

FRANKLIN COUNTY BOARD OF COMMISSIONERS

Agenda Summary Report (ASR)

DATE SUBMITTED: 03/01/2023	PREPARED BY: Whitney Conner
BOARD MEETING DATE: 03/14/2023	DEPARTMENT: Office of Public Defense
ITEM: (Select One) ☒ Consent Agenda ☐ Brought Before the Board Time needed: Choose an item.	
SUBJECT: Continuing Professional Services Contract with Shelley Ajax	
FISCAL IMPACT: None	
BACKGROUND: Each filed homicide or persistent offender case triggers potentially complex procedural and substantive requirements. By definition these cases not only consume extraordinary time but also results in significant financial outlays. This is so because the public defender has to not only ensure protection of the defendant's substantive and procedural rights, but must also satisfy the appearance of fairness if raised by appellate review or inquiry by outside parties. This contract is an <u>as needed</u> contract. We are requesting to continue to contract with Ms. Ajax for homicide and persistent offender legal representation. This contract comes subsequent to her notice of termination from her felony panel contract which did include these appointments. Due to that termination this contract is to continue her representation on these type of cases.	
RECOMMENDATION: Approve Resolution and Professional Services Contract.	
ATTACHMENTS: (All documents you are submitting to the Board- ASR, Resolution, Other) Resolution Professional Services Contract	
COORDINATION: Larry Zeigler, OPD Manager Whitney Conner, OPD Admin Assistant	
HANDLING / ROUTING: Fully executed documents will be imported into Document Manager a.s.a.p. for your retrieval None	

I certify the above information is accurate and complete.

Whitney Conner, OPD Admin Assistant

FRANKLIN COUNTY RESOLUTION _____

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

**EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SHELLEY AJAX
FOR PUBLIC DEFENSE SERVICES IN FRANKLIN COUNTY SUPERIOR COURT
FOR PERSON CHARGED WITH HOMICIDE AND PERSISTENT OFFENDER CRIMES.**

WHEREAS, Franklin County is obligated by law to provide indigent defense services in Franklin County Superior Court; and

WHEREAS, attorney Shelley Ajax has been providing such services in Franklin County Superior Court by way of a contract that has since been terminated; and

WHEREAS, Franklin County wishes to re-contract with attorney Shelley Ajax for a new period from January 1, 2023 to December 31, 2025; and

WHEREAS, it is therefore appropriate to execute the proposed contract for public defense services with attorney Shelley Ajax;

NOW THEREFORE, BE IT RESOLVED THAT the professional services agreement with attorney Shelley Ajax for public defense services on homicide cases filed in Superior Court.

DATED this day of, 2021.

**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON**

Chair

Chair Pro Tem

Member

ATTEST:

Clerk of the Board

Contract: AJAX12312025FCSC

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH HOMICIDE OFFENSES IN FRANKLIN COUNTY SUPERIOR COURT

CONTRACT SUMMARY			
Contract Type	Franklin County Superior Court – Homicide		
Contract Number	AJAX12312025FCSC	Contract Holder	Shelley Ajax
WSBA #	33627	Effective Dates	01/1/23-12/31/25
Caseload Cap	None	Compensation	\$95/HOUR

THIS AGREEMENT is entered into by and between **Shelley Ajax**, attorney at law, Washington State Bar Association # **33627** ("Attorney"), dba Ajax Law Firm, and **FRANKLIN COUNTY**, a State of Washington political subdivisions ("County"), for and on behalf of the Franklin County Superior Court.

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

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with homicide or persistent offender (RCW 9.94A.570) offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with homicide and persistent offender offenses, meets the standards set by the Washington State Bar Association for such representation, and desires to contract with the County to provide legal services to indigent persons subject to homicide and persistent offender charges in the Franklin County Superior Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023**, and shall continue thereafter through and including the **31st day of December 2025**, 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 **5861 W. Clearwater Ave, Kennewick, WA 99336**. Attorney's current local office telephone and fax numbers are **(509) 783-3330 and (509) 783-3334**, respectively; and Attorney's current office/work e-mail address is shelley@ajaxlawfirm.com.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-

mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Franklin County Public Defense Manager ("PDM"), the Franklin County Superior Court Administrator ("Superior Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Franklin County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of homicide or persistent offender crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA") in observance of the applicable Standards for Indigent Defense as adopted by the WSBA ("Standards"). 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 and meets the following criteria: 1) has had at least four years of criminal trial experience; 2) has had at least one year experience as a felony defense attorney; 3) has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury including at least one trial where at least one charge was a Class A Felony; 4) has had experience as counsel in cases involving mental health issues; and sexual offenses; and expert witnesses; and 5) has demonstrated legal writing ability. Attorney further certifies that he/she has not been subject to a termination proceeding involving a previous Franklin County personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her. These requirements may be reviewed with the PDM by written request.

