

COMMISSIONERS RECORD 47
FRANKLIN COUNTY
Commissioners' Proceeding for March 29, 2006

The Honorable Board of Franklin County Commissioners met on the above date. Present for the meeting were Neva J. Corkrum, Chairman; Bob Koch, Chair Pro Tem; and Frank H. Brock, Member; and Mary Withers, Clerk to the Board. Fred Bowen, County Administrator, was on vacation.

OFFICE BUSINESS

Secretary Patricia Shults met with the Board.

Consent Agenda

Motion - Mr. Brock: I move for approval of the consent agenda removing item #3 as follows:

1. Approval of **Resolution 2006-167** authorizing the Clerk's Office to purchase a stamp table from Husk in the amount of \$1,327.76 and authorizing an intra budget transfer in the amount of \$1,328 within the 2006 Current Expense County Clerk Budget, #001-000-160, from line item 512.30.43.0000 (Travel) to line item 594.00.60.0000 (Capital Outlay). (Exhibit 1)
2. Approval of **Resolution 2006-168** authorizing the purchase of eight laptop computers for the Sheriff's Department and authorizing an inter budget transfer in the amount of \$25,279 from the Non-Departmental Budget, #001-000-700, line item 519.90.10.0001 (Contingency Reserve) to the Capital Outlay Budget, #001-000-710, line item 594.00.64.3501 (Computer Hardware). (Exhibit 2)

(Clerk's Note: Item 3 was removed from the consent agenda.)

3. Approval of **Resolution 2006-___** for the Personal Service Agreement providing for a family law facilitator service for Franklin County Superior Court Clerk, between Franklin County and Michelle Dolven, to be paid from the 2006 Miscellaneous Courthouse Facilitator Budget, #116-000-001, line item 512.22.41.0000 (Professional Services), effective through March 2007.
4. Approval of **Resolution 2006-169** for the Personal Services Agreement between Franklin County and Let's Pretend Entertainment, LLC, to perform four shows each day July 1-4, 2006 in conjunction with the project designated Grand Old 4th, with the cost not to exceed \$3,000.00, plus lodging on July 1-4, 2006. (Exhibit 3)
5. Approval of **Resolution 2006-170** for the Personal Services Agreement between Allan Hirsh "Allyoop", to perform three shows each day July 1-4, 2006 in conjunction with the project designated Grand Old 4th, with the cost not to exceed \$1,750.00, plus lodging on July 1-4, 2006. (Exhibit 4)

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6. Approval of **Resolution 2006-171** extending the agreements to April 30, 2006 for Robert Thompson and Sam Swanberg to represent indigent persons in the Franklin County Superior Courts. (Exhibit 5)
7. Approval of **Resolution 2006-172** for Independent Contractor Agreement (between Franklin County and Patrick D. McBurney, Jr.) to provide legal representation to indigent persons charged with crimes in the courts of Franklin County, Washington (District Court) effective January 1, 2006 through December 31, 2008. (Exhibit 6)
8. Approval of **Resolution 2006-173** for the Independent Contractor Agreements (between Franklin County and Matthew L. Rutt and Franklin County and Carl G. Sonderman) to provide legal representation to indigent persons charged with crimes in the courts of Franklin County, Washington (Superior Court) effective January 1, 2006 through December 31, 2008. (Exhibit 7)
9. Approval of **Resolution 2006-174** establishing a Pension and Disability Plan for Franklin County Reserve Officers, administered through the State Board of Volunteer Firefighters and Reserve Officers; authorizing creation of revenue line item 363.00.00.0520 (Reserve Officers Pension & Disability) and expenditure line item 521.20.20.0010 (Reserve Officers Pension & Disability) within the 2006 Current Expense Sheriff Budget, #001-000-520; and approving an inter budget transfer in the amount of \$4,000 from the 2006 Non-Departmental Budget, #001-000-700, line item 519.90.10.0001 (Contingency Reserve) to the Sheriff's Budget, #001-000-520, line item 521.20.20.0010 (Reserve Officers Pension & Disability). (Exhibit 8)

Second by Mr. Koch. 3:0 vote in favor.

Contract

Susan Henward has signed a contract to be a representative for indigent persons charged in crimes in District Court. The contract has been signed but was not received in time for the consent agenda.

Motion – Mr. Brock: I move for approval of Resolution 2006-175. Second by Mr. Koch. 3:0 vote in favor. (Exhibit 9)

Vouchers/Warrants

Motion – Mr. Koch: I move for payment of fund expenditures in the amount of \$209,760.55: Current Expense warrants 50163 through 50182 for \$149,401.79; Courthouse Renovation Fund warrant 377 for \$48,880.50; Current Expense warrants

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50183 through 50184 for \$5,027.14; Election Equipment Revolving warrants 317 through 318 for \$6,269.48; and Law Library warrant 976 for \$181.64. Second by Mr. Brock. 3:0 vote in favor. (Exhibit 10)

WSU EXTENSION

WSU Extension Director Kay Hendrickson and WSU Extension Agent Tim Waters met with the Board.

Report from Tim Waters

Mr. Waters is the new WSU Extension agent. He told the Board about a carrot seed trial that is being conducted. He is also working with WSU Extension Agent Tim Woodward on a biofuels project. The first portion will be to do a soybean variety trial on ground at Columbia Basin College (CBC).

Food Sense Program

Ms. Hendrickson told the Board about a grant she is seeking from the USDA nutrition and healthy lifestyle program for the Food Sense Program. She thinks we can do this program without a lot of additional money using matching resources that we have and leveraging both county and state funds. It targets third to fifth grade kids in schools that have 50% free and reduced lunch use. The research is showing that third to fifth graders are the most likely and capable age of kids influencing their families' food decisions. We will partner with Walla Walla Extension who has the staff to help us get the program going. They will hire unsupervised staff that will be on WSU payroll. She will not ask for additional money specifically for the program this year. Next year it may cost the county some money, but probably not more than \$100 per month.

Ms. Hendrickson asked for Board approval before April 30 to move forward, a letter of support, and signing of a match form. She will be able to match time for the grant so her administrative time will apply as well as clerical staff time. The Extension Office will provide office supplies, duplicating, and office space. The grant includes shared space and office space. An office space will be needed for this person, furnished with a desk, chair, computer and phone. Ms. Hendrickson needs the county to provide the desk, chair, computer and phone. She assumes the program will not be functioning

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until her office has moved to where the Auditor's Office is currently located when there will be office space available.

The Board will give approval and asked Ms. Hendrickson to work with County Administrator Fred Bowen on the details. Some used furniture will be available from other departments at the time of the move back to the courthouse.

1-800 Food Safety and Preservation Line

Ms. Hendrickson has been asked to host a 1-800 food safety and preservation line. It would be staffed by volunteers from the Food Preservation Advisor Program. The county would need to provide a workstation including a desk, chair, file cabinet, computer and phone. The Board said there will be space and equipment available.

Mrs. Corkrum asked if that would be basically in the summer months only.

Ms. Hendrickson said it would be staffed year-round. It will be a line for all of eastern Washington.

Spanish Conversation Group

Ms. Hendrickson gave a report of the first meeting of the Spanish Conversation Group held yesterday. Twelve people from six departments attended. The meetings will be held starting next week on Tuesday and Thursday from noon to 12:30. The format that will be used is called "Spanish for Gringos." She asked if the county can buy three sets for people to checkout. They cost about \$30 each including CDs. The Board gave approval.

PUBLIC WORKS

Engineer Tim Fife met with the Board.

Bid Opening: CRP 582/Dilling Lane Bridge #216.0.56, Federal Aid Project
#BROS-2011 (024)

Bid Opening convened at 9:35 a.m. Present: Commissioners Corkrum, Koch and Brock; County Engineer Tim Fife; and Clerk to the Board Mary Withers. Present in audience: Jon Wagner of Wesslen Construction and Fred Hurst.

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Two bids were received:

Wesslen Construction	Total bid price \$264,864.54
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Hurst Construction from East Wenatchee	Total bid price \$292,141.60
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Engineer's estimate was \$174,143.

Mr. Fife will review the bids and the funding sources. The funding is provided by the Federal government. It will be at least a couple of weeks before a bid award is recommended.

Mr. Wagner and Mr. Hurst left the audience. Human Resources Director Rosie H. Rumsey joined the meeting. Present in audience: Troy Woody.

Employee Length of Service Award

Mr. Fife said one employee is scheduled to receive an award based on hire date but was out of work for six months in 2005 for an L&I injury. He doesn't think it is appropriate to give him a length of service award when he has not been here for six months. Another person has been out a couple of times. Mr. Fife feels the length of service award would be inappropriate for people who have not necessarily been at work for lengthy periods of time. He said as long as they're using their annual leave and paid by us, they are still here, but when that runs out, they sign a request to go on leave without pay and they are being paid by L&I, not the county. One employee was actually gone nine months but on L&I for five months of the nine. Mr. Fife asked the Board to consider changing the policy.

Mr. Brock wants to talk to the Prosecutor's Office prior to making a decision.

Mr. Woody suggested having the policy written to specify continuous service, without any leave to exceed 90 days.

TRAC

TRAC Manager Troy Woody met with the Board.

TRAC Advisory Board Meetings

TRAC Advisory Board Meetings have been changed to quarterly meetings. The first 2006 meeting will be April 11 at 5:00 p.m. Mr. Koch wants to attend.

TRAC Web Site

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The Board reviewed a draft of the new TRAC web site. The web site will serve customers that want to buy tickets and customers that are booking an event. Ranch and Home and BDI are both contributing \$2500 and Clearwire is providing us with free wireless internet access for customers.

Recent Events

The Board reviewed figures for two events held last week at TRAC, the Monster Truck Show and the Quilt Show. Mr. Woody told the Board about how staffing was handled to allow easier access to TRAC with shorter or less lines.

Ferrellgas Proposal

Ferrellgas has proposed putting a propane tank in the RV park that could be used by the public for refills. Mr. Woody told the Board about other details of the proposal. RV Park people will staff the park. Ferrellgas will keep any money for the first year. Ferrellgas is currently reviewing Mr. Woody's proposal further.

Mr. Brock asked are there any negatives? Mr. Woody said the only one he can think of is having to have someone around to fill tanks but the RV park sets the hours.

The propane would be available for the public and for RV Park users. There is already a till at the RV Park. There is no other propane refill station in west Pasco. Motorhomes can pull in and fill without going through the whole park. Ferrellgas will do the marketing. Mr. Woody does not know if exchange tank service will be provided.

Upcoming Events

Upcoming events include the WSTRC team ropers and two weddings this weekend and the Mid-Columbia Quarter Horse Show and Noe Hispanic Dance next weekend.

Recessed at 10:02 a.m.

Reconvened at 10:16 a.m.

INFORMATION SERVICES (IS)

IS Director Kevin Scott and Toni Fulton met with the Board. Also present: Human Resources Director Rosie H. Rumsey.

Personnel

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Mr. Scott requested approval to increase the salary of an IS position. He said the position is classified along with any other clerical position in the county but is not like any other clerical position. He feels it is grossly underpaid. He said the needs of the IS Department have grown drastically throughout the years. The secretarial position needs to be addressed given the workload, how the job has changed, how the documentation has changed, and the volume of the documentation required. The job has grown into almost like a tech support job because Ms. Fulton has to be the front line to answer phone calls about technical questions. Previous people in the position also have had to provide help, training and access for computers throughout the county. Mr. Scott explained why the position is different from other clerical positions in the county. He said we deal with a host of confidential information. In 1997 we tried to remove the position from the union but the court commissioner ruled no. The position does have access to any information on computers in the county.

Mrs. Corkrum said she is hearing what you're saying. However, we have approved having a salary review of all county salaries. You're not the only one that has requested an upgrade. We have stuck to the fact that we're going to wait for that salary review before we change anybody. If we change somebody now too high and the salary review says that's too high, then what do we do? The salary would have to be frozen.

Mr. Koch told Mr. Scott that he needs to make sure the salary review committee understands the position when they do the review.

Mr. Scott told the Board that the IS Department is understaffed on the technical side. Some of the burden has been put on the secretary. The IS projects, systems, and complexity of the network has grown by leaps and bounds. He gave an example of the workload caused by an increased number of computers. Recently there are 24 new laptops in the Sheriff's Department that now need support.

Mr. Scott asked is there a way that we could move the position up two steps within the same grade as allowed in the union contract? We have money in our budget to cover that. We started this request last year before the salary review was started.

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Mrs. Corkrum said we should have addressed this at budget time. She thinks it is not the right time to do it.

Ms. Rumsey has reviewed all the job descriptions of various administrative assistants, confidential secretaries and legal secretaries and conducted some interviews with staff in other departments. She looked at the position in the IS Department. She told the Board some of the questions she asked. This position is currently at a Grade 33. In her professional opinion, it is too low for the work that is done, but because we've been saying no to every other department head, unfortunately the timing is not right for a reclassification. She thinks the position should be at a minimum at Grade 39, not knowing exactly what that position does. It could warrant higher placement.

Ms. Rumsey told Mr. Scott that an employee can be moved up steps within the grade, no more than two steps in one given year according to the union contract.

An RFP was done for the salary review work. Interviews with top two companies are scheduled for April 10. The interview committee will make a recommendation to the Board after that time. Ms. Rumsey said it should take about three months minimum for the company to do a good job. She anticipates realistically any changes will be made as of January 1, 2007.

Mr. Scott said if it is a money issue, IS can cover the two steps because of some cost-saving efforts that have occurred.

Mr. Koch told Mr. Scott to prepare a new job description in preparation for the salary review work.

If the position was raised to Grade 33 Step 6, the annual salary would be \$29,434. It is currently \$28,016. The difference is \$128 per month.

Mrs. Corkrum asked the other Board members if they're willing to approve the change and have the paperwork prepared for the consent agenda on Monday. Mr. Brock said he has no objection. Mr. Koch agreed.

Mr. Scott asked if the salary survey can add a provision to look at staffing levels in IS. Ms. Rumsey will try to add staffing level questions in all departments to the list of questions for the salary survey work.

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Mr. Scott told the Board again that his department needs more technical staff.

Computer Purchase and Replacement

Mrs. Corkrum told Mr. Scott that the WSU Extension Office will need two phones and possibly two computers.

Mr. Scott said in the future, he would like to consider adding an Equipment Repair and Replacement (ER&R) amount from each department for computer replacement costs. Each department would pay some money continuously to be used for computer repair and replacement.

