Any compensation or consideration (if any) to be paid or given by Attorney to the other Juvenile Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the Counties for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks leave of absence from the practice of law during the term of this Agreement and is unable to obtain the assistance of the other Juvenile 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 Counties and the JJC Administrator) 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 Counties for such substitution(s).

(ii) Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the Counties 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 Juvenile Court.

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

Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

24. **JUDICIAL SERVICE.** Attorney shall not serve in any judicial capacity (including judge pro tem or court commissioner) in any case in which the Counties are a named party or in any case in which the State of Washington is a named party and is being represented by the Benton County Prosecuting Attorney's Office/Franklin County Prosecuting Attorney's Office (or by an appointed special deputy prosecutor thereof).

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

26. **CAPTIONS.** 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.

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration in the Tri-Cities,

Washington. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The Counties 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) days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in superior court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in superior court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

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

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

Franklin County Board of Commissioners
1016 N. Fourth Ave.
Pasco, WA 99301

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

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

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

b. Any notices required or permitted to be given by the Counties to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or

mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 above.

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

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

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

34. **PUBLIC INDIGENT DEFENSE COORDINATOR.** Notwithstanding the other terms and provisions in this Agreement, if the Counties retain and/or designate a person/entity to coordinate, monitor, and evaluate the performances and compliance of attorneys (like Attorney) under public indigent defense agreements with the Counties, the Counties shall have the right and absolute discretion to designate such person/entity to fulfill various roles, and assume various responsibilities, of the Counties, the JJC Administrator, and/or the court under this Agreement including, without any limitation, the role of the JJC Administrator under paragraphs 3.d., 3.f., and 4.a. above; the role of the court under paragraph 14.b. above; and the role of the JJC Administrator and/or the court under paragraph 18.a above.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

Attorney		Benton Franklin Counties Juvenile Justice Center	
Susan Darden Henwood 09/28/09		Sharon A. Paradis 10/1/09	
Susan Darden Henwood	**Date**	**Sharon A. Paradis**	**Date**
Approved as to Form and Content:			
9/28/09			
Eric Hsu, Attorney at Law	**Date**		
Indigent Defense Coordinator			
BENTON COUNTY APPROVAL		**FRANKLIN COUNTY APPROVAL**	
By:		By:	
Name: Max Benitz, Jr.		Name: Rick Miller	
Title: Chairman, Board of Commissioners		Title: Chairman, Board of Commissioners	
Date:		Date:	
Attest:		Attest:	
Clerk of the Board:		Clerk of the Board:	

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF CONTRACTING FOR ENGINEERING SERVICES WITH J-U-B ENGINEERS, INC. FOR THE HORSE HEAVEN VISTA PROJECT

WHEREAS, resolution 04-534 allows for non-public works services, the county need not advertise or follow a formal competitive bidding procedure; and

WHEREAS, J-U-B Engineers, Inc was originally contracted through CWH Architects to provide engineering services for the Horse Heaven Vista project; and

WHEREAS, though, CWH, Architects completed their portion of the project, the County still required additional engineering services from J-U-B Engineers on said project; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington, the Board hereby concurs with contracting with J-U-B Engineers, Inc. to provide engineering services for the Horse Heaven Vista project for a contract amount not to exceed $12,000 including WSST; and

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners hereby authorizes the Chairman of the Board to sign the attached contract hereto for said services.

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

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

cc:

Contract No. 09-30006

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 **J-U-B ENGINEERS, INC.** with its principal offices at 2810 West Clearwater Ave., Suite 201, Kennewick, WA 99336(hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following exhibits, which are incorporated herein by reference

a. **Exhibit A - Bid Proposal dated August 13, 2009**
b. **Exhibit B - 2009 Prevailing Wage Rates**

2. DURATION OF CONTRACT

The term of this Contract shall begin when executed by both parties, and shall be substantially complete by December 31, 2009. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

a. The COUNTY requires and the CONTRACTOR agrees to prepare drawings and project specifications as required for federal aid project, attend design coordination and preconstruction meetings, provide on-site construction services and observation when requested by Benton County. Services and rates are all in accordance with Exhibit "A" attached hereto.