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

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

b. Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as County may deem appropriate, in their sole discretion, even at a time after execution of this Agreement. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

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

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

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

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases

(which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** On or about the date of this Agreement, the County contemplates entering into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of homicide or persistent offender crimes in Franklin County Superior Court and will also utilize one or more Staff Defenders to provide such services. Cases will be assigned as determined by the Public Defense Manager in his sole discretion, based on a number of factors including, but not limited to, type of case, equitable distribution, budgetary constraints, training needs of staff and contracted defenders, and client dynamics. Attorney acknowledges and specifically agrees to this system of case assignment and understands that this Agreement does not create any entitlement of assignment to any particular case, group of cases or type of cases, and does not create any recourse for failure to be assigned to same.

5. **CASE APPOINTMENTS.** Attorney agrees to, and shall, accept appointments to represent indigent defendants charged with homicide or persistent offender charges in Franklin County Superior Court. Such cases will be assigned to attorneys holding homicide and persistent offender defense contracts as determined by the Public Defense Manager in his sole discretion,

based on a number of factors including, but not limited to, type of case, equitable distribution, budgetary constraints, training needs of staff and contracted defenders, and client dynamics.

6. **CONTINUED REPRESENTATION.** Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. If restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case.

Once appointed to represent a client, Attorney shall continue such representation until the case is "fully complete" as defined herein, unless permitted by the Court to withdraw as attorney of record.

7. **NUMBER OF APPOINTMENTS.** While this agreement does not impose a numerical limit on the number of cases that may be assigned to Attorney, Attorney nevertheless assumes personal and sole responsibility for ensuring that his/her practice of indigent criminal defense comports with the standards for such, contained in the Standards for Indigent Defense as adopted by the WSBA, including any such standards on overall caseloads. Attorney fully acknowledges and understands that neither County nor the PDM are responsible in any way for monitoring Attorney's caseload for purposes of compliance with such Standards for Indigent Defense.

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

9. **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 Franklin County Superior Court aware of such development for purposes of the Superior Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

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

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

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

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

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

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

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

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute

(iv) Any crime of dishonesty or deception.

11. **COMPENSATION.** For cases to which Attorney is appointed, he/she shall be compensated in the amount of **\$95/hour** or services rendered pursuant to this agreement up to a maximum aggregate amount of **\$10,000** per case (or such greater maximum aggregate amount as may be specifically approved and ordered by the court or its designee, approved pursuant to any other administrative process established by the PDM or County, or as this contract may be amended in particular cases when reasonable and necessary due to extraordinary facts, or complexity). Compensation shall be due and owing on an as-appointed and as-worked basis, and no minimum amount of compensation shall be due Attorney on any weekly, monthly or annual periodic basis other than as worked and billed.

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

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide or Persistent Offender case, Attorney shall submit an invoice for payment to the Office of Public Defense that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers, or to respond to any billing related questions or to prepare or review any compensation related court orders shall not be billable to the County. All payment vouchers and requests for additional

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

c. If a matter appointed pursuant to this Agreement is scheduled for a reasonably certain trial, then no later than thirty (30) calendar days before said trial commences, Attorney shall complete a Hourly Case Trial Budget Worksheet (on the prescribed form), which shall detail the anticipated billable time, costs and expenses that the trial will entail, and submit to the PDM.

12. COSTS AND EXPENSES.

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, commuting expenses relating to travel to either the Franklin County Courthouses or to any meetings within the city limits of Richland, Kennewick, Pasco, or West Richland, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources). However, under any circumstances, unless otherwise prohibited in another provision in this agreement, Attorney shall be entitled to compensation for his/her time incurred in undertaking the activity that generates the cost (including the time incurred for commuting or traveling to/from meetings).

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider to be compensated directly by the PDM provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses) nor shall Attorney be entitled to be reimbursed or the service provider be compensated for any such expense unless such expense has been pre-approved pursuant to process for such pre-approval established by the PDM and promulgated by written policy. Such preauthorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such 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 PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration. These invoices should be submitted to the Office of Public Defense no later than 30 days after said date of time expended.

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

(iii) In the case of reimbursement for travel mileage the following provisions shall apply: 1) Attorney shall be reimbursed at the rate then published by the Federal General Services Administration for use of personally owned vehicles; 2) only travel to and from destinations outside of the city limits of Richland, Kennewick, Richland, and West Richland shall be eligible for reimbursement; and 3) the mileage shall be calculated based on a starting point of the Franklin County Courthouse for Franklin County cases.

c. In addition to receiving the above-stated compensation under paragraph 11 Attorney shall receive \$600.00 per day for each full day of trial and \$300.00 for each partial day of trial or special set hearing. A full day of trial is defined as actual trial proceedings going beyond 1:30 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings on the record related to a jury or bench trial in court, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall include any time awaiting a jury decision when Attorney is required by the Court to remain in or close by the Courthouse pending verdict and shall include any time responding to the Bench's direction to appear on or off the record pending verdict or summons by the Court. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of \$600.00 if the matter was scheduled for a jury trial or \$300.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting an invoice to the Office of Public Defense outlining each of the days said Attorney was in trial for the mentioned case. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

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

14. **INSURANCE.**

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

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

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

by law, Attorney waives all rights of subrogation against the County for recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