OTHER BUSINESS

Secretary Patricia Shults met with the Board.

Insurance Proposals

Mr. Brock said he thought both presentations were good but he cannot see that there is an advantage to change, either dollar-wise or coverage-wise. He thinks we have to keep looking at this because things change every year.

Motion – Mr. Brock: I move we send a letter rescinding our notice to withdraw from the Risk Pool as written. Second by Mr. Koch. 3:0 vote in favor. (Exhibit 11)

Motion – Mr. Brock: I move we send a letter to Mr. Scott Davis, Program Representative for the Washington Rural Counties Insurance Program, thanking them for their presentation to us and telling them that we're going to stay with the Risk Pool. Second by Mr. Koch. 3:0 vote in favor. (Exhibit 12)

MINUTES

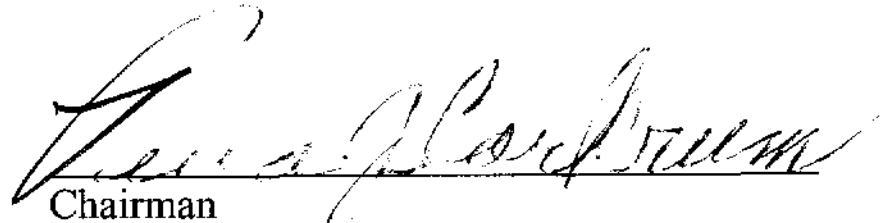
Motion – Mr. Koch: I move we accept the Commissioner Minutes of March 20, 2006. Second by Mr. Brock. 3:0 vote in favor.

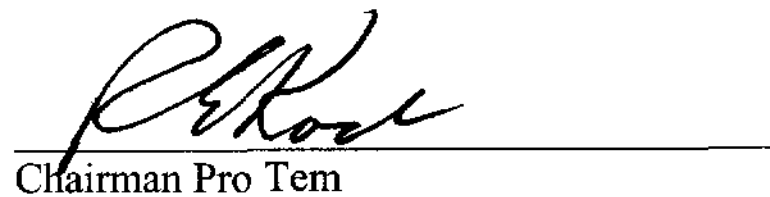
Adjourned at 11:08 a.m.

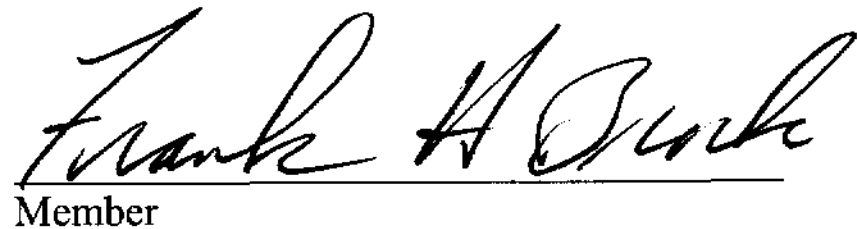
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There being no further business, the Franklin County Board of Commissioners meeting was adjourned until April 3, 2006.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON


Chairman


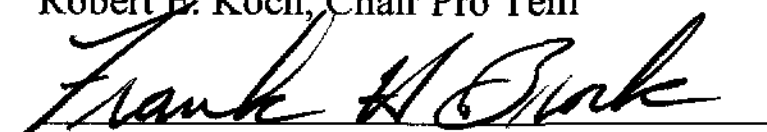

Chairman Pro Tem


Member

Attest:


Clerk to the Board

Approved and signed April 10, 2006.

FRANKLIN COUNTY RESOLUTION NO. 2006 167**BEFORE THE BOARD OF COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON****RE: AUTHORIZING THE CLERK'S OFFICE TO PURCHASE A STAMP TABLE
FROM HUSK IN THE AMOUNT OF \$1,327.76****and****INTRA BUDGET TRANSFER IN THE AMOUNT OF \$1,328 WITHIN THE 2006
CURRENT EXPENSE COUNTY CLERK BUDGET, NUMBER 001-000-160,
FROM LINE ITEM 512.30.43.0000 (TRAVEL) TO LINE ITEM 594.00.60.0000
(CAPITAL OUTLAY)****WHEREAS, the County Clerk notified the Board of the need to replace a table they use for
incoming case flow files, stamps, etc.; and****WHEREAS, the Clerk requested authorization to purchase a stamp table from Husk Office
Furniture & Supplies in the amount of \$1,327.76; and****WHEREAS, the Clerk suggested funds would be available within the Travel line item of the
County Clerk Budget; and****WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority
of Franklin County and deems this to be in the best interest of the County;****NOW, THEREFORE, BE IT RESOLVED** the Franklin County Board of Commissioners
hereby authorizes the Clerk's Office to purchase a stamp table from Husk in the amount of
\$1,327.76.**BE IT FURTHER RESOLVED** the Franklin County Board of Commissioners hereby
authorizes an intra budget transfer in the amount of \$1,328 within the 2006 Current Expense
County Clerk Budget, Number 001-000-160, from line item 512.30.43.0000 (Travel) to line item
594.00.60.0000 (Capital Outlay).**APPROVED** this 29th day of March 2006.**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON**
Neva J. Corkrum, Chair
Robert E. Koch, Chair Pro Tem
Frank H. Brock, Member

Attest:


Clerk to the BoardOriginals: Auditor
Minutes
County Clerk

cc: Accounting

**HUSK OFFICE FURNITURE
& SUPPLIES****327 W. Clark St. Pasco, WA 99301****Fax (509) 547-8215 Phone (509) 547-7593 Email order@huskoffice.com****Furniture Proposal****F.C. Clerk
Mike****Contact:****Greg Banks: gregb@huskoffice.com****Ben Klem: benk@huskoffice.com****546-3365****Fax****2/22/06****Stamp Table**

			Sales Price	
	Stock #		EA	Total
1	EA CTO 3072DSH	30"d x 72"w x 41 1/2"h Desk Shell	669.00	669.00
1	EA CTO 1772ORG	With 2 eaCenter Drawer, 1/4" Wood Edge		
0	EA	72" Organizer	557.00	557.00
			0.00	0.00

All prices set up and delivered

Please allow 6 to 8 Weeks from date of order for delivery

Sub Total	1226.00
Tax 8.3%	<u>101.76</u>
Total	1327.76

Specifications

Husk Office Furniture

Job
F.C. Clerk
Mike

Page 2 of 2

Please Bid

1EA - 30"d x 72"w x 41 1/2"h Desk shell with 2 Center drawers

1EA - 12"d x 72"w x 17"h Organizer with 1/4" Dbl Sided Masonite removable dividers

Adjustable feet on whole unit.

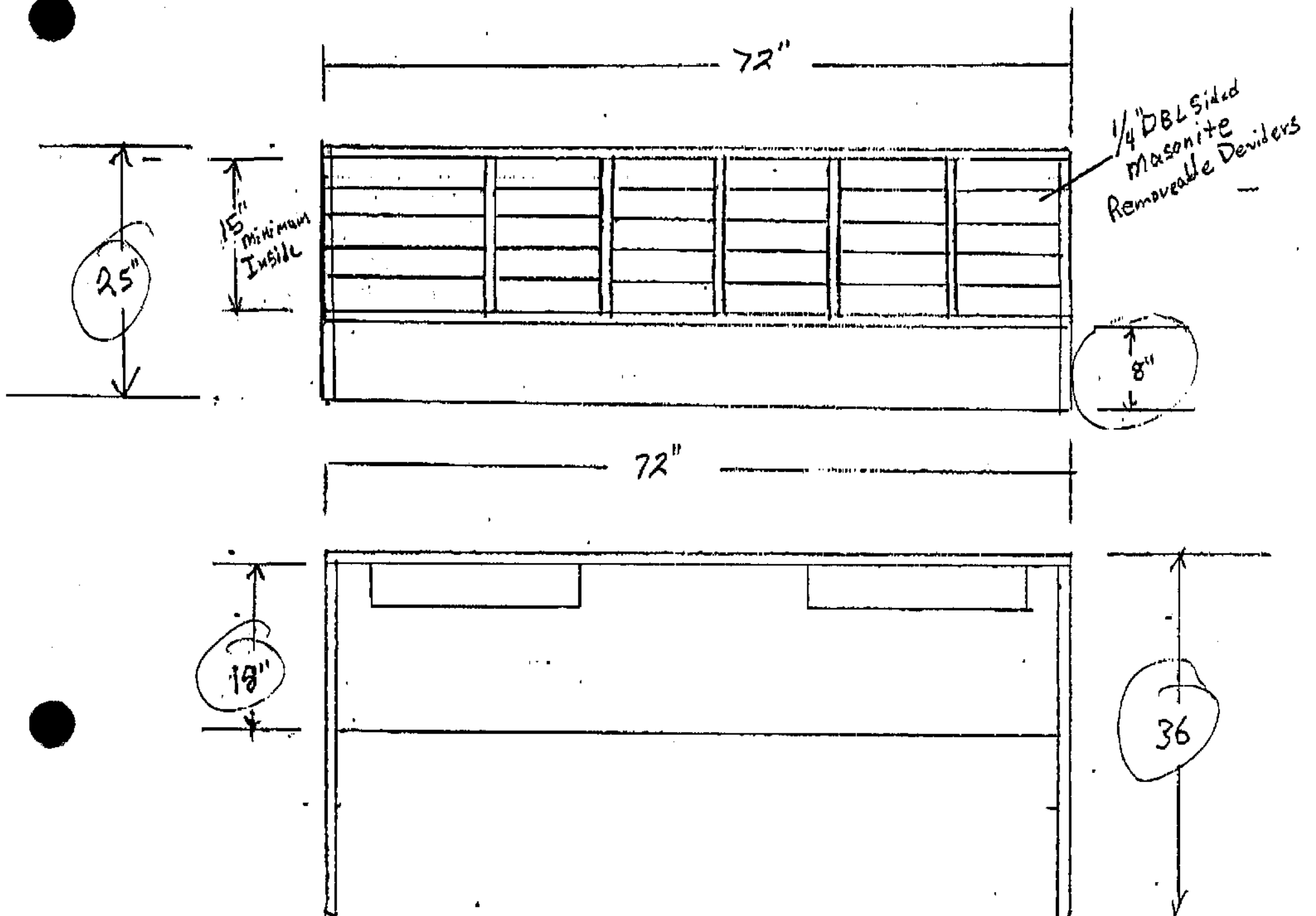
1/2 modesty

See drawing for details

Top - June Mahogany

Sides - June Mahogany

Faces - 1/4" Wood with 1/4" Round over



for DE,

HUSK OFFICE FURNITURE
 BEN KLEM
 327 W. CLARK ST.
 PASCO, WA 99301
 (509) 547-7593 • FAX 547-8215
 benk@huskoffice.com

Revised

SL88-LTS

FRANKLIN COUNTY RESOLUTION NO. 2006 168**BEFORE THE BOARD OF COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON**

RE: PURCHASE OF EIGHT LAPTOP COMPUTERS FOR THE SHERIFF'S DEPARTMENT AND AUTHORIZATION FOR AN INTER BUDGET TRANSFER IN THE AMOUNT OF \$25,279 FROM THE NON-DEPARTMENTAL BUDGET, NUMBER 001-000-700, LINE ITEM 519.90.10.0001 (CONTINGENCY RESERVE) TO THE CAPITAL OUTLAY BUDGET, NUMBER 001-000-710, LINE ITEM 594.00.64.3501 (COMPUTER HARDWARE)

WHEREAS, Emergency Management received a grant from the State Homeland Security Program for the purchase of eight laptops to be used by the Sheriff's deputies; and

WHEREAS, the grant will expire April 30, 2006; and

WHEREAS, in accordance with the grant requirements, Franklin County Information Services will purchase the laptops with County funds and invoice Emergency Management for full reimbursement; and

WHEREAS, a quote was received from DATEC Incorporated in the amount of \$25,278.02 for eight laptop computers; and

WHEREAS, the Information Services Director requests a transfer in the amount of \$25,279 to supplement the Computer Hardware line item in the Capital Outlay Budget, Number 001-000-710; and

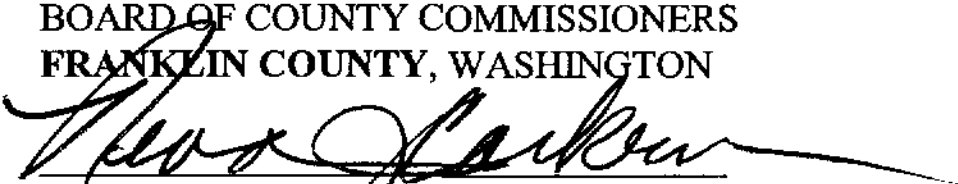
WHEREAS, reimbursement funds will be deposited into the Contingency Reserve line item within the Non-Departmental Budget, Number 001-000-700, when received; and

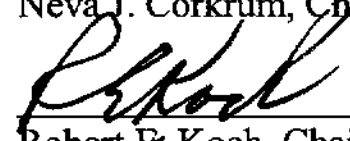
WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and deems the transfer as being in the best interest of Franklin County;

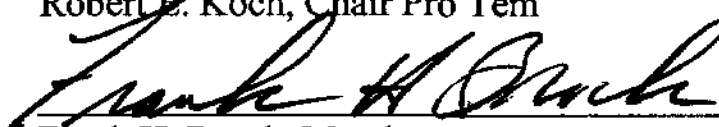
NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the purchase of eight laptop computers for the Sheriff's Department and authorizes an inter budget transfer in the amount of \$25,279 from the Non-Departmental Budget, Number 001-000-700, line item 519.90.10.0001 (Contingency Reserve) to the Capital Outlay Budget, Number 001-000-710, line item 594.00.64.3501 (Computer Hardware).