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: Darral S. Moore, P.E.
2810 West Clearwater Ave., Suite 201
Kennewick, WA 99336
(509) 783-2144 Phone
(509) 736-0790 Fax

b. For COUNTY: Loretta Smith Kelty, Deputy Co. Admin.
PO Box 190
Prosser, WA 99350
(509) 786-5600 Phone
(509) 786-5625 Fax

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 $12,000 including Washington State Sales Tax. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative. At the completion of all work contemplated by this Contract or at the end of the contract term, whichever comes first, the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing

wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment will be made until such affidavit is provided.

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 **[Exhibit A]**, 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 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 contract 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 adding 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 Bests 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". 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 coverage shall be mailed to the COUNTY at

the following address:

Benton County
PO Box 190
Prosser, WA 99350

(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 there from to the extent such use is not agreed to in writing by the CONTRACTOR.

b. For Design/Construction Contracts: 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

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 CONTRACT

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 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.

- This section was intentionally left blank -

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

BENTON COUNTY

Max Benitz Jr., Chairman
Benton County Commissioner

Dated: _____

J-U-B ENGINEERS, INC.

Darral S. Moore, Project Mgr.

Dated: 10-6-09

Approved as to Form:

Jonathan Young
Deputy Prosecuting Attorney

EXHIBIT A

J-U-B ENGINEERS, Inc.
ENGINEERS • SURVEYORS • PLANNERS

2810 West Clearwater Ave., Suite 201
Kennewick, WA 99336
(509) 783-2144
Fax 736-0790
www.jub.com

August 13, 2009

Adam J. Fyall
Benton County Commissioners' Office
7122 West Okanogan Place, Building A
Kennewick, Washington 99336-2359

RE: HORSE HEAVEN VISTA - BENTON COUNTY

Dear Adam:

Per our phone conversation the following is a description of the revised scope of work to the Horse Heaven Vista project off of SR 221.

Additional Scope of Work

JUB to prepare drawings and project specifications as required for federal aid projects. Additionally, JUB to attend design coordination meetings and preconstruction meeting. JUB to also provide on-site construction services and observation when requested by Benton County. Additional services are estimated at $12,000 not to exceed. Attached is JUB's 2009 Fee Schedule as Exhibit "A".

Sincerely,
J-U-B ENGINEERS, INC.

Darral S. Moore, P.E.
Project Manager

enc: Exhibit "A"

30-07-014-01/Fyall.doc

Exhibit A
J-U-B ENGINEERS, Inc.

2009 Fee Schedule

Position	Hourly Charge Rate* Range
Principal	$ 205.00 - 255.00
Project Manager	$ 115.00 - 205.00
Structural Engineer	$ 125.00 - 175.00
Project Engineer	$ 100.00 - 130.00
Design Engineer	$ 70.00 - 100.00
Planner	$ 85.00 - 160.00
Two Man Survey Crew	$ 130.00 - 160.00
Licensed Surveyor	$ 120.00 - 150.00
Construction Manager / Administrator	$ 120.00 - 150.00
Construction Observer	$ 40.00 - 110.00
Technician	$ 40.00 - 110.00
Drafter – CAD	$ 60.00 - 90.00
Clerical / Administrative	$ 50.00 - 80.00
Out-of-Office Expenses and Subconsultants	10% markup
Mileage (adjusted quarterly); Currently	$0.55/mile

* Rates shall be adjusted yearly to incorporate inflation / salary adjustments.

RESOLUTION

e

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXTENDING THE SERVICE AGREEMENT WITH J.T. ATKINS & COMPANY FOR THE CREATION OF AN UPDATE TO THE RED MOUNTAIN AMERICAN VITICULTURAL AREA MASTER SITE PLAN; AMENDING RESOLUTION 09-331

WHEREAS, per Resolution 09-331 dated May 18, 2009 the Board of Benton County Commissioners approved the service agreement between Benton County and J.T. Atkins & Company for creation of an update to the Red Mountain American Viticultural Area Master Site Plan with a contract term to expire on July 31, 2009; and

WHEREAS, the Consultant did not complete the Agreement within the time schedule as originally written due to delays in getting some of the input information from third parties. However, the Consultant continued to work on the project beyond the expiration but within the cost and scope of the original contract; and

WHEREAS, the Sustainable Development Coordinator needs approval from the Board to extend the Agreement beyond its original expiration date in order to pay the Consultant for services rendered; **NOW, THEREFORE**

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves payment to the J.T. Atkins & Company for services rendered within the cost and scope of the original Agreement approved by Resolution 09-331.