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

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

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

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

- d. **Other Insurance Provisions:**

1. The Attorney's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents. Attorney's liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the County shall be excess and not contributory to Attorney's insurance policies.
2. The Attorney's liability insurance policies shall contain no special limitations on the scope of protection afforded to the 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 Attorney's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The Attorney shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the Attorney maintains higher limits than the minimums required in this contract, the County require and shall be entitled to coverage for the higher limits maintained by the Attorney.**
7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.
8. Attorney hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Attorney to enter into a pre-loss agreement to waive subrogation without an endorsement, then Attorney agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Attorney enter into such a waiver of subrogation on a pre-loss basis.
8. Compensation and/or payments due to Attorney under this Agreement are expressly conditioned upon Attorney's strict compliance with all insurance requirements. Payment to Attorney may be suspended in the event of non-compliance. Upon receipt of evidence of Attorney's compliance, such payments not otherwise subject to withholding or set-off will be released to Attorney.

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

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have a A. M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Franklin County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. All insurance to be maintained by the Attorney, other than Professional Liability and Workmen's Compensation, shall specifically include the County, its elected and appointed officers, officials, employees and agents as "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the County. Any insurance or self-insurance maintained by the County, its elected and appointed officials, employees and agents shall be excess of the Attorney's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Franklin County Office of Public Defense within ten (10) days of execution of this Agreement.
3. All written notices under this Section [8] and notice of cancellation or change of required insurance coverages shall be mailed to the Franklin County Office of Public Defense.
4. The Attorney or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Franklin County Office of Public Defense: Attn: Public Defense Manager, Franklin County Office of Public Defense, 1016 N. 4th Avenue, Pasco, WA 99301.

15. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Franklin County Superior Court or the PDM receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between the Attorney and the client, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Franklin County Court Administrator and the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the PDM, who shall provide the represented person with a copy of the response within five (5) business days). The PDM shall review the complaint and

Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM then may follow-up with the Franklin County Superior Courts within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Franklin County Superior Courts' ability and/or duty to monitor the performance of attorneys appearing before the court.

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

16. **TERMINATION.**

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. To the extent that Attorney is appointed to a pending case at the time of termination at the election of either party pursuant to this subsection 16c., Attorney shall not withdraw from the case unless: a) such withdrawal would not prejudice the rights of the client; b) such withdrawal would not result in substantial duplication of legal services in the defense of the case; and c) the Court specifically allows the withdrawal. If, even after this Agreement is terminated pursuant to this subsection 16c Attorney is unable to meet the criteria for withdrawal as stated herein and remains appointed to, and responsible for, such a pending case, Attorney shall continue to be entitled to compensation as provided herein, and the parties shall continue to be bound by the provisions of this Agreement, but Attorney shall no longer be eligible to be appointed any more new cases. Should the County decide to provide indigent defense representation in the Franklin Superior Court through a county agency such as an Office of Public Defense or a similar entity that will affect the scope and number of indigent defense contracts available, the County hereby agree to make its intentions known as soon as reasonably possible so that both the County and the Attorney can plan an appropriate transition for both sides. Upon receipt of such notice, Attorney may request transfer from contract status to employee status with no interruption in and/or transfer of existing caseload in accordance with then-existing County personnel policies.

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

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

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

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in section 14 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide notice as soon as practically possible so that appropriate substitution for coverage of Attorney's contract can be obtained and approved. Compensation for Attorney's Agreement shall be suspended during the time of active military duty and for reasonable transition time that may be requested by Attorney after return from active service. Attorney shall be entitled to resume contract duties with full compensation upon written request to the PDM within a reasonable time after return from active service.

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

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

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

21. **TEMPORARY JUDICIAL SERVICE.**

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

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

23. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

27. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not

be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

28. DISPUTE RESOLUTION.

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

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

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

party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Franklin County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

29. **NOTICES.**

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

Larry W. Zeigler, Public Defense Manager
Franklin Office of Public Defense
1016 N. 4th Avenue
Pasco, WA 99301

OPD@franklincountywa.gov

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

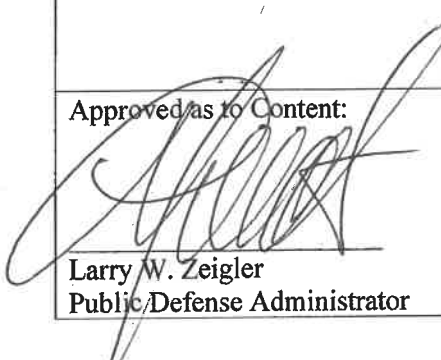
c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to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

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

31. **PUBLIC DEFENSE MANAGER.** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this

31. **PUBLIC DEFENSE MANAGER.** Attorney acknowledges that the County has employed a Public Defense Manager ("PDM") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the PDM to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

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

 _____ Shelley Ajax WSBA # 36227	_____ Chair _____ Date _____ Chair Pro Tem _____ Member
Approved as to Content:  _____ Larry W. Zeigler Public Defense Administrator	_____ Date _____ Constituting the Board of Commissioners for Franklin County, WA