APPROVED this 29th day of March 2006.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON


Neva J. Corkrum, Chair


Robert E. Koch, Chair Pro Tem


Frank H. Brock, Member

Attest:


Clerk to the Board

Originals: Auditor
Minutes
Information Services

cc: Accounting Department
Sheriff's Department
Emergency Management

March 29, 2006

RECEIVED
COUNTY ADMINISTRATOR

MAR 27 2006

**Contact:**

Bob Stein/Julie Baker
364 Upland Drive
Seattle, WA 98188
Ph 206-575-1470
Fax 206-575-1475

Quote Prepared for:

Franklin County
Travis Amundson

Quote# 60310001
Date: 03/10/06
Terms: Net 20 Days
Validity: 30 Days

Part Number	Description	Qty	Unit Price	Ext. Price
CF-74	Intel Core Duo Processor T2400 1.83 GHz 13.3" XGA Transmissive Color LCD with Touchscreen 460 Nit 80GB Hard Drive 512 MB RAM Intel Pro/Wireless LAN Windows XP PC Card Type I or II x 1 Secure Digital (SD) Card x 1 Express Card x 1 CDRW/DVD Combo Drive Lithium Ion Battery AC Adapter 3 Year Limited Warranty	8	\$2,766.00	\$22,128.00
Options/Accessories	Mini Port Replicator	1	\$169.00	\$169.00
	Lind DC Power Adapter	8	\$112.00	\$896.00
			SubTotal	\$23,193.00
			Sales Tax	\$1,925.02
			Shipping	\$160.00
			Total	\$25,278.02
	Price quoted reflects Inter-local contract discounts Delivery estimate 3-6 weeks ARO			

FRANKLIN COUNTY RESOLUTION NO. 2006 169

BEFORE THE BOARD OF COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON

**RE: PERSONAL SERVICES AGREEMENT BETWEEN FRANKLIN COUNTY
AND LET'S PRETEND CIRCUS TO PERFORM FOUR SHOWS EACH DAY
JULY 1-4, 2006 IN CONJUNCTION WITH THE PROJECT DESIGNATED
GRAND OLD 4TH**

WHEREAS, Elisa Hays, Managing Director, Let's Pretend Entertainment, LLC, agrees to perform four shows each day July 1-4, 2006 in conjunction with the project designated Grand Old 4th, with the cost not to exceed \$3,000.00, plus lodging on July 1-4, 2006 ;

WHEREAS, final payment of \$3,000 will be paid on the last day of the show; and

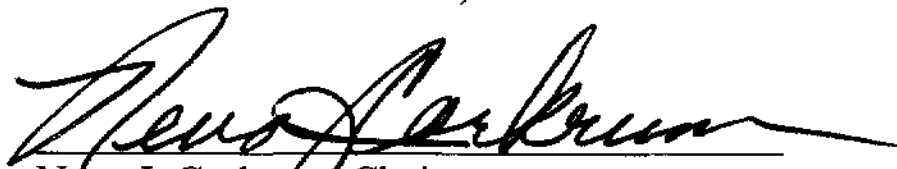
WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the county and have the care of county property and management of county funds and business; and

WHEREAS, the Board of County Commissioners constitutes the legislative authority of Franklin County and desires to enter into the attached agreement as being in the best interest of Franklin County;

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the attached Personal Services Agreement between Franklin County and Let's Pretend Entertainment, LLC, to perform four shows each day July 1-4, 2006 in conjunction with the project designated Grand Old 4th, with the cost not to exceed \$3,000.00, plus lodging on July 1-4, 2006.

APPROVED this 29th day of March 2006.

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


Neva J. Corkrum, Chair


Robert E. Koch, Chair Pro Tem

Attest:


Clerk to the Board


Frank H. Brock, Member

Originals: Auditor
Minutes
Let's Pretend Entertainment

cc: Accounting Department
County Administrator File
County Administrator - Invoice

PERSONAL SERVICES AGREEMENT**2006 169**

THIS AGREEMENT is entered into between **Franklin County**, hereinafter referred to as Franklin County, and **Let's Pretend Entertainment, LLC**, hereinafter referred to as the Contractor, in consideration of the mutual benefits, terms, and conditions hereinafter specified.

Purpose

The purpose of this agreement is to allow Franklin County to retain the Contractor to perform four (4) forty-five (45) minute shows each day July 1-4, 2006 in connection with the project designated Grand Old 4th.

Scope Of Services

The Contractor agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment, and supplies.

Time For Performance

Work under this contract shall commence upon the giving of written notice by the Board of Franklin County Commissioners to the Contractor to proceed. The Contractor shall perform all services and provide all work product required pursuant to this agreement July 1-4, 2006.

Payment

The Contractor shall be paid by Franklin County for completed work and for services rendered under this agreement as follows:

- a. Payment for the work provided by the Contractor shall be made as provided on Exhibit "A" attached hereto, provided that the total amount of payment to the Contractor shall not exceed \$3,000.00, plus lodging July 1 through July 4, 2006, without express written modification of the agreement signed by the Board of Franklin County Commissioners.
- b. Final payment of \$3,000.00 will be made promptly upon ascertainment and verification by the County of the completion of the work under this agreement.
- c. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment, and incidentals necessary to complete the work.

- d. The Contractor's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of Franklin County and state for a period of three (3) years after final payments. Copies shall be made available upon request.

Compliance With Laws

The Contractor shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.

Indemnification

The Contractor, its officers, agents and employees, agree to fully indemnify, hold harmless and defend Franklin County, its officers, agents, and employees, against any and all liability, damage, loss, claims, demands, and actions of any nature whatsoever on account of personal injuries including, without limitation on the foregoing, worker's compensation and death claims, or property loss or damage of any kind whatsoever, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any way connected with, any negligent or intentional act or omission of the Contractor, its officers, agents, and employees in performing this contract. The Contractor shall, at its own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claims, demands, and actions.

Furthermore, for the purposes of this section, the Contractor expressly waives its immunity under Title 51 or subsequent revisions of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties.

Insurance

The Contractor shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage, and professional liability insurance in the amount of \$1,000,000.

Said general liability policy shall name Franklin County as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the named insured. Certificates of coverage as required by this section shall be delivered to Franklin County Risk Manager within fifteen (15) days of execution of this agreement.

Independent Contractor

The Contractor and Franklin County agree that the Contractor is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employees of Contractor shall be entitled to any benefits accorded Franklin County employees by virtue of the services provided under this agreement. Franklin County shall not be responsible for withholding or otherwise deducting federal income tax or social security, for contributing to the state industrial insurance program, or otherwise assuming the duties of an employer with respect to Contractor, or any employee of Contractor.

Covenant Against Contingent Fees

The Contractor warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, Franklin County shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Discrimination Prohibited

The Contractor, with regard to the work performed by it under this agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, sex, marital status, disabled, or Vietnam era veteran status, or the presence of any physical, mental, or sensory handicap in the selection and retention of employees or procurement of materials or supplies, provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved.

Assignment

The Contractor shall not sublet or assign any of the services covered by this agreement without the express written consent of Franklin County.

Non-Waiver

Waiver by Franklin County of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

Termination

- a. Franklin County reserves the right to terminate this agreement at any time by giving ten (10) days written notice to the Contractor.
- b. In the event of the death of a member, partner, or officer of the Contractor, or any of its supervisory personnel assigned to the project, the surviving members of the Contractor hereby agree to complete the work under the terms of this agreement, if requested to do so by Franklin County. This section shall not be a bar to renegotiations of this agreement between surviving members of the Contractor and Franklin County, if Franklin County so chooses.
- c. In the event that the Contractor terminates this agreement on or after May 1, 2006, for no fault of Franklin County or TRAC, Franklin County shall be refunded any and all deposit funds paid to Contractor within (10) business days.

Notices

Notices to Franklin County shall be sent to the following address:

Grand Old 4th
Franklin County Administrator
1016 N. Fourth Avenue
Pasco, WA 99301
Attn: Fred H. Bowen

Notices to the Contractor shall be sent to the following address:

Elisa Hays, Owner
Let's Pretend ~~Circus~~ Entertainment
2720 23rd Ave SE
Puyallup, WA 98372

Integrated Agreement

This Agreement together with attachments of addenda, represents the entire and integrated agreement between Franklin County and the Contractor supersedes all prior negotiations, representations, or agreements written or oral. Should there be any conflicting provisions or discrepancies between this Personal Services Agreement and attached Exhibit A, the provisions of the Personal Services Agreement shall supersede the conflicting provisions or discrepancies of attached Exhibit A. This agreement may be amended only by written instrument signed by both Franklin County and the Contractor.

Jurisdiction And Venue

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington. The venue of any action shall be in the Superior Court for Franklin County.

Changes, Modifications, and Amendments

This Agreement may be waived, changed, modified, or amended only by written agreement executed by both of the parties hereto.

Severability

If a provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end and the provisions of this Agreement are declared to be severable.

All Writings Contained Herein

This Agreement sets forth in full the entire agreement of the parties, and any other agreement, representation or understanding, verbal or otherwise, is hereby deemed to be null and void and of no force and effect whatsoever.


The parties to this Contract have executed this Contract in original duplicates as of the date written below.

This Contract shall take effect this 29th day of MAR., 2006.

CONTRACTOR:


Firm: Let's Pretend Entertainment, LLC

By: Elisa Hays

Signature: 

Title: Owner and Managing Director

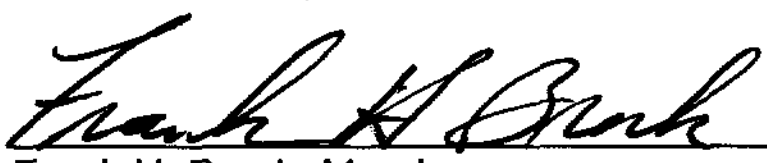
Approved as to form:


Ryan E. Verhulp,
Chief Civil Prosecutor

BOARD OF COUNTY COMMISSIONER
Franklin County, Washington


Neva J. Conkrum, Chairman


Robert E. Koch, Chairman Pro Tem


Frank H. Brock, Member

ATTEST BY:


Clerk of the Board



Let's Pretend Entertainment, LLC
 Elisa Hays, Managing Director
 2720 23rd Ave. SE • Puyallup, WA 98372
 Phone: (253) 278-6410
elisa@cutestshow.com
www.cutestshow.com

2006 ENTERTAINMENT SERVICES CONTRACT/RIDER

This agreement is entered into between **LET'S PRETEND ENTERTAINMENT, LLC**, hereinafter referred to as **LPE**, and **FRANKLIN COUNTY/GRAND OLD FOURTH**, hereinafter referred to as the **EVENT**, in consideration of the mutual benefits, terms, and conditions hereinafter specified.

I. SERVICES

1. Performance Dates: JULY 1-4, 2006
2. Show: The Let's Pretend Circus
3. Number of Shows: four shows/day
4. Length of Show: 15 minutes pre-show + 30 minute show

II. PAYMENT

1. \$750.⁰⁰/day + quality lodging for 4 nights to include two single rooms or one double room. Non-smoking rooms on the ground floor are preferred.
2. Total Contract Rate: \$3000.⁰⁰, due no later than the final day of the EVENT in the form of a check made payable to "Let's Pretend Entertainment."

III. PERFORMANCE SPACE

1. The EVENT will provide performance space measuring no less than 20' x 20', excluding audience area, unless expressly agreed otherwise. The EVENT will provide LPE with details of the performance area no less than fifteen (15) days in advance of the first scheduled performance.
2. LPE will provide a sound system to include CD player and 2 wireless microphones.
3. The EVENT will provide LPE with shelter sufficient to cover the performance space.
4. The EVENT will provide bleachers, bales of straw &/or benches for audience seating no less than two (2) hours prior to the first performance.
5. The EVENT will provide access to a 110 electrical outlet dedicated to LPE's use within 25' of the performance space.

IV. SCHEDULE

1. Performance Schedules: In order to provide the best possible performance and allow sufficient time for strolling we request that shows be scheduled with no less than two hours between the start times of each show. (ie 12:00, 2:00, 4:00) The total time each day from the start of the first show to the start of the final show should not exceed eight (8) hours.
2. Set Up/ Load Out: Unless otherwise noted LPE will arrive and set up one day prior to the first performance. If necessary in order to maintain our schedule, LPE will be allowed to load out following the final performance. If we cannot drive a vehicle onto the grounds to the performance area the EVENT will provide transportation assistance.

V. PROMOTION

1. The EVENT will provide signage indicating show times and include LPE performance times in published schedules.
2. The EVENT is responsible for promoting and publicizing LPE's performances. LPE will provide the EVENT with promotional materials. Presence of LPE representatives at promotional activities may be arranged upon request.
3. LPE will include the EVENT on our website calendar and provide a link to the EVENT'S website.

VI. ACCESS

1. The EVENT will provide entrance passes and conveniently accessible parking at no charge to LPE. Entrance and parking passes for entertainers will be provided prior to the first scheduled performance. A reasonable number of "comp" passes are always appreciated.

VII. HOSPITALITY

1. The EVENT will provide LPE with a lockable dressing room/storage area or a secured staging area out of the public view.
2. Bottled water each day is greatly appreciated!

VIII. INDEPENDENT CONTRACTOR

LPE is an independent contractor and retains the exclusive right to employ any and all such persons as are deemed necessary and appropriate to fulfill the services outlined in this agreement. This agreement makes no promises to the EVENT of the presence of any particular representative of LPE. LPE is an equal opportunity employer and prohibits discrimination based on gender, race, national origin, age, marital status, religion, sexual orientation or handicap insofar as any particular disability does not prevent the proper execution of any work required by LPE.

IX. EXCLUSIVE PROPERTY

All materials and supplies used in any way by LPE including, without limitation, equipment, sets, costumes, props, scripts, and all non-tangibles including, without limitation, concept and design are the exclusive property of LPE and as such are non-transferable and may not be used or replicated in any form by the EVENT or any of its officers, agents, employees or otherwise without express permission by the Managing Director of LPE. No photograph or other representation of the aforementioned exclusive property of LPE may be used at any time without express permission by the Managing Director of LPE.

X. INSURANCE

LPE carries comprehensive general liability insurance through First Specialty Insurance Corp. with a minimum coverage of \$2,000,000.00 per occurrence for bodily injury or death of any one person and property damage, and \$3,000,000.00 aggregate. A certificate of additional insured will be provided if requested at least thirty (30) days prior to the EVENT.

XI. CANCELLATION

Scheduling and routing is a complex task completed many months in advance, as such **LPE accepts no cancellations**, except due to catastrophic circumstances necessitating complete closure of the EVENT. Any cancellation by the EVENT outside of aforementioned exception will be assessed a 50% of total performance fee charge plus court costs outside of sixty (60) days prior to event. Cancellations within sixty (60) days of the EVENT will be responsible for 100% of total performance fees plus court costs.