Dated this _____ day of _____, 2009

_____

Chairman of the Board

_____

Member

_____

Member

Attest: _____

Clerk of the Board

Original: Sus. Dev. File
Copy: Auditor; R. Ozuna; A. Fyall; J.T. Atkins

f

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: JOHNSON, HINZERLING, & OIEH INTERSECTION - C.E. 1885 CRP; ROTHROCK, FOISY, & OIEH INTERSECTION – C.E. 1886 CRP; AND NORTH RIVER ROAD CURVE – C.E. 1874 CRP

WHEREAS, by resolution dated September 28, 2009, award was made to A & B Asphalt, Inc., Benton City, Washington for Johnson, Hinzerling, & OIEH Intersection - C.E. 1885 CRP; Rothrock, Foisy, & OIEH Intersection – C.E. 1886 CRP; and North River Road Curve – C.E. 1874 CRP; and

WHEREAS, the contract in the amount of $371,158.75 has been executed by A & B Asphalt, Inc.; NOW, THEREFORE,

BE IT RESOLVED that the Board hereby authorizes the Chairman of the Board of County Commissioners to sign said contract for Johnson, Hinzerling, & OIEH Intersection - C.E. 1885 CRP; Rothrock, Foisy, & OIEH Intersection – C.E. 1886 CRP; and North River Road Curve – C.E. 1874 CRP C.E.

Dated this 7th day of October, 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

9

RESOLUTION NO._____

County Engineer Project No. 1885, 1886, & 1874 CRP
Arterial ☒ Access ☒

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF COUNTY ROADS, RE: Johnson, Hinzerling, & OIEH Intersection - CE 1885 CRP; Rothrock, Foisy, & OIEH - CE 1886 CRP; and North River Road Curve - CE 1874 CRP

IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the County Engineer is hereby authorized to proceed with the improvements to the Johnson, Hinzerling, & OIEH Intersection - CE 1885 CRP; the Rothrock, Foisy, & OIEH Intersection - CE 1886 CRP; and North River Road Curve - CE 1874 CRP according to the contract awarded September 28, 2009 to A & B Asphalt, Inc.

Length of Project:__± miles; Width of Roadbed: _ ft.; Surface:_ ft.; Pavement: _ ft.
Type and depth of surfacing: Hot Mix Asphalt _____.
Bridge ____Irrigation Crossing: Length ____ ft.; Width _____ ft.
Estimated date of beginning: October 12, 2009 ; Estimated date of completion: May 31, 2010

BE IT FURTHER RESOLVED, That for the foregoing proper county road purpose there is hereby appropriated sums in the following detail:

	CE 1885 CRP County Road Fund	CE 1886 CRP County Road Fund	CE 1874 CRP County Road Fund	Total
Prelim. Engr.	15,000.00	15,000.00	15,000.00	45,000.00
Right-of-Way	3,600.00	2,700.00		6,300.00
Mat. from Stkple				0.00
Day Labor				0.00
Contract	162,782.00	119,609.00	88,767.75	371,158.75
Const. Engr.	16,218.00	11,960.00	8,877.25	37,055.25
Contingencies	8,000.00	5,931.00	4,355.00	18,286.00
Total	205,600.00	155,200.00	117,000.00	477,800.00

The county road purpose herein described is HEREBY DECLARED to be a public necessity and the County Road Engineer is HEREBY ORDERED AND AUTHORIZED to report and proceed thereon as by law provided.

BE IT FURTHER RESOLVED, That this purpose be performed in accordance with the Standard Road and Bridge Specifications of the State of Washington as adopted by this Board.

ADOPTED this 12th day of October, 2009.

_____
Chairman

(SEAL)

_____
Chairman Pro-Tem

Attest:

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

_____
Clerk of the Board

SWB:LJM:slc

h

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS, RE: C.E. 1925 ERR - CRUSHING AND STOCKPILING 2009 AND C.E. 1926 ERR – CRUSHING AND STOCKPILING 2010

WHEREAS, it is the intention of the Board of County Commissioners to crush and stockpile surfacing materials for road construction and maintenance functions; NOW, THEREFORE,

BE IT RESOLVED that the County Engineer is authorized to schedule and advertise a bid date for C.E. 1925 ERR - Crushing and Stockpiling 2009 and C.E. 1926 ERR – Crushing and Stockpiling 2010.

Dated this 12th day of October 2009.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

SWB:MJG:slc

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS, RE: PURCHASE OF LIQUID DEICER

WHEREAS, Benton County has executed an Intergovernmental Cooperative Purchasing Agreement with the State of Washington, Department of General Administration, Office of State Procurement for the purpose of purchasing equipment, materials, and supplies from State approved Contracts; and

WHEREAS, liquid deicer is listed on the State Contract OSP 02708 at the delivered price of $145.25 per ton; and

WHEREAS, the Public Works Manager recommends the purchase of 35 ton of liquid deicer as listed on State Contract OSP 02708; NOW, THEREFORE,

BE IT RESOLVED, that the Benton County Public Works Department is hereby authorized to purchase 35 tons of liquid deicer from Road Wise, Inc., Tacoma, Washington, at a total price of $5,083.75 plus state sales tax of $421.95; and

BE IT FURTHER RESOLVED, that the Public Works Manager is hereby authorized to proceed with the purchase.

Dated this 12th day of October, 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

Roadwise, Inc

APPENDIX D CONTRACTOR INFORMATION

1. **Company Name**: Roadwise, Inc.
   Address: 1616 So. Geiger St.
   City: Tacoma State: Washington Zip: 98465
   Phone: Toll free – (877) 260-1151 or (253) 761-2487 Fax: (253) 761-2125
   Washington State Department of Revenue Registration Tax number: 602-039-428
   Federal Tax ID No.: 91-2034499

2. **Legal Status of the Bidder:** Corporation: X

3. **Bidder's Authorized Representative:** (Reference Contract section 2.3)
   Name: Jeff Dobson
   Title: President
   Phone: Toll free – (877) 260-1151 or (253) 761-2487 Fax: (253) 761-2125
   E-mail: roadwiseinc@comcast.net

4. **Customer Service / Order Placement:**
   Company Name: Roadwise, Inc.
   Contact Person's Name: Collett Resop
   Address: 1616 So. Geiger St.
   City: Tacoma State: Washington Zip: 98465
   Phone: Toll free – (877) 260-1151 or (253) 761-2487 Fax: (253) 761-2125

5. **Sales Usage and Other Reports Contact Person:** (Reference Contract section 2.8)
   Contact Person's Name: Collett Resop
   Phone: Toll free – (877) 260-1151 or (253) 761-2487 Fax: (253) 761-2125

6. **Minority/Women Owned Business (MWBE):** (Reference Contract section 6.5) No: X

7. **Contractor Sales Representatives:**

Name	Jeff Dobson	Name	Marty Buell
Address	1616 So. Geiger St. Tacoma WA 98465	Address	2106 Round Lake Rd., St. Maries, Idaho
Territory	Western Washington	Territory	Eastern Washington
Phone	Toll free – (877) 260-1151 or (253) 761-2487	Phone	(509) 389-0004

8. **Purchasing Cooperative Members:** Political Subdivision: Contractor agrees to sell the goods and services on this contract to political subdivisions which are members of the State of Washington Purchasing Cooperative (WSPC): Yes: X.

Roadwise, Inc

9. **Payment Methods and Term:**

Prompt Payment Discount and Payment Terms: 0% 20 days; Net 30 days.

Purchasing (charge) Cards accepted Yes __ No X.

10. **Subcontractors/Trucking Transporters:** Bidders shall provide the following information, if applicable. Where additional space is needed and/or where specifically requested, submit an attached letter. (Reference section 4.13 of the Solicitation Document)

A. Identify any subcontractors/trucking transporters that will participate in the fulfillment of contract requirements and briefly describe the nature of equipment/services to be performed. Identify the anticipated dollar value of subcontractor's participation. Include federal tax identification (TIN) number.

Name: Commercial Truck Service Address: 4723 N. Rebecca St., Spokane WA 99217

Anticipated value of participation: $350,000 - $400,000

Description of equipment/services: 7 full time tanker delivery trucks that haul approximately 35 tons each. A full time, full service truck shop for repairs and maintenance, and a yard to park trucks, located in Spokane, WA.