LPE shall not be held liable by the EVENT and no discount to the Contract Rate will be provided in the rare event that a performance must be cancelled due to conditions beyond the control of LPE including, without limitation, severe weather, power outages, property damage, and serious injury or illness. LPE reserves the right to determine if conditions necessitate a performance cancellation and will communicate such to an appropriate representative of the EVENT at the earliest possible time. Addition of a supplemental performance will be at the sole discretion of LPE.

In the unlikely event of a complete cancellation by LPE due to circumstances beyond our control, LPE agrees to perform at the EVENT the following year for a substantially reduced rate to be agreed upon by the EVENT and the Managing Director of LPE.

XII. JURISDICTION

This agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed hereto that this agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance.

XIII. SEVERABILITY

If a provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates set forth below.

LET'S PRETEND ENTERTAINMENT, LLC

**Event: FRANKLIN COUNTY
GRAND OLD FOURTH**

Agent: Elisa Hays

Agent:

Title: Owner and Managing Director

Title:

Signature:

Signature:

Date:

Date:

FRANKLIN COUNTY RESOLUTION NO. 2006 170

BEFORE THE BOARD OF COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON

RE: PERSONAL SERVICES AGREEMENT BETWEEN FRANKLIN COUNTY AND ALLAN HIRSCH "ALLYOOP" TO PERFORM THREE SHOWS EACH DAY JULY 1-4, 2006 IN CONJUNCTION WITH THE PROJECT DESIGNATED GRAND OLD 4TH

WHEREAS, Allan Hirsch, Allyoop, agrees to perform three shows each day July 1-4, 2006 in conjunction with the project designated Grand Old 4th, with the cost not to exceed \$1,750.00, plus lodging on July 1-4, 2006 ;

WHEREAS, final payment of \$1,750.00 will be paid on the last day of the show; and


WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the county and have the care of county property and management of county funds and business; and

WHEREAS, the Board of County Commissioners constitutes the legislative authority of Franklin County and desires to enter into the attached agreement as being in the best interest of Franklin County;

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the attached Personal Services Agreement between Franklin County and Allan Hirsh "Allyoop", to perform three shows each day July 1-4, 2006 in conjunction with the project designated Grand Old 4th, with the cost not to exceed \$1,750.00, plus lodging on July 1-4, 2006.

APPROVED this 29th day of March 2006.

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


Neva J. Corkrum, Chair


Robert E. Koch, Chair Pro Tem

Attest:


Clerk to the Board


Frank H. Brock, Member

Originals: Auditor
Minutes
Allan Hirsch

cc: Accounting Department
County Administrator File
County Administrator - Invoice

PERSONAL SERVICES AGREEMENT**2006 170**

THIS AGREEMENT is entered into between **Franklin County**, hereinafter referred to as Franklin County, and **Allan Hirsch**, hereinafter referred to as the Contractor, in consideration of the mutual benefits, terms, and conditions hereinafter specified.

Purpose

The purpose of this agreement is to allow Franklin County to retain the Contractor to perform three (3) forty-five (45) minute shows each day July 1-4, 2006 in connection with the project designated Grand Old 4th.

Scope Of Services

The Contractor agrees to perform the services including the provision of all labor, materials, equipment, and supplies.

Time For Performance

Work under this contract shall commence upon the giving of written notice by the Board of Franklin County Commissioners to the Contractor to proceed. The Contractor shall perform all services and provide all work product required pursuant to this agreement July 1-4, 2006.

Payment

The Contractor shall be paid by Franklin County for completed work and for services rendered under this agreement as follows:

- a. Payment for the work provided by the Contractor shall not exceed \$1,750.00, plus lodging July 1-4, 2006, without express written modification of the agreement signed by the Board of Franklin County Commissioners.
- b. Final payment of \$1,750.00 will be made promptly upon ascertainment and verification by the County of the completion of the work under this agreement.
- c. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment, and incidentals necessary to complete the work.

- d. The Contractor's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of Franklin County and state for a period of three (3) years after final payments. Copies shall be made available upon request.

Compliance With Laws

The Contractor shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.

Indemnification

The Contractor, its officers, agents and employees, agree to fully indemnify, hold harmless and defend Franklin County, its officers, agents, and employees, against any and all liability, damage, loss, claims, demands, and actions of any nature whatsoever on account of personal injuries including, without limitation on the foregoing, worker's compensation and death claims, or property loss or damage of any kind whatsoever, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any way connected with, any negligent or intentional act or omission of the Contractor, its officers, agents, and employees in performing this contract. The Contractor shall, at its own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claims, demands, and actions.

Furthermore, for the purposes of this section, the Contractor expressly waives its immunity under Title 51 or subsequent revisions of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties.

Insurance

The Contractor shall secure and maintain in force throughout the duration of this contract professional liability insurance up to \$1,000,000 per occurrence/aggregate for property damage or personal injury; up to \$2,000,000.

Said general liability policy shall name Franklin County as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the named insured. Certificates of coverage as required by this section shall be delivered to Franklin County Risk Manager within fifteen (15) days of execution of this agreement.

Independent Contractor

The Contractor and Franklin County agree that the Contractor is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employees of Contractor shall be entitled to any benefits accorded Franklin County employees by virtue of the services provided under this agreement. Franklin County shall not be responsible for withholding or otherwise deducting federal income tax or social security, for contributing to the state industrial insurance program, or otherwise assuming the duties of an employer with respect to Contractor, or any employee of Contractor.

Covenant Against Contingent Fees

The Contractor warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, Franklin County shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Discrimination Prohibited

The Contractor, with regard to the work performed by it under this agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, sex, marital status, disabled, or Vietnam era veteran status, or the presence of any physical, mental, or sensory handicap in the selection and retention of employees or procurement of materials or supplies, provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved.

Assignment

The Contractor shall not sublet or assign any of the services covered by this agreement without the express written consent of Franklin County.

Non-Waiver

Waiver by Franklin County of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

Termination

- a. Franklin County reserves the right to terminate this agreement at any time by giving ten (10) days written notice to the Contractor.
- b. In the event that the Contractor terminates this agreement on or after May 1, 2006, for no fault of Franklin County or TRAC, Franklin County shall be refunded any and all deposit funds paid to Contractor within (10) business days.

Notices

Notices to Franklin County shall be sent to the following address:

Grand Old 4th
Franklin County Administrator
1016 N. Fourth Avenue
Pasco, WA 99301
Attn: Fred H. Bowen

Notices to the Contractor shall be sent to the following address:

Allan Hirsch, Owner
Alleyoop Children's Concerts
2853 21st Avenue West
Seattle, WA 98199

Integrated Agreement

This Agreement represents the entire agreement between Franklin County and the Contractor. This Agreement supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both Franklin County and the Contractor.

Jurisdiction And Venue

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington. The venue of any action shall be in the Superior Court for Franklin County.

Changes, Modifications, and Amendments

This Agreement may be waived, changed, modified, or amended only by written agreement executed by both of the parties hereto.

Severability

If a provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end and the provisions of this Agreement are declared to be severable.

All Writings Contained Herein

This Agreement sets forth in full the entire agreement of the parties, and any other agreement, representation or understanding, verbal or otherwise, is hereby deemed to be null and void and of no force and effect whatsoever.

The parties to this Contract have executed this Contract in original duplicates as of the date written below.

This Contract shall take effect this 29th day of MAR, 2006.

CONTRACTOR:

BOARD OF COUNTY COMMISSIONER
Franklin County, Washington

Firm: Alleyoop Children's Concerts


Neva J. Corkrum, Chairman

By: Allan Hirsch


Robert E. Koch, Chairman Pro Tem

Signature: 



Frank H. Brock, Member

Title: Owner

ATTEST BY:

Approved as to form:


Clerk of the Board


Ryan E. Verhulp,
Chief Civil Prosecutor

FRANKLIN COUNTY RESOLUTION NO. 2006 171

BEFORE THE BOARD OF COMMISSIONERS, FRANKLIN COUNTY,
WASHINGTON

**RE: EXTENDING THE AGREEMENTS TO APRIL 30, 2006 FOR SAM
SWANBERG AND ROBERT THOMPSON TO REPRESENT INDIGENT
PERSONS IN FRANKLIN COUNTY SUPERIOR COURT**

WHEREAS, Franklin County Resolution 2003-179 approved the Agreements between Franklin County and Robert Thompson, Carl Sonderman and Sam Swanberg to represent indigent persons in Franklin County Superior Court; and

WHEREAS, Franklin County Resolution 2005-547 extended the agreement for sixty (60) days, as the original agreements were due to expire December 31, 2005; and

WHEREAS, Franklin County Resolution 2006-111 extended the agreements for another thirty (30) days to allow sufficient time to complete the new agreements; and


WHEREAS, Board of Commissioners were notified of the need to extend the agreements for Robert Thompson and Sam Swanberg for the purposes of obtaining additional time beyond March 31st to get their new contracts signed and returned; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and deems this to be in the best interest of the County;

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves extending the agreements to April 30, 2006 for Robert Thompson and Sam Swanberg to represent indigent persons in the Franklin County Superior Courts.

APPROVED this 29th day of March 2006.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON



Neva J. Corkrum, Chair




Robert E. Koch, Chair Pro Tem



Frank H. Brock, Member

Attest:


Clerk to the Board

Originals: Auditor
Minutes
Accounting

cc: Bob Thompson
Sam Swanberg
Superior Court
Tim Klashke

FRANKLIN COUNTY RESOLUTION**2006 172**

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY,
WASHINGTON

RE: INDEPENDENT CONTRACTOR AGREEMENT (BETWEEN FRANKLIN COUNTY AND PATRICK D. MCBURNEY, JR.) TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH CRIMES IN THE COURTS OF FRANKLIN COUNTY, WASHINGTON (DISTRICT COURT) EFFECTIVE JANUARY 1, 2006 THROUGH DECEMBER 31, 2008

WHEREAS, the Franklin County Board of Commissioners placed an advertisement seeking qualified attorneys to receive court appointments on an independent contractor basis to perform legal defense services for indigent persons charged with crimes in Franklin County District Court, as contracts expired December 31, 2005; and

WHEREAS, Attorney Patrick McBurney expressed a desire and willingness to continue to serve as legal defense for indigent persons; and

WHEREAS, pursuant to R.C.W. 36.01.010 and R.C.W. 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the county and have the care of county property and management of county funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into this agreement as being in the best interest of Franklin County;

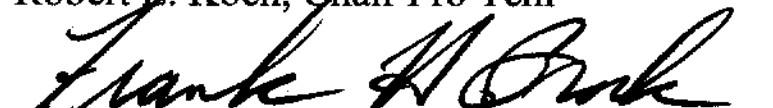
NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the attached Independent Contractor Agreement (between Franklin County and Patrick D. Mcburney, Jr.) to provide legal representation to indigent persons charged with crimes in the courts of Franklin County, Washington (District Court) effective January 1, 2006 through December 31, 2008.

APPROVED this 29th day of March 2006.

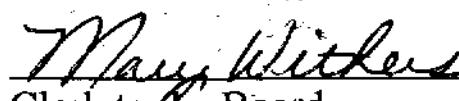
BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON


Neva J. Corkum, Chair


Robert E. Koch, Chair Pro Tem


Frank H. Brock, Member

Attest:


Clerk to the Board

Originals: Auditor
Minutes
Patrick McBurney, Jr.

cc: District Court Administrator
Prosecuting Attorney
Tim Klashke

**INDEPENDENT CONTRACTOR AGREEMENT TO
PROVIDE LEGAL REPRESENTATION TO INDIGENT
PERSONS CHARGED WITH CRIMES IN THE COURTS
OF FRANKLIN COUNTY, WASHINGTON**

2006 172

THIS AGREEMENT shall be deemed made and effective as of the 1st day of January, 2006, and is entered into by and between the **COUNTY OF FRANKLIN, WASHINGTON**, a state of Washington municipal corporation (hereinafter referred to as the "County"), and **PATRICK D. McBURNEY, JR.**, an Attorney at Law (hereinafter referred to as "Attorney").

**THIS AGREEMENT IS ENTERED INTO BASED UPON THE
FOLLOWING FACTS:**

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney has experience in defending persons charged with crimes and desires to contract with the County to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.

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

1. **TERM.** This Agreement shall be deemed effective for all purposes as of the **1st day of January, 2006**, and shall continue thereafter for a period of **three (3) years** through and including the **31st day of December, 2008**, unless earlier terminated pursuant to paragraph 20 below. Provided that, however, Attorney shall be fully obligated to continue representing all persons whom Attorney has been appointed hereunder to represent through the final conclusion of the case or matter in which Attorney was appointed to represent such persons notwithstanding that such continued representation may require Attorney to perform such services and representation after the termination date of this Agreement.

2. **OFFICE LOCATION.** Attorney presently and regularly maintains an office for the practice of law at 1776 Fowler, Ste. 29, Richland, Washington 99352. Attorney's current local office telephone number is (509) 374-8996. Throughout the entire term of this Agreement, Attorney shall continue to maintain such office and telephone number; 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 number to another Tri-Cities local telephone number provided that Attorney provides advance written notice of such change(s) to the County, the Franklin County Prosecuting Attorney, the Franklin County District Court, the Franklin County District Court Clerk, the Franklin County Superior Court, and the Franklin County Superior Court Clerk.

3. **LICENSE AND QUALIFICATION.** As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; has not been 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.

This Agreement shall be subject to termination pursuant to paragraph 20 below in the event that Attorney fails to comply with any material provision of this Agreement; in the event that Attorney's license to practice law in the state of Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction determines and expressly finds that Attorney has rendered ineffective assistance of counsel to a criminal defendant; 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.

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 criminal actions in Benton and Franklin counties 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 for whom Attorney is appointed to represent under this Agreement. During each calendar year throughout 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 relating to criminal defense. Attorney shall provide the County with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each such calendar year. Additionally, during each calendar year throughout the term of this Agreement, 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"). The County may provide Attorney's name and address to the

WOPD for purposes of the WOPD notifying Attorney of such upcoming training seminars. Attorney shall provide the County 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.