11. **Railroads:** Bidders shall provide the following information, if applicable. Where additional space is needed and/or where specifically requested, submit an attached letter. (Reference section 4.13 of the Solicitation Document)

A. Identify any railroads that will provide freight transportation services in the fulfillment of contract requirements and briefly describe the shipping and receiving sites, and services to be performed.

Name: Union Pacific Railroad

Brief description: Rail shipment from Ogden, UT to Spokane, WA., Yakima, WA. and Tacoma, WA. We also have leased 37 tanker rail cars that haul approximately 100 tons or 18,000 gallons each.

12. **Terminal/storage:** Contractor has indicated below the warehouse, terminal or storage facility at which products will be stored prior to delivery to Washington destinations in performance of this contract in the event of contract award. Discuss if different for different product order/delivery options.

Name:	Roadwise, Inc.
Address:	Union Pacific Railroad Yard on corner of Havana & Sprague in Spokane, WA.
Phone:	(509) 487-9171
Contact Person:	Mel Lawson
Discussion:	We have increased our storage from 1 million to 2 million gallons in Spokane.

Name:	Roadwise, Inc.
Address:	100 W. Pine St., Yakima, WA
Phone:	Toll free – (877) 260-1151 or (253) 761-2487
Contact Person:	Jeff Dobson

Discussion:	Yakima – We have a leased track and we are in negotiations for the land. We purchased 15,000 - 35,000gallon storage tanks for a total of 525,000 gallons of storage. Additional 50,000 gallon storage at Tacoma, WA.

13. Product Information:

Pacific Northwest Snow Fighters (PNS) Qualified Product List			
Categories		Product Name and Manufacturer	
Category 1	Corrosion Inhibited Magnesium Chloride (Liquid)	FreezGard Zero CI Plus	186 gallons/ton

14. Contractor's ability to perform the contract:

A. Management Resources: Identify and describe the roll of key company management, sales and customer service personnel that will be involved in the performance of this contract in the event of contract award.

Jeff Dobson – President and General Manager

Marty Buell – Eastern Washington Sales Manager

Collett Resop – Administrative Assistant and Order placement

Mel Lawson – Storage, Dispatch and Truck Management

B. Bidder's Quality Assurance / Quality Control Program: Describe in detail your firm's quality control / quality assurance program to assure the quality of the product. Both the manufacturer's and Bidder's QA/QC program should be discussed.

North American Salt Company samples and tests each batch (200,000 gallons) before shipping to ensure compliance with PNS and WSDOT specifications.

C. Storage and Transportation Capabilities: Describe your product warehousing/storage, and transportation capabilities (including number and availability of delivery trucks, number and availability of railcars) that will be used in the performance of this contract in the event of contract award.

We will pre-fill our 2 million gallon storage yard in Spokane, pre-fill our 50,000 gallon storage in Tacoma, we hope to pre-fill our 15,000 – 35,000 gallon storage tanks in Yakima, and we will pre-fill and have on our tracks 37 railcars for a total of 3,241,000 gallons of storage to start the winter season. North American Salt has a fleet of over 400 railcars that are available to us.

D. Performance Capabilities During Storm Events: Describe your firm's ability to provide quick response to orders prior to and during winter storm events, including: strategic location of product, alternative shipping arrangements, and available personnel plan.

We have 7 full time Mag trucks with drivers, a full time manager and 2 full time mechanics that can fill in as drivers. All are available 24/7. Everything is the same as last winter except we have increased our storage capacity by almost 150%.

E. Ordering Capacity: Describe you firm's order: receiving, acknowledgment, tracking, invoicing, payment receiving, and order problem resolution program.

Orders are placed with our Tacoma office. Receipt acknowledgements of orders will be faxed immediately to the ordering party. Orders are scheduled and relayed to the ordering party by telephone or fax. Any delays or problems are resolved by telephone to appropriate people. After confirmation of delivery and receiving bill of ladings, invoices are prepared and mailed. Billing and payment are tracked by our accounting department in our accounting system.

APPENDIX G PRICE SHEETS

Bulk Prices

Delivery in bulk truckload quantities. Prices are US dollars ($) and volumes are in US Short Tons (2000 pounds).

PNS Category	1 Corrosion Inhibited Liquid Magnesium Chloride	
	Product Bid: FreezGard Zero CI Plus	
Order/Delivery Options	**3 Days**	**7 Days**
WSDOT Region 1, Northwest		
Maintenance Area 1	$177.95/ton	$172.45/ton
Maintenance Area 2	$175.35/ton	$169.85/ton
Maintenance Area 3	$167.50/ton	$162.00/ton
Maintenance Area 4	$164.90/ton	$159.40/ton
Maintenance Area 5	$163.10/ton	$157.60/ton
Drop Shipment Charges:	$125.00/drop	
WSDOT Region 2, North Central		
Maintenance Area 1	$144.50/ton	$139.00/ton
Maintenance Area 2	$138.00/ton	$132.55/ton
Maintenance Area 3	$139.50/ton	$134.00/ton
Drop Shipment Charges:	$125.00/drop	
WSDOT Region 3, Olympic		
Maintenance Area 1	$168.00/ton	$162.50/ton
Maintenance Area 2	$172.25/ton	$166.75/ton
Maintenance Area 3	$184.10/ton	$178.60/ton
Maintenance Area 4	$178.65/ton	$173.15/ton
Drop Shipment Charges:	$125.00/drop	
WSDOT Region 4, Southwest		
Maintenance Area 1	$173.50/ton	$168.00/ton
Maintenance Area 2	$168.50/ton	$163.00/ton
Maintenance Area 3	$176.00/ton	$170.50/ton
Maintenance Area 4	$156.00/ton	$150.50/ton
Drop Shipment Charges:	$125.00/drop	
WSDOT Region 5, South Central		
Maintenance Area 1	$160.25/ton	$153.00/ton
Maintenance Area 2	$161.00/ton	$153.50/ton
Maintenance Area 3	$152.50/ton	$145.25/ton
Maintenance Area 4	$152.00/ton	$145.00/ton
Drop Shipment Charges:	$125.00/drop	
WSDOT Region 6, Eastern		
Maintenance Area 1	$134.58/ton	$128.10/ton
Maintenance Area 2	$130.20/ton	$124.05/ton
Maintenance Area 3	$131.35/ton	$125.45/ton
Maintenance Area 4	$132.74/ton	$126.70/ton
Drop Shipment Charges:	$125.00/drop	

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE PERSONAL SERVICE CONTRACT EXTENSION AGREEMENT BETWEEN BENTON COUNTY AND CONSOLIDATED FOOD MANAGEMENT INC. FOR CORRECTION FOOD SERVICES LOCATED AT THE BENTON COUNTY JAIL FACILITY, CURRENT EXPENSE FUND NO. 0000-101, SHERIFF CUSTODY DEPARTMENT 120

WHEREAS, proposals for corrections food services located at the Benton County Jail Facility, Kennewick, WA were solicited from interested providers in 2008; and

WHEREAS, a Personal Service Contract was entered into on January 15, 2009 between Benton County and Consolidated Food Management Inc., for corrections food services to the jail for calendar year 2009 via Resolution 09-031; and

WHEREAS, the parties' 2009 Personal Service Contract specifies that upon mutual written agreement of the parties, the contract terms and conditions may be extended for four (4) subsequent one year periods; and

WHEREAS, Benton County has been satisfied with the food service provided by Consolidated Food Management Inc; and

WHEREAS, the parties wish to extend the contract terms and conditions for calendar year 2010 with a change to Section 25 COMPENSATION. "The total amount payable to the CONTRACTOR for 2010 shall not exceed eight hundred seventeen thousand two hundred ninety three dollars and zero cents ($817,293.00);" **NOW, THEREFORE,**

BE IT RESOLVED, the Benton County Commissioners hereby approves the attached Personal Service Contract Extension Agreement between Benton County and Consolidated Food Management Inc. for correction food services in an amount not to exceed $817,293.00 for the calendar year 2010; and

BE IT FURTHER RESOLVED, the Board authorizes the Chairman of the Board to sign the attached Personal Service Contract Extension Agreement; and

BE IT FURTHER RESOLVED, the Personal Service Contract Extension Agreement commences on January 1, 2010 and expires December 31, 2010.