Attorney further represents and warrants that, throughout the entire term of this Agreement, Attorney will have adequate time in Attorney's private law practice caseload and regular personal schedule and will have adequate office support staff services, office resources, and office equipment to competently undertake and effectively and efficiently perform all services required under this Agreement. Attorney further represents and warrants that Attorney's private law practice and personal schedule will not unduly or unreasonably 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 indigent 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 to the alleged criminal charge(s) and keeping such persons reasonably apprised as to the status of their case. No later than by the 10th day of each month during the term of this Agreement, Attorney shall provide the County with a written report showing the total number and types of private practice cases (which for purposes of this Agreement shall include pro bono cases and retained-fee cases) in which Attorney provided legal services during the preceding month, the total number of court-appointed cases under this Agreement in which Attorney provided legal services during the preceding month, and the 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 court-appointed cases under this Agreement.

4. **OTHER INDIGENT DEFENSE AGREEMENT.** On or about the date of this Agreement, it is contemplated that the County will enter into a substantially similar (but separate and independent) agreement with one (1) other licensed attorney to provide criminal defense services to indigent persons in Franklin County District Court. Attorney agrees to cooperate and coordinate with said other attorney and the Franklin County District Court to establish and effectuate a process to ensure an efficient and equitable distribution of appointments between Attorney and said other attorney (sometimes hereinafter the criminal defense panel comprised by Attorney and said other attorney shall be referred to as the "District Court Indigent Defense Panel"), and Attorney further agrees that the County has no responsibility for, or any involvement in, the establishment or implementation of such process.

5. **COURT APPOINTMENTS; SCOPE OF REPRESENTATION.** During the term of this Agreement, Attorney agrees to and shall accept court appointments to represent eligible indigent persons (regardless of their race, color, national origin, age, marital status, sexual orientation, handicap, or political or religious

affiliation) on any criminal matter in Franklin County District Court ("District Court") and in certain limited criminal matters in Franklin County Superior Court ("Superior Court") in which publicly-provided counsel is furnished or required by law (sometimes hereinafter, when the context permits, said courts are collectively referred to as the "Court"). Without limitation, such representation shall include the investigation of the underlying facts, the research of relevant law, appropriate communication with the client, review of potential plea alternatives, and the preparation for and appearance in all stages of court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing proceedings, and post-conviction reviews.

More specifically, Attorney shall accept court appointments on the following criminal matters:

- (a) Any non-felony criminal matter filed in District Court in which publicly provided counsel is furnished or required by law.
- (b) Any appeal or statutory writ from District Court or any municipal court filed in Superior Court.
- (c) Any felony matter filed in District Court or Superior Court up to a maximum of two (2) appointments per calendar year. A matter initially filed as a felony in District Court and subsequently-filed as a felony in Superior Court shall be deemed as being one (1) matter.
- (d) Any material witness matter filed in Superior Court up to a maximum of four (4) appointments per calendar year.

Without limitation to Attorney's duty to initially meet with an indigent defendant 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 indigent defendant is jailed/imprisoned), Attorney shall arrange to meet in person (face-to-face) with the defendant as soon as possible but no later than 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 defendant). Additionally, throughout Attorney's representation of any indigent defendant under this Agreement, Attorney shall maintain appropriate contact/communications with the defendant so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall apprise the defendant 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 defendant). Without limiting any of the foregoing, with regard to any post-appointment court hearing involving an "in custody" defendant, Attorney shall contact (either in person

or via telephone) such defendant to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

Attorney agrees to and shall represent all persons whom Attorney is appointed by the Court to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a retained-fee basis. Without limitation in that regard, Attorney's duties hereunder shall also include 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.

Attorney shall open, compile and maintain an appropriate case file for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such file in its 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.

6. **CONTINUED REPRESENTATION.** In the event that a change of venue is granted to a person for whom Attorney has been appointed to represent under this Agreement, Attorney shall continue to represent such person in the court to where venue is transferred without additional compensation. Further, as mentioned above, Attorney's obligation to provide legal representation under this Agreement includes the obligation to timely and fully complete all cases or matters encompassed by 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 or matters encompassed by this Agreement following its termination shall not in any way entitle Attorney to receive any additional compensation.

7. **NUMBER OF APPOINTMENTS.** For each calendar year during the term of this Agreement, Attorney agrees to and shall accept Court appointments hereunder to represent indigent persons up to a maximum of **two hundred (200) total "case equivalents" per year.** The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the year in which a case equivalent is to be counted under this paragraph. Attorney shall accept additional case appointments in excess of the above-stated annual maximum total provided that Attorney shall be entitled to receive additional compensation at the rate specified in paragraph 14 below.

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

- (a) An appointment to any appeal or statutory writ from District Court or any municipal court filed in Superior Court shall be

counted as being one (1) case equivalent if an "Anders" brief is required and shall be counted as five (5) case equivalents if the matter requires substantive issues to be addressed.

- (b) An appointment regarding a probation violation filed in District Court shall be counted as being a one-half (1/2) case equivalent.
- (c) An appointment to any matter in which Attorney is initially appointed but withdraws prior to the trial readiness/omnibus hearing for any reason (including, but not limited to, because of substitution of retained counsel or a conflict of interest) shall not count as any type of case equivalent.
- (d) 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 court and Attorney continues representing the same person in such matter (e.g., if Attorney was appointed to represent a person on a 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 and shall count as a one-half (1/2) case equivalent.
- (e) Except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving a single charge or 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.

Throughout the term of this Agreement, the Franklin County Superior Court Clerk and the Franklin County District Court Clerk shall each 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. Said Court clerks shall provide copies of such

records to the County and the Benton-Franklin County Superior Court Administrator on a monthly basis. Attorney shall have the burden of proof in the event that Attorney disagrees with any such records.

9. **CLIENT ELIGIBILITY.** The Court, consistent with applicable laws, rules and standards, shall solely determine the eligibility of any particular person for representation by Attorney under this Agreement. If Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive such publicly-provided representation under the standards established by the Court, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Court of such possibility for purposes of the Court taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Court 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 Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in a criminal action in which Attorney has not been appointed by the Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

11. **TELEPHONE CONSULTATIONS.** In addition to providing legal services in the Court-appointed matters set forth in paragraph 5 above, Attorney shall be reasonably available to accept telephone calls from persons in custody on non-felony matters who are legally entitled to make such calls under any applicable state and/or federal laws or rules. Attorney understands and acknowledges that all law enforcement agencies enforcing criminal violations within the jurisdiction of the

County and its Courts are legally required to maintain a list containing the names and telephone numbers of all attorneys who have contracted with the County to accept court appointments to represent indigent persons and that such list is legally required to be made available to all persons in custody requesting to speak with legal counsel. Attorney further understands and acknowledges that an indigent person's legal right to defense counsel cannot be limited by the normal office and working hours of court-appointed attorneys and that, accordingly, it may be necessary on occasion for Attorney to accept telephone calls from persons in custody during non-business hours.

If the County continues to maintain a collect-call telephone system for calls made from the County jail, the County shall reimburse the Attorney on a quarterly basis for any actual documented and specifically-identified expense incurred by Attorney in receiving any such collect calls.

Attorney shall provide any necessary legal services and representation to those persons in custody who contact and consult with Attorney via telephone during any proceedings required by applicable law or court rule. If and when the Court subsequently determines that any such person is eligible to receive Court-appointed counsel and Attorney is appointed by the Court to represent such person, Attorney shall continue to represent such person during and in all matters and proceedings set forth in paragraph 5 above.

12. **TELEPHONE NUMBERS AND NOTICES.** Attorney shall provide written notice to the following-listed persons and agencies that sets forth Attorney's office telephone number and Attorney's home telephone number or such other number(s) where Attorney may be regularly and generally contacted via telephone for purposes of this Agreement:

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

AND TO: Franklin County Prosecuting Attorney
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

AND TO: Franklin County Superior Court
c/o Court Administrator
7320 W. Quinault
Kennewick, WA 99336

AND TO: Franklin County Superior Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

AND TO: Franklin County District Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

AND TO: Franklin County Sheriff
Franklin County Courthouse
1015 Fifth Avenue
Pasco, WA 99301

AND TO: Pasco Chief of Police
Pasco Police Department
Pasco City Hall
525 N. 3rd Ave.
Pasco, WA 99301

AND TO: Connell Chief of Police
Connell Police Department
Connell City Hall
Connell, WA 99326

AND TO: Commander of the Washington State Patrol
Kennewick Detachment
Route 7, Box 12450
Kennewick, WA 99337

Attorney shall also provide the above-described written notice to any other law enforcement agency designated to Attorney in writing by the Courts. Attorney shall provide the above-described notice and information to the above-listed and designated recipients immediately upon entering into this Agreement and shall subsequently provide immediate written notice of any and all changes to such information to all such recipients.

A telephone number for Attorney that reaches an answering/message service or a recorded message or answering machine does not comply with the requirements of this paragraph unless the answering/message service is actually capable of putting the person calling in immediate contact with Attorney.

13. **MONTHLY BASE COMPENSATION.** As base compensation for Attorney's performance and rendering of services hereunder, the County shall pay Attorney the sum of **\$2,703.50 per month.**

Attorney acknowledges and agrees that the above-stated monthly payments to Attorney shall immediately cease in the event that this Agreement is terminated for any reason prior to the termination date specified in paragraph 1 above. For example, if this Agreement is subsequently terminated effective August 31, 2006, the above-stated \$2,703.50 monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-owing and unpaid amounts for services rendered hereunder prior to such termination date.

Attorney further acknowledges and agrees that the above-stated compensation amount is reasonable and equitable and that (except for any additional compensation earned and paid pursuant to paragraph 14 below) such compensation shall constitute Attorney's full and exclusive compensation hereunder for all cases and matters handled by Attorney during the term of this Agreement.

14. **ADDITIONAL COMPENSATION.** In the event that Attorney's annual total case equivalents for appointments under this Agreement exceed the maximum total set forth in paragraph 7 above, Attorney shall be entitled to receive additional compensation at the rate of \$85.00 for each case equivalent that exceeds such annual maximum total.

Within sixty (60) days of Attorney becoming entitled to receive additional compensation under this paragraph, Attorney shall submit a payment voucher to the County that specifically references and identifies each excess case equivalent that serves as the basis for additional compensation and the exact amount of additional compensation being requested as a result thereof. Upon receipt of such payment voucher from Attorney, the County, assuming it does not dispute such payment voucher, shall pay the additional compensation to Attorney within sixty (60) days thereafter. Provided that, notwithstanding the above, the County shall have the right to deny payment of any voucher for additional compensation that is not timely submitted to the County within the above-stated requisite sixty (60) day period.

15. **COSTS AND EXPENSES.** Both parties recognize that in certain circumstances the need may arise for Attorney to incur certain out-of-pocket expenses for indigent defense-related items such as, without limitation, private investigator fees, interpreter fees, scientific test fees, expert witness fees, and costs of travel, meals and lodging.

Attorney shall be entitled to receive reimbursement for the actual cost of such 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 Court order that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rule(s). Such 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 indigent defense-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to its employees under the County's then-existing employee travel-related policies and rules.

In addition to any other prerequisites imposed by court rule(s), as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a payment voucher to the County that descriptively identifies the specific expenditure(s) for which reimbursement is sought and that has attached thereto a copy of the Court order(s) that specifically pre-approved and authorized such expenditure(s) together with attached copies of all written payment receipts relating to such incurred expenditure(s). 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 County within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

16. **ADDITIONAL ASSISTANCE.** The parties recognize that Attorney may from time-to-time be appointed hereunder to handle certain Class-A felony matters in Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Superior Court appoint the other District Court Indigent Defense Panel attorney to assist Attorney in such matter, with the other attorney being appointed to assist Attorney in the same manner as any other criminal indigent defense appointment. Attorney acknowledges and agrees that the provisions of this paragraph may be pursued and utilized only under extremely extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work and/or accepting an inordinately greater amount of responsibility than the other District Court Indigent Defense Panel attorney.

17. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney hereby agrees to and shall fully indemnify the County and hold the County, its representatives, officers, employees, and agents fully harmless 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, 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 the terms of this Agreement. In the event any suit or legal proceeding is brought against the County or any of its 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 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 representatives, officers, employees or agents in such suits or other legal proceedings. The indemnification and hold harmless provisions of this paragraph shall survive the termination of this Agreement.

18. **INSURANCE.** Throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to perform services or duties hereunder, Attorney shall obtain and continuously maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount **not less than \$500,000.00 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 \$5,000.00.** Said policy shall include coverage as an additional insured for any other attorney(s) acting for or on behalf of Attorney in the performance of this Agreement. Said policy shall provide professional liability insurance coverage for any errors and/or omissions by Attorney during the course of performing legal services under this Agreement, and shall further require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered. Said policy shall also comply with all applicable state of Washington insurance requirements and shall be issued by an insurance company authorized to conduct business and issue insurance in the state of Washington. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated and acting Risk Manager with written proof and confirmation that such insurance policy and coverage has been obtained and Attorney shall provide the Risk Manager with annual written proof and confirmation that such insurance policy and coverage continues to exist no later than by January 15th of each year during the term of this Agreement.

19. **CLIENT COMPLAINTS; PERFORMANCE MONITORING.** In the event the Franklin County Superior Court Clerk and/or the Franklin County District Court Clerk receive an oral or written communication from a defendant represented by Attorney under this Agreement that in substance asserts a complaint over the quality or timeliness of the legal defense services rendered to such defendant by Attorney, the Clerk shall request and obtain a written, signed, and dated complaint

from the defendant that specifically describes and details the relevant alleged facts and circumstances underlying the defendant's asserted complaint, whereupon the Clerk shall promptly provide the County with a copy of such written complaint. Upon receiving such complaint from the Clerk, the County, without limitation to any other action it may deem necessary/appropriate to pursue under this Agreement, shall forward a copy of the complaint to Attorney and request and obtain Attorney's written response thereto (which Attorney shall promptly prepare and provide), whereupon the County shall forward copies of the complaint and Attorney's response to the Court for purposes of the Court reviewing such documentation and implementing any necessary/appropriate action with Attorney and/or the defendant to address and resolve the complaint.

Additionally, during the term of this Agreement, the County reserves the right and discretion to periodically ask the Court and/or the Court Clerk to provide the County with a written evaluation/assessment of the quality of Attorney's performance of indigent defense services and related duties and obligations under this Agreement. The County may (but shall not be obligated to) provide Attorney with notice of request/obtainment of such evaluation/assessment and/or with a copy of such evaluation/assessment.