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 Sheriffs Office
cc: Auditor, R. Ozuna, CFM

Prepared by: K Mercer

CONTRACT EXTENSION AGREEMENT

THIS CONTRACT EXTENSION AGREEMENT is made and entered into this ____ day of _____, 2009 by and between Benton County, a political subdivision located at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY") and Consolidated Food Management Inc. (hereinafter "CONTRACTOR").

WHEREAS, the parties entered into a Contract dated January 12, 2009 (the "CONTRACT") via resolution 09-031, for corrections food services located at the Benton County Jail Facility; and

WHEREAS, the CONTRACT specifies that upon mutual agreement of the parties, the contract terms and conditions may be extended for four (4) subsequent one year periods on mutual written agreement of the parties; and

WHEREAS, the parties wish to extend the contract terms and conditions for calendar year 2010 and change Section 25 COMPENSATION to increase the amount payable to CONTRACTOR commensurate with CONTRACTOR'S 2010 pricing (Exhibit B attached hereto.) and

NOW, THEREFORE, in consideration of the payments, provisions, and agreements set forth herein, the parties agree as follows:

1. This Extension Agreement, and the parties' existing agreement and all contract documents incorporated therein constitute the integrated agreement between parties.

2. This Extension Agreement shall be effective January 1, 2010 through December 31, 2010.

3. CONTRACTOR shall be paid in accordance with Exhibit B (2010 pricing) attached hereto. SECTION 25.b. of the CONTRACT (COMPENSATION) shall be replaced with the following:

   "The total amount payable to the CONTRACTOR for 2010 under this contract shall not exceed eight hundred seventeen thousand two hundred ninety three dollars and zero cents ($817,293.00);"

4. 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 Extension Agreement on behalf of the County, and the Contractor has executed this Extension Agreement, on the day and year first above written.

BENTON COUNTY

_____

Max Benitz Jr., Chairman

Date: _____

Approved as to Form

Jonathan Young, Deputy Prosecuting Attorney

Consolidated Food Management Inc.

Signature

Kenneth T Arnold V.P.

Print Name/Title

Date: 9-29-09

7429 SE 27th Street
Mercer Island, WA 98040-2744
206.232.9771
206.232.1533 Fax
www.cfm-inc.com

Consolidated
Food Management

EXHIBIT B (2010 Pricing)

Inmates	Daily Meals	Cost/Meal 2010	Cost/Year 2010	Projection Cost/Meal 2011 4% CPI increase
650	1951 - 2000	1.056		$1.099
667	2001 - 2050	1.045		$1.087
684	2051 - 2100	1.034		$1.075
700	2101 - 2150	1.023		$1.064
717	2151 - 2200	1.013		$1.054
734	2201 - 2250	1.004		$1.044
750	2251 - 2300	0.995	$817,292.488	$1.035
767	2301 - 2350	0.986		$1.025
784	2351 - 2400	0.978		$1.017
800	2401 - 2450	0.970		$1.008
817	2451 - 2500	0.962		$1.000
834	2501 - 2550	0.957		$0.995
850	2551 - 2600	0.952		$0.990
867	2601 - 2650	0.945		$0.983
884	2651 - 2700	0.938		$0.976
900	2701 - 2750	0.932		$0.969

B W A BERNARDO | WILLS
ARCHITECTS PC

9:05 RECEIVED
OCT 02 2009
BENTON COUNTY COMMISSIONERS

Max	✓
Leo	✓
Jim	✓
David	✓
Loretta	✓
Other	Small

R Rogers

October 1, 2009

Benton County Commissioners
PO Box 190
Prosser, WA 99350

RE: Benton County - New Administration Building
Preliminary Cost Assessment
BWA #08-341

Dear Commissioner:

For your review, this letter contains an assessment of the discussions of the August 26, 2009 meeting with David Sparks and Roy Rogers regarding the Benton County - New Administration Building project. This assessment clarifies the basic scope of the building, as developed by the Commissioners, Mr. Sparks and Mr. Rogers, and as derived from a February 4, 2008 memorandum from Mr. Sparks to the Benton County Board of Commissioners.

The memorandum outlines which departments are included in the planning of the new administration building, as well as the basic overall size of the building. The memorandum also includes a Space Needs Request, which estimates the need for each department. Finally, the memorandum includes some overall cost estimate numbers that were applied to the overall area analysis.

The analysis from the memorandum suggests that spatial needs may be met with a building program area of 40,000 sf of office space. This area will be divided into two office levels of 20,000 sf each. Additionally, it suggests the inclusion of a 20,000 sf basement-level parking garage, supporting 100 spaces. The cost analysis suggests that the office area would cost approximately $165 per square foot ($6,600,000), and the basement garage would cost approximately $83 per square foot ($1,660,000). This total, which I assume includes site costs, would be $8,260,000.

I have reviewed the assessment of the spatial and allocation needs for each department, and I believe that it is very reasonable. If we assume 70% efficiency for the building, this allows 30% support area for walls, major circulation, corridors, lobbies, elevators, stairs, toilet rooms, mechanical and electrical rooms, and common spaces such as communal conference rooms, storage rooms, and building management rooms. With this efficiency, a 20,000 sf office level would have 14,000 sf of office space, with 6,000 sf remaining for the support area. I transferred the individual department areas from the memorandum almost verbatim, only subtracting 500 sf from both the Auditor's Office and the Commissioners' Office. The department office areas total 14,000 sf for each of the two office levels. The division of area for each of the departments involved is described as follows:

107 S HOWARD FOURTH FLOOR
SPOKANE WA 99201
509•838•4511
FAX 509•838•4605
WWW.BERNARDOWILLS.COM

Ground Floor	
• Auditor	5,500 sf
– Accounting	
– Elections	
– Vehicle Licensing	
– Recording	
• Assessor	3,500 sf
– Board of Equalization	
• Treasurer	2,000 sf
• WSU Co-Op Extension	3,000 sf
TOTAL GROUND FLOOR	14,000 sf
Second Floor	
• Commissioners	5,500 sf
– Commissioners	
– Facilities	
– Sustainable Development	
• Personnel/Civil Service	3,000 sf
• Building/G.I.S.	4,500 sf
• Central Services	1,000 sf
– Mail Room	
TOTAL SECOND FLOOR	14,000 sf

I am concerned about the number of parking spaces anticipated in the memorandum. It describes the 20,000 sf parking garage as having 100 parking stalls. To begin with, this level will probably have about 75% efficiency. This leaves 15,000 sf, and if that is divided by 400 sf per space (not 200 sf per space as outlined in the memorandum), the result is approximately 35 to 37 spaces. The memorandum describes the need for 32 county vehicles.

Regarding the estimated costs outlined in the memorandum, I have concerns with the unit costs used. I have done some research using both the 2009 Means Cost Guide, as well as some recent comparable projects, and curiously they were very similar. My opinion is that the estimated rough number unit cost should be $220 per sq. ft. for the office levels, and $85 per sq. ft. for the basement parking level. The estimated area of the site to be developed is 240,000 sf. With these values, the preliminary estimated construction cost of the 40,000 sf office project is as follows:

Garage	20,000 sf x $85/sf	$1,700,000
Office	40,000 sf x $220/sf	8,800,000
Subtotal Building		$10,500,000
Sitework	240,000 sf x $5/sf	1,200,000
TOTAL CONSTRUCTION		$11,700,000

As with any project, there are associated "soft" costs that must be considered for the budget. These costs include furnishings, testing, permits, taxes, design fees, and contingencies; the breakdown of these costs is as follows:

Fixtures/Furnishings/Equipment	(6.0%)	$730,000
Testing and Inspections	(.25%)	30,000
Geotechnical and Surveys	(.50%)	60,000
Construction Permits and Fees	(1.5%)	180,000
Design Fees	(10.0%)	1,200,000
Contingencies	(5.0%)	600,000
Subtotal		$2,800,000
Construction Costs		11,700,000
Subtotal		14,500,000
WA State Sales Tax (8.6%)		

Please review this assessment and let Mr. Sparks know how you would like us to proceed. If you have any questions, please let us know. Thank you.

Sincerely,

Brian S. Page

Brian S. Page, AIA
Architect/Project Manager

cc: Commissioner Max Benitz, Jr. - Chairman
Commissioner Leo Bowman
Commissioner James Beaver
David Sparks - County Administrator
Roy Rogers - Director of Facilities
Loretta Smith Kelty - Deputy Administrator