20. **TERMINATION.** In the event that the Court enters an order that precludes Attorney from receiving any further Court 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 or 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 fully liable to the County for any additional costs or expenses incurred by the County relating to such substitute appointment(s) in addition to any other damages sustained by the County arising out of Attorney's conduct and breach.

In addition to the automatic termination provisions above, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any material provision of this Agreement by giving Attorney ten (10) days advance written notice of termination, which notice shall specify the reason(s) for the termination. 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.

In addition to the above provisions regarding termination, either party may elect to terminate this Agreement without cause or reason by providing the other party with no less than ninety (90) days advance written notice of such election to terminate.

In any event, consistent with the provisions of paragraph 13 above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid by the County for all services duly performed by Attorney under this Agreement up to the date of termination. Further, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of or reason for termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the date of termination unless Attorney is expressly barred or prohibited from doing so by Court order.

21. **INDEPENDENT CONTRACTOR.** The parties understand, acknowledge, and agree that Attorney is not an employee of the County and that Attorney, as of the date of this Agreement and throughout its entire term, is and will be acting and operating as a fully independent contractor. In that regard, the County shall have no right, authority, or duty to directly control or supervise the direct performance of Attorney's duties and services hereunder, which control and supervisory capacity is fully and ultimately vested within the inherent power and discretion of the Court.

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

Provided that, however, Attorney may make mutually acceptable arrangements with the other District Court Indigent Defense Panel attorney to have said other attorney make temporary, substitute appearances for Attorney on routine criminal docket matters and routine court hearings on an as-needed (but limited and infrequent) basis provided that Attorney is actually and unavoidably unavailable and provided that such 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. Any compensation or consideration (if any) to be paid or given by Attorney to the other District Court Indigent Defense Panel attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and the other District Court Indigent Defense Panel attorney, and said other attorney shall not be entitled to receive any additional compensation from the County for such substitution(s).

Provided further that, however, in the event that 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 District Court Indigent Defense Panel attorney during such temporary absence, Attorney may seek and obtain the assistance of another

attorney to make temporary, substitute appearances for Attorney during such absence on routine criminal 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 County) 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 defense 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.

Any compensation or consideration (if any) to be paid or given by Attorney to such other non-panel 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). Attorney acknowledges and agrees that Attorney shall be strictly 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 18 above) and that Attorney shall be strictly liable for any and all damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

23. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process it deems appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in performing indigent criminal defense services.

24. **OTHER APPOINTMENTS.** Except for the Court appointments expressly contemplated and provided for in this Agreement, Attorney shall not enter into any other contract/agreement/arrangement to receive appointments from any other court to perform public defense or prosecution services.

25. **JUDICIAL SERVICE.** Attorney shall not serve in any judicial capacity (including, without limitation, judge pro-tem or court commissioner) in or for any court located within the County on any matter. Further, Attorney shall not serve in any judicial capacity (including, without limitation, judge pro-tem or court commissioner) in any case in which the County is a party or in any case in which the state of Washington is a party and is represented by the County's Prosecuting Attorney's Office or an appointed special deputy of such office.

26. **AGREEMENT TO RE-NEGOTIATE.** In the event that Attorney's annual appointments and resulting case equivalent totals hereunder amount to seventy-five percent (75%) or less of the above-stated two hundred (200) maximum

case equivalent total for any calendar year during the term of this Agreement, the parties agree that, at the County's request, they will negotiate in good faith an equitable and appropriate reduction in the amount of Attorney's monthly base compensation for the following calendar year. In the event that the parties fail to reach a negotiated and agreed reduction in the amount of Attorney's monthly base compensation, the issue will be resolved by the parties pursuant to the provisions of paragraph 33 below.

27. **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. Any new statutory requirement, court rule, and/or appellate court decision relating to indigent criminal defense services effective subsequent to the effective date of this Agreement shall be subject to further negotiation and agreement between the parties.

28. **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.

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

30. **BINDING EFFECT.** Strictly subject to the above restriction against assignment, this Agreement shall be binding upon Attorney's heirs, legal representatives, successors, and assigns.

31. **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.

32. **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.

33. **DISPUTE RESOLUTION.** 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 parties shall equally share and pay the mediator's fees and expenses.


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. Each party to the action shall be responsible for the payment of one-half of the fees and expenses of the arbitrator(s). The provisions of RCW Chapter 7.04 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) 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.

34. **NOTICE TO PARTIES.** Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's address specified and set forth in paragraph 12 above. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 above.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

.....


Patrick D. McBurney, Jr., Attorney at Law
Date: March 28, 2006

**Franklin County, Washington, a
municipal corporation**

By: 

Neva J. Coxrum
Chair/Member
Board of County Commissioners


By: 

Robert E. Koch
Chair Pro Tem/Member
Board of County Commissioners

By: 

Frank H. Brock
Member
Board of County Commissioners

ATTEST:


Clerk of the Board

Signed and dated this 29th day of
MARCH, 2006.

FRANKLIN COUNTY RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON

RE: INDEPENDENT CONTRACTOR AGREEMENTS (BETWEEN FRANKLIN COUNTY AND MATTHEW L. RUTT AND FRANKLIN COUNTY AND CARL G. SONDERMAN) TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH CRIMES IN THE COURTS OF FRANKLIN COUNTY, WASHINGTON (SUPERIOR COURT) EFFECTIVE JANUARY 1, 2006 THROUGH DECEMBER 31, 2008

WHEREAS, the Franklin County Board of Commissioners placed an advertisement seeking qualified attorneys to receive court appointments on an independent contractor basis to perform legal defense services for indigent persons charged with crimes in Franklin County Superior Court, as contracts expired December 31, 2005; and

WHEREAS, Attorney's Matthew Rutt and Carl Sonderman expressed a desire and willingness to continue to serve as legal defense for indigent persons; and

WHEREAS, pursuant to R.C.W. 36.01.010 and R.C.W. 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the county and have the care of county property and management of county funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into this agreement as being in the best interest of Franklin County;

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the attached Independent Contractor Agreements (between Franklin County and Matthew L. Rutt and Franklin County and Carl G. Sonderman) to provide legal representation to indigent persons charged with crimes in the courts of Franklin County, Washington (Superior Court) effective January 1, 2006 through December 31, 2008.

APPROVED this 29th day of March 2006.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON


Neva J. Gorkrumb, Chair


Robert E. Koch, Chair Pro Tem


Frank H. Brock, Member

Attest:


Clerk to the Board

Originals: Auditor
Minutes
Matthew Rutt
Carl Sonderman

cc: Superior Court Administrator
Prosecuting Attorney
Tim Klashke

2006 173

**INDEPENDENT CONTRACTOR AGREEMENT TO
PROVIDE LEGAL REPRESENTATION TO INDIGENT
PERSONS CHARGED WITH CRIMES IN THE COURTS
OF FRANKLIN COUNTY, WASHINGTON**

THIS AGREEMENT shall be deemed made and effective as of the 1st day of January, 2006, and is entered into by and between the **COUNTY OF FRANKLIN, WASHINGTON**, a state of Washington municipal corporation (hereinafter referred to as the "County"), and **MATTHEW L. RUTT**, an Attorney at Law (hereinafter referred to as "Attorney").

**THIS AGREEMENT IS ENTERED INTO BASED UPON THE
FOLLOWING FACTS:**

- A.** The County has the legal responsibility to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.
- B.** Attorney has experience in defending persons charged with crimes and desires to contract with the County to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.

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

1. **TERM.** This Agreement shall be deemed effective for all purposes as of the **1st day of January, 2006**, and shall continue thereafter for a period of **three (3) years** through and including the **31st day of December, 2008**, unless earlier terminated pursuant to paragraph 23 below. Provided that, however, Attorney shall be fully obligated to continue representing all persons whom Attorney has been appointed hereunder to represent through the final conclusion of the case or matter in which Attorney was appointed to represent such persons notwithstanding that such continued representation may require Attorney to perform such services and representation after the termination date of this Agreement.

2. **OFFICE LOCATION.** Attorney presently and regularly maintains an office for the practice of law at 1776 Fowler, Ste. 23, Richland, Washington 99352. Attorney's current local office telephone number is (509) 542-0266. Throughout the entire term of this Agreement, Attorney shall continue to maintain such office and telephone number; 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 number to another Tri-Cities local telephone number provided that Attorney provides advance written notice of such change(s) to the County, the Franklin County Prosecuting Attorney, the Franklin County Superior Court, the Franklin County District Court, the Franklin County Superior Court Clerk, and the Franklin County District Court Clerk.

3. **LICENSE AND QUALIFICATION.** 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 two (2) years of direct trial experience in felony 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.

This Agreement shall be subject to termination pursuant to paragraph 23 below in the event that Attorney fails to comply with any material provision of this Agreement; in the event that Attorney's license to practice law in the state of 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 a criminal defendant; 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.

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 criminal actions in Benton and Franklin counties 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 for whom Attorney is appointed to represent under this Agreement. During each calendar year throughout 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 relating to criminal defense. Attorney shall provide the County with written proof and confirmation that such CLE

credits have been obtained no later than by December 31st of each such calendar year. Additionally, during each calendar year throughout the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii), 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"). The County may provide Attorney's name and address to the WOPD for purposes of the WOPD notifying Attorney of such upcoming training seminars. Attorney shall provide the County 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.

Attorney further represents and warrants that, throughout the entire term of this Agreement, Attorney will have adequate time in Attorney's private law practice caseload and regular personal schedule and will have adequate office support staff services, office resources, and office equipment to competently undertake and effectively perform all services required under this Agreement. Attorney further represents and warrants that Attorney's private law practice and personal schedule will not unduly or unreasonably 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 indigent 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 to the alleged criminal charge(s) and keeping such persons reasonably apprised as to the status of their case. No later than by the 10th day of each month during the term of this Agreement, Attorney shall provide the County with a written report showing the total number and types of private practice cases (which for purposes of this Agreement shall include pro bono cases and retained-fee cases) in which Attorney provided legal services during the preceding month, the total number of court-appointed cases under this Agreement in which Attorney provided legal services during the preceding month, and the 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 court-appointed cases under this Agreement.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** On or about the date of this Agreement, it is contemplated that the County will enter into identical (but separate and independent) agreements with three (3) other licensed attorneys to provide criminal defense services to indigent persons in the County's courts. Attorney agrees to cooperate and coordinate with said other attorneys and the County's Superior and District Courts to establish and effectuate a process to ensure an efficient and equitable distribution of appointments between Attorney and said other attorneys, and Attorney further agrees that the County has no responsibility for, or any involvement in, the establishment or implementation of such process.

Additionally, Attorney and said other contracting attorneys (sometimes hereinafter collectively referred to as the "Indigent Defense Panel") shall collectively designate one (1) of them to act as their spokesperson and liaison with the Courts, the County Prosecuting Attorney's office, the County's Board of Commissioners, and the Benton-Franklin local Bar Association. The name of the attorney so designated (and, if/when applicable, said attorney's duly designated replacement) shall be promptly provided in writing to all of the above-designated entities.

5. **COURT APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept court appointments to represent eligible indigent persons (regardless of their race, color, national origin, age, marital status, sexual orientation, handicap, or political or religious affiliation) on any felony matter in Franklin County Superior Court or in Franklin County District Court (said courts are sometimes hereinafter collectively referred to when the context permits as the "Court" or "Courts") in which publicly-provided counsel is furnished or required by law.

More specifically, Attorney shall accept court appointments on the following matters:

- (a) Any matter filed in Franklin County Superior Court in which publicly-provided counsel is furnished or required by law (except for matters in juvenile court under Title 13 RCW and matters specifically and exclusively covered by another legal services contract or those matters that are the legal responsibility of another governmental entity such as, without limitation, the state of Washington Attorney General's Office).
- (b) Any appeal or statutory writ from Franklin County District Court or from any municipal court for which attorneys appointed pursuant to a contract with the County are unable to handle due to a conflict of interest and/or any appeal from Franklin County District Court involving cases in which Attorney was appointed by such court.
- (c) Any felony matter initially filed in Franklin County District Court, including those cases in which a felony charge is ultimately reduced to a misdemeanor or gross misdemeanor charge.
- (d) Any non-felony criminal filing in Franklin County District Court up to a maximum of six (6) appointments per calendar year.
- (e) Any Franklin County District Court probation violation involving cases in which Attorney was previously appointed or involving cases in which attorneys appointed pursuant to a legal services

contract with the County are unable to handle due to a conflict of interest.

Without limitation to Attorney's duty to initially meet with an indigent defendant 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 indigent defendant is jailed/imprisoned), Attorney shall arrange to meet in person (face-to-face) with the defendant as soon as possible but no later than 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 defendant). Additionally, throughout Attorney's representation of any indigent defendant under this Agreement, Attorney shall maintain appropriate contact/communications with the defendant so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall apprise the defendant 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 defendant). Without limiting any of the foregoing, with regard to any post-appointment court hearing involving an "in custody" defendant, Attorney shall contact (either in person or via telephone) such defendant to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

6. **CONTINUED REPRESENTATION.** In the event that a change of venue is granted to a person for whom Attorney has been appointed to represent under this Agreement, Attorney shall continue to represent such person in the court to where venue is transferred. Further, as mentioned above, Attorney's obligation to provide representation under this Agreement includes the obligation to timely and fully complete all cases or matters encompassed by 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 or matters encompassed by this Agreement following its termination shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

By way of example, in the event that Attorney was required by this paragraph to continue representing an indigent person charged with a non-homicide crime after the above-stated termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation. By way of further example, in the event that Attorney was required by this paragraph to continue representing an indigent person charged with a homicide after the above-stated termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued representation is specified in paragraph 15 below.

7. **NUMBER OF APPOINTMENTS.** For each calendar year during the term of this Agreement, Attorney agrees to and shall accept Court appointments hereunder to represent indigent persons up to a maximum of **one hundred forty (140) total case equivalents per calendar year** (which, on a quarterly basis, equates to **thirty-five (35) case equivalents per calendar-year quarter**). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the quarter in which a case equivalent is to be counted hereunder.

Provided that, during the first, second, and/or third quarters of each calendar year during the term of this Agreement, Attorney agrees to and shall accept Court appointments hereunder that exceed the above-stated quarterly numerical case equivalent maximums for the first, second, and/or third quarters of the calendar year. At Attorney's discretion, however, Attorney may elect to accept Court appointments during the fourth quarter of a calendar year that exceed the above-stated annual numerical case equivalent maximum of one hundred forty (140) total case equivalents.

Provided further that, in the event that Attorney's court appointments hereunder are less than the above-stated numerical case equivalent maximums during any of the first three (3) quarters of the calendar year, the difference between the maximum number and the actual number of case equivalent appointments received by Attorney during any such quarter(s) shall be added to the quarterly maximum of case equivalent appointments for the next following quarter. For example, in the event that Attorney only received twenty-five (25) case equivalent appointments during the second quarter of a calendar year, Attorney shall be obligated to accept a total of forty-five (45) case equivalent appointments during the ensuing third quarter of that calendar year without receiving any additional compensation therefore. In certain instances, however, Attorney may be entitled to receive additional compensation (as specified in paragraph 17 below) if and when Attorney's appointments hereunder exceed the above-stated and applicable numerical case equivalent maximums.

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

- (a) An appointment to a felony matter in Franklin County Superior Court shall be counted as being one (1) case equivalent.
- (b) An appointment to any other matter in Franklin County Superior Court including, without limitation, any violation of a sentencing condition (e.g., probation violation, show cause on S.R.A. sentence, etc.), civil contempt, and material witness matters, shall be counted as being a one-third ($1/3^{\text{rd}}$) case equivalent.

- (c) An appointment to a felony or non-felony matter in Franklin County District Court shall be counted as being a one-half ($\frac{1}{2}$) case equivalent; provided that, if the matter is filed in Franklin County Superior Court, it shall not be counted as a case equivalent under this subparagraph (c), but rather it shall be counted as a case equivalent under subparagraphs (a) or (b) above, as applicable. An appointment in Franklin County District Court for probation violation, civil contempt, or material witness matter shall be counted as being a one-third ($\frac{1}{3}^{\text{rd}}$) case equivalent; provided that, if the same material witness matter is filed in Franklin County Superior Court, it shall only be counted a single time.
- (d) An appointment to any matter in which Attorney is initially appointed but withdraws prior to the omnibus hearing for any reason (including, without limitation, substitution of retained counsel or conflict of interest) shall not count as any type of case equivalent.
- (e) 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 court and Attorney continues representing the same person in such matter (e.g., if Attorney was appointed to represent a person on a felony 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 and shall count as a one-third ($\frac{1}{3}^{\text{rd}}$) case equivalent.
- (f) An appointment involving a seventy-two (72) hour hold shall not count as any type of case equivalent.
- (g) Except as may be otherwise 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.

Throughout the term of this Agreement, the Franklin County Superior Court Clerk and the Franklin County District Court Clerk shall each 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. Said Court clerks shall provide copies of such records to the County and the Benton-Franklin County Superior Court Administrator on a monthly basis. Attorney shall have the burden of proof in the event that Attorney disagrees with any such records.

9. **CLIENT ELIGIBILITY.** The Court, consistent with applicable laws, rules and standards, shall solely determine the eligibility of any particular person for representation by Attorney under this Agreement. If Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive such publicly-provided representation under the standards established by the Court, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Court of such possibility for purposes of the Court taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Court 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 Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in a criminal action in which Attorney has not been appointed by the Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

for purposes of the 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 by the Court to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of relevant law, appropriate communication with the client, review of potential plea alternatives, and the preparation for and appearance on behalf of the client in all stages of court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing 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.

Attorney shall open, compile and maintain an appropriate case file for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such file in its 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.

12. **TELEPHONE CONSULTATIONS.** In addition to providing legal services in the Court-appointed matters set forth in paragraph 5 above, Attorney shall be reasonably available to accept telephone calls from persons in custody on a felony matter who are legally entitled to make such calls under any applicable state and/or federal laws or rules. Attorney understands and acknowledges that all law enforcement agencies enforcing felony violations within the jurisdiction of the County and its Courts are legally required to maintain a list containing the names and telephone numbers of all attorneys who have contracted with the County to accept court appointments to represent indigent persons and that such list is legally required to be made available to all persons in custody requesting to speak with legal counsel. Attorney further understands and acknowledges that an indigent person's legal right to defense counsel cannot be limited by the normal office and working hours of court-appointed attorneys and that, accordingly, it may be necessary on occasion for Attorney to accept telephone calls from persons in custody during non-business hours.

If the County continues to maintain a collect-call telephone system for calls made from the County jail, the County shall reimburse the Attorney on a quarterly basis for any actual documented and specifically-identified expense incurred by Attorney in receiving any such collect calls.

Attorney shall provide any necessary legal services and representation to those persons in custody who contact and consult with Attorney via telephone

during any proceedings required by applicable law or court rule. If and when the Court subsequently determines that any such person is eligible to receive Court-appointed counsel and Attorney is appointed by the Court to represent such person, Attorney shall continue to represent such person during and in all matters and proceedings set forth in paragraph 5 above.

13. **TELEPHONE NUMBERS AND NOTICES.** Attorney shall provide written notice to the following-listed persons and agencies that sets forth Attorney's office telephone number and Attorney's home telephone number or such other number(s) where Attorney may be regularly and generally contacted via telephone for purposes of this Agreement:

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

TO: Franklin County Prosecuting Attorney
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

TO: Franklin County Superior Court
c/o Court Administrator
7320 W. Quinault
Kennewick, WA 99336

TO: Franklin County Superior Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

TO: Franklin County District Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

TO: Franklin County Sheriff
Franklin County Courthouse
1015 Fifth Avenue
Pasco, WA 99301

TO: Pasco Chief of Police
Pasco Police Department
Pasco City Hall
525 N. 3rd Ave.
Pasco, WA 99301

TO: Connell Chief of Police
Connell Police Department
Connell City Hall
Connell, WA 99326

TO: Commander of the Washington State Patrol
Kennewick Detachment
Route 7, Box 12450
Kennewick, WA 99337

Attorney shall also provide the above-described written notice to any other law enforcement agency designated to Attorney in writing by the Courts. Attorney shall provide the above-described notice and information to the above-listed and designated recipients immediately upon entering into this Agreement and shall subsequently provide immediate written notice of any and all changes to such information to all such recipients.

A telephone number for Attorney that reaches an answering/message service or a recorded message or answering machine does not comply with the requirements of this paragraph unless the answering/message service is actually capable of putting the person calling in immediate contact with Attorney.

14. **MONTHLY BASE COMPENSATION.** As base compensation for Attorney's performance and rendering of services hereunder, the County shall pay Attorney the sum of **\$5,693.16 per month.**

Attorney acknowledges and agrees that the above-stated monthly payments to Attorney shall immediately cease in the event that this Agreement is terminated for any reason prior to the termination date specified in paragraph 1 above. For example, if this Agreement is subsequently terminated effective August 31, 2006, the above-stated \$5,693.16 monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-owing and unpaid amounts for services rendered hereunder prior to such termination date.

Attorney acknowledges and agrees that the above-stated compensation amount is reasonable and equitable and that (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide and/or

sexually violent predator cases) such compensation shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney during the term of this Agreement up to the above-stated annual maximum total of one hundred forty (140) case equivalents.

15. **HOMICIDE CASE COMPENSATION.** Attorney shall receive additional compensation for appointments to homicide cases in any degree (exclusive of capital cases) at the rate of \$60.00 per hour up to a maximum aggregate amount of \$7,500.00 per case. Attorney shall receive additional compensation for homicide capital cases at the rate of \$65.00 per hour (or at the rate of \$75.00 per hour if Attorney has obtained capital case certification from either the Court and/or the Washington Supreme Court pursuant to Washington State Superior Court Special Proceedings Criminal Rule 2 (as now existing or hereafter amended)) up to a maximum aggregated amount of \$30,000.00 per case (or such greater aggregated amount as may be specifically approved by the Court in a particular case).

Payment of any such additional compensation is based on time expended 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.

As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a payment voucher to the County 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). Attorney's administrative time expended to prepare and submit such vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the Court's review and final approval for payment. Attorney shall submit such payment vouchers to the County 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.

16. **SEXUALLY VIOLENT PREDATOR CASE COMPENSATION.** Attorney shall receive additional compensation for appointments to sexually violent predator cases under RCW Chapter 71.09 *et seq.* at the rate of \$65.00 per hour; provided that, the hourly rate payable to Attorney for services actually rendered in such cases outside of the Tri-Cities area (e.g., to attend hearings in western

Washington) shall be at such higher rate as negotiated and agreed to by Attorney and the County on a case-by-case basis; and provided further that, the County shall be entitled to receive and retain any and all reimbursement paid by the state of Washington for such cases.

Payment of any such additional compensation is based on time expended 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.

As a precondition to Attorney being paid the above-mentioned additional compensation for a sexual predator case, Attorney shall be required to submit a payment voucher to the County that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10) 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). Attorney's administrative time expended to prepare and submit such vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the Court's review and final approval for payment. Attorney shall submit such payment vouchers to the County 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.

17. **ADDITIONAL COMPENSATION.** In the event Attorney's total case equivalents for appointments under this Agreement exceed the maximum totals set forth and discussed in paragraph 7 above, Attorney shall be entitled to receive additional compensation for each appointment that exceeds the maximum case equivalent totals as follows:

- | | | |
|-----|--|------------------------------------|
| (a) | Criminal filings in Franklin County
Superior Court | \$400/\$750
(if trial required) |
| (b) | All other matters in Franklin County
Superior Court | \$150 |
| (c) | Criminal filings disposed of in Franklin
County District Court (provided that
there shall be no compensation for any | |

district court filing that is subsequently
filed in Franklin County Superior Court). \$200

(d) All other matters in Franklin County
District Court \$100

Within sixty (60) days of Attorney becoming entitled to receive additional compensation under this paragraph, Attorney shall submit a payment voucher to the County that specifically references and identifies each excess appointment that serves as the basis for additional compensation and the exact amount of additional compensation being requested as a result thereof. Upon receipt of such payment voucher from Attorney, the County, assuming it does not dispute such payment voucher, shall pay the additional compensation to Attorney within sixty (60) days thereafter. Provided that, notwithstanding the above, the County shall have the right to deny payment of any voucher for additional compensation under this paragraph that is not timely submitted to the County within the above-stated requisite sixty (60) day period.

18. **COSTS AND EXPENSES.** Both parties recognize that in certain circumstances the need may arise for Attorney to incur certain out-of-pocket expenses for indigent defense-related items such as, without limitation, private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of travel, meals and lodging.

Attorney shall be entitled to receive reimbursement for the actual cost of such 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 Court order that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rule(s). Such 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 indigent defense-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to its employees under the County's then-existing employee travel-related policies and rules.

In addition to any other prerequisites imposed by court rule(s), as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a payment voucher to the County that descriptively identifies the specific expenditure(s) for which reimbursement is

sought and that has attached thereto a copy of the Court order(s) that specifically pre-approved and authorized such expenditure(s) together with attached copies of all written payment receipts relating to such incurred expenditure(s). 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 County within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

19. **ADDITIONAL ASSISTANCE.** The parties recognize that Attorney may from time-to-time be appointed to handle certain Class-A felony matters hereunder in Franklin County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Court appoint one (1) of the other three (3) Indigent 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 criminal indigent defense appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extremely 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 three (3) members of the Indigent Defense Panel.

20. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney hereby agrees to and shall fully indemnify the County and hold the County, its representatives, officers, employees, and agents fully harmless 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, 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 the terms of this Agreement. In the event any suit or legal proceeding is brought against the County or any of its 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 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 representatives, officers, employees or agents in such suits or other legal proceedings. The indemnification and hold harmless provisions of this paragraph shall survive the termination of this Agreement.

21. **INSURANCE.** Throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to perform services or duties hereunder, Attorney shall obtain and continuously maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount **not less than \$500,000.00 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 \$5,000.00.** Said policy shall include coverage as an additional insured for any other attorney(s) acting for or on behalf of Attorney in the performance of this Agreement. Said policy shall provide professional liability insurance coverage for any errors and/or omissions by Attorney during the course of performing legal services under this Agreement, and shall further require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered. Said policy shall also comply with all applicable state of Washington insurance requirements and shall be issued by an insurance company authorized to conduct business and issue insurance in the state of Washington. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated and acting Risk Manager with written proof and confirmation that such insurance policy and coverage has been obtained and Attorney shall provide the Risk Manager with annual written proof and confirmation that such insurance policy and coverage continues to exist no later than by January 15th of each year during the term of this Agreement.

22. **CLIENT COMPLAINTS; PERFORMANCE MONITORING.** In the event the Franklin County Superior Court Clerk and/or the Franklin County District Court Clerk receive an oral or written communication from a defendant represented by Attorney under this Agreement that in substance asserts a complaint over the quality or timeliness of the legal defense services rendered to such defendant by Attorney, the Clerk shall request and obtain a written, signed, and dated complaint from the defendant that specifically describes and details the relevant alleged facts and circumstances underlying the defendant's asserted complaint, whereupon the Clerk shall promptly provide the County with a copy of such written complaint. Upon receiving such complaint from the Clerk, the County, without limitation to any other action it may deem necessary/appropriate to pursue under this Agreement, shall forward a copy of the complaint to Attorney and request and obtain Attorney's written response thereto (which Attorney shall promptly prepare and provide), whereupon the County shall forward copies of the complaint and Attorney's response to the Court for purposes of the Court reviewing such documentation and implementing any necessary/appropriate action with Attorney and/or the defendant to address and resolve the complaint.

Additionally, during the term of this Agreement, the County reserves the right and discretion to periodically ask the Court and/or the Court Clerk to provide the County with a written evaluation/assessment of the quality of Attorney's performance of indigent defense services and related duties and obligations under

this Agreement. The County may (but shall not be obligated to) provide Attorney with notice of request/obtainment of such evaluation/assessment and/or with a copy of such evaluation/assessment.

23. **TERMINATION.** In the event that the Court enters an order that prohibits or disqualifies Attorney from receiving any further Court 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 or 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 fully liable to the County for any additional costs or expenses incurred by the County relating to such substitute appointment(s) in addition to any other damages sustained by the County arising out of Attorney's conduct and breach.

In addition to the automatic termination provisions above, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any material provision of this Agreement by giving Attorney ten (10) days advance written notice of termination, which notice shall specify the reason(s) for the termination. 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.

In addition to the above provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with no less than ninety (90) days advance written notice of such election.

In any event, consistent with the provisions of paragraph 14 above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid by the County for all services duly performed by Attorney under this Agreement up to the date of termination. Further, 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 date of termination unless Attorney is expressly barred or prohibited from doing so by Court order.

24. **INDEPENDENT CONTRACTOR.** The parties understand, acknowledge, and agree that Attorney is not an employee of the County and that Attorney, as of the date of this Agreement and throughout its entire term, is and will be acting and operating as a fully independent contractor. In that regard, the

County shall have no authority or duty to directly control or supervise the direct performance of Attorney's duties or services hereunder, which control and supervisory capacity is fully and ultimately vested within the inherent power and discretion of the Court.

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

Provided that, however, Attorney and any of the other three (3) Indigent Defense Panel attorneys may mutually agree to make temporary, substitute appearances for each other on routine criminal docket matters and routine court hearings on an as-needed basis provided that Attorney is actually and unavoidably unavailable and provided that such 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. Any compensation or consideration (if any) to be paid or given by Attorney to the other Indigent Defense Panel attorneys for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and the other Indigent Defense Panel attorneys, and said other attorneys shall not be entitled to receive any additional compensation from the County for such substitution(s).

Provided further that, however, in the event that 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 Indigent Defense Panel attorneys during such temporary absence, Attorney may seek and obtain the assistance of another attorney to make temporary, substitute appearances for Attorney during such absence on routine criminal 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 County) 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 defense 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.

Any compensation or consideration (if any) to be paid or given by Attorney to such other non-panel 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). Attorney acknowledges and agrees that Attorney

shall be strictly 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 21 above) and that Attorney shall be strictly liable for any and all damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

26. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process it deems appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in performing indigent criminal defense services.

27. **OTHER APPOINTMENTS.** Except for the Court appointments expressly contemplated and provided for in this Agreement, Attorney shall not enter into any other contract/agreement/arrangement to receive appointments from any other court to perform public defense or prosecution services.

28. **JUDICIAL SERVICE.** Attorney shall not serve in any judicial capacity (including judge pro tem or court commissioner) in or for any court located within the County on any matter. Further, Attorney shall not serve in any judicial capacity (including judge pro tem or court commissioner) in any case in which the County is a party or in any case in which the state of Washington is a party and is represented by the County's Prosecuting Attorney's Office or an appointed special deputy of such office.

29. **AGREEMENT TO RE-NEGOTIATE.** In the event that Attorney's annual appointments and resulting case equivalent totals hereunder amount to seventy-five percent (75%) or less of the above-stated one hundred forty (140) annual maximum case equivalent totals for any calendar year during the term of this Agreement, the parties agree that, at the County's request, they will negotiate in good faith an equitable and appropriate reduction in the amount of Attorney's monthly base compensation for the following calendar year. In the event that the parties fail to reach a negotiated and agreed reduction in the amount of Attorney's monthly base compensation, the issue will be resolved by the parties pursuant to the provisions of paragraph 36 below.

30. **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. Any new statutory requirement, court rule, and/or appellate court decision relating to indigent criminal defense services effective subsequent to the effective date of this Agreement shall be subject to further negotiation and agreement between the parties.

31. **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.

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

33. **BINDING EFFECT.** Strictly subject to the above restriction against assignment, this Agreement shall be binding upon Attorney's heirs, legal representatives, successors, and assigns.

34. **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.

35. **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.

36. **DISPUTE RESOLUTION.** 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 parties shall equally share and pay the mediator's fees and expenses.

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. Each party to the action shall be responsible for the payment of one-half of the fees and expenses of the arbitrator(s). The provisions of RCW Chapter 7.04 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) 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.

37. **NOTICE TO PARTIES.** Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's address specified and set forth in paragraph 13 above. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 above.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

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

Matthew L. Rutt
Matthew L. Rutt, Attorney at Law
Date: 3-24-06

**Franklin County, Washington, a
municipal corporation**

By: Neva J. Corkrum
Neva J. Corkrum
Chair/Member
Board of County Commissioners

By: Robert E. Koch
Robert E. Koch
Chair Pro Tem/Member
Board of County Commissioners

By: Frank H. Brock
Frank H. Brock
Member
Board of County Commissioners

ATTEST:

Mary Withers
Clerk of the Board

Signed and dated this 29th day of
MARCH, 2006.

2006 173

**INDEPENDENT CONTRACTOR AGREEMENT TO
PROVIDE LEGAL REPRESENTATION TO INDIGENT
PERSONS CHARGED WITH CRIMES IN THE COURTS
OF FRANKLIN COUNTY, WASHINGTON**

THIS AGREEMENT shall be deemed made and effective as of the 1st day of January, 2006, and is entered into by and between the **COUNTY OF FRANKLIN, WASHINGTON**, a state of Washington municipal corporation (hereinafter referred to as the "County"), and **CARL G. SONDERMAN**, an Attorney at Law (hereinafter referred to as "Attorney").

**THIS AGREEMENT IS ENTERED INTO BASED UPON THE
FOLLOWING FACTS:**

- A.** The County has the legal responsibility to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.
- B.** Attorney has experience in defending persons charged with crimes and desires to contract with the County to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.

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

1. **TERM.** This Agreement shall be deemed effective for all purposes as of the **1st day of January, 2006**, and shall continue thereafter for a period of **three (3) years** through and including the **31st day of December, 2008**, unless earlier terminated pursuant to paragraph 23 below. Provided that, however, Attorney shall be fully obligated to continue representing all persons whom Attorney has been appointed hereunder to represent through the final conclusion of the case or matter in which Attorney was appointed to represent such persons notwithstanding that such continued representation may require Attorney to perform such services and representation after the termination date of this Agreement.

2. **OFFICE LOCATION.** Attorney presently and regularly maintains an office for the practice of law at 504 W. Margaret Street, Pasco, WA 99301-5209. Attorney's current local office telephone number is (509) 547-4011. Throughout the entire term of this Agreement, Attorney shall continue to maintain such office and telephone number; 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 number to another Tri-Cities local telephone number provided that Attorney provides advance written notice of such change(s) to the County, the Franklin County Prosecuting Attorney, the Franklin County Superior Court, the Franklin County District Court, the Franklin County Superior Court Clerk, and the Franklin County District Court Clerk.

3. **LICENSE AND QUALIFICATION.** 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 two (2) years of direct trial experience in felony 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.

This Agreement shall be subject to termination pursuant to paragraph 23 below in the event that Attorney fails to comply with any material provision of this Agreement; in the event that Attorney's license to practice law in the state of 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 a criminal defendant; 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.

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 criminal actions in Benton and Franklin counties 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 for whom Attorney is appointed to represent under this Agreement. During each calendar year throughout 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 relating to criminal defense. Attorney shall provide the County with written proof and confirmation that such CLE

credits have been obtained no later than by December 31st of each such calendar year. Additionally, during each calendar year throughout the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii), 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"). The County may provide Attorney's name and address to the WOPD for purposes of the WOPD notifying Attorney of such upcoming training seminars. Attorney shall provide the County 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.

Attorney further represents and warrants that, throughout the entire term of this Agreement, Attorney will have adequate time in Attorney's private law practice caseload and regular personal schedule and will have adequate office support staff services, office resources, and office equipment to competently undertake and effectively perform all services required under this Agreement. Attorney further represents and warrants that Attorney's private law practice and personal schedule will not unduly or unreasonably 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 indigent 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 to the alleged criminal charge(s) and keeping such persons reasonably apprised as to the status of their case. No later than by the 10th day of each month during the term of this Agreement, Attorney shall provide the County with a written report showing the total number and types of private practice cases (which for purposes of this Agreement shall include pro bono cases and retained-fee cases) in which Attorney provided legal services during the preceding month, the total number of court-appointed cases under this Agreement in which Attorney provided legal services during the preceding month, and the 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 court-appointed cases under this Agreement.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** On or about the date of this Agreement, it is contemplated that the County will enter into identical (but separate and independent) agreements with three (3) other licensed attorneys to provide criminal defense services to indigent persons in the County's courts. Attorney agrees to cooperate and coordinate with said other attorneys and the County's Superior and District Courts to establish and effectuate a process to ensure an efficient and equitable distribution of appointments between Attorney and said other attorneys, and Attorney further agrees that the County has no responsibility for, or any involvement in, the establishment or implementation of such process.

Additionally, Attorney and said other contracting attorneys (sometimes hereinafter collectively referred to as the "Indigent Defense Panel") shall collectively designate one (1) of them to act as their spokesperson and liaison with the Courts, the County Prosecuting Attorney's office, the County's Board of Commissioners, and the Benton-Franklin local Bar Association. The name of the attorney so designated (and, if/when applicable, said attorney's duly designated replacement) shall be promptly provided in writing to all of the above-designated entities.

5. **COURT APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept court appointments to represent eligible indigent persons (regardless of their race, color, national origin, age, marital status, sexual orientation, handicap, or political or religious affiliation) on any felony matter in Franklin County Superior Court or in Franklin County District Court (said courts are sometimes hereinafter collectively referred to when the context permits as the "Court" or "Courts") in which publicly-provided counsel is furnished or required by law.

More specifically, Attorney shall accept court appointments on the following matters:

- (a) Any matter filed in Franklin County Superior Court in which publicly-provided counsel is furnished or required by law (except for matters in juvenile court under Title 13 RCW and matters specifically and exclusively covered by another legal services contract or those matters that are the legal responsibility of another governmental entity such as, without limitation, the state of Washington Attorney General's Office).
- (b) Any appeal or statutory writ from Franklin County District Court or from any municipal court for which attorneys appointed pursuant to a contract with the County are unable to handle due to a conflict of interest and/or any appeal from Franklin County District Court involving cases in which Attorney was appointed by such court.
- (c) Any felony matter initially filed in Franklin County District Court, including those cases in which a felony charge is ultimately reduced to a misdemeanor or gross misdemeanor charge.
- (d) Any non-felony criminal filing in Franklin County District Court up to a maximum of six (6) appointments per calendar year.
- (e) Any Franklin County District Court probation violation involving cases in which Attorney was previously appointed or involving cases in which attorneys appointed pursuant to a legal services

contract with the County are unable to handle due to a conflict of interest.

Without limitation to Attorney's duty to initially meet with an indigent defendant 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 indigent defendant is jailed/imprisoned), Attorney shall arrange to meet in person (face-to-face) with the defendant as soon as possible but no later than 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 defendant). Additionally, throughout Attorney's representation of any indigent defendant under this Agreement, Attorney shall maintain appropriate contact/communications with the defendant so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall apprise the defendant 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 defendant). Without limiting any of the foregoing, with regard to any post-appointment court hearing involving an "in custody" defendant, Attorney shall contact (either in person or via telephone) such defendant to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

6. **CONTINUED REPRESENTATION.** In the event that a change of venue is granted to a person for whom Attorney has been appointed to represent under this Agreement, Attorney shall continue to represent such person in the court to where venue is transferred. Further, as mentioned above, Attorney's obligation to provide representation under this Agreement includes the obligation to timely and fully complete all cases or matters encompassed by 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 or matters encompassed by this Agreement following its termination shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

By way of example, in the event that Attorney was required by this paragraph to continue representing an indigent person charged with a non-homicide crime after the above-stated termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation. By way of further example, in the event that Attorney was required by this paragraph to continue representing an indigent person charged with a homicide after the above-stated termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued representation is specified in paragraph 15 below.

7. **NUMBER OF APPOINTMENTS.** For each calendar year during the term of this Agreement, Attorney agrees to and shall accept Court appointments hereunder to represent indigent persons up to a maximum of **one hundred forty (140) total case equivalents per calendar year** (which, on a quarterly basis, equates to **thirty-five (35) case equivalents per calendar-year quarter**). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the quarter in which a case equivalent is to be counted hereunder.

Provided that, during the first, second, and/or third quarters of each calendar year during the term of this Agreement, Attorney agrees to and shall accept Court appointments hereunder that exceed the above-stated quarterly numerical case equivalent maximums for the first, second, and/or third quarters of the calendar year. At Attorney's discretion, however, Attorney may elect to accept Court appointments during the fourth quarter of a calendar year that exceed the above-stated annual numerical case equivalent maximum of one hundred forty (140) total case equivalents.

Provided further that, in the event that Attorney's court appointments hereunder are less than the above-stated numerical case equivalent maximums during any of the first three (3) quarters of the calendar year, the difference between the maximum number and the actual number of case equivalent appointments received by Attorney during any such quarter(s) shall be added to the quarterly maximum of case equivalent appointments for the next following quarter. For example, in the event that Attorney only received twenty-five (25) case equivalent appointments during the second quarter of a calendar year, Attorney shall be obligated to accept a total of forty-five (45) case equivalent appointments during the ensuing third quarter of that calendar year without receiving any additional compensation therefore. In certain instances, however, Attorney may be entitled to receive additional compensation (as specified in paragraph 17 below) if and when Attorney's appointments hereunder exceed the above-stated and applicable numerical case equivalent maximums.

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

- (a) An appointment to a felony matter in Franklin County Superior Court shall be counted as being one (1) case equivalent.
- (b) An appointment to any other matter in Franklin County Superior Court including, without limitation, any violation of a sentencing condition (e.g., probation violation, show cause on S.R.A. sentence, etc.), civil contempt, and material witness matters, shall be counted as being a one-third ($1/3^{\text{rd}}$) case equivalent.

- (c) An appointment to a felony or non-felony matter in Franklin County District Court shall be counted as being a one-half ($\frac{1}{2}$) case equivalent; provided that, if the matter is filed in Franklin County Superior Court, it shall not be counted as a case equivalent under this subparagraph (c), but rather it shall be counted as a case equivalent under subparagraphs (a) or (b) above, as applicable. An appointment in Franklin County District Court for probation violation, civil contempt, or material witness matter shall be counted as being a one-third ($\frac{1}{3}^{\text{rd}}$) case equivalent; provided that, if the same material witness matter is filed in Franklin County Superior Court, it shall only be counted a single time.
- (d) An appointment to any matter in which Attorney is initially appointed but withdraws prior to the omnibus hearing for any reason (including, without limitation, substitution of retained counsel or conflict of interest) shall not count as any type of case equivalent.
- (e) 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 court and Attorney continues representing the same person in such matter (e.g., if Attorney was appointed to represent a person on a felony 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 and shall count as a one-third ($\frac{1}{3}^{\text{rd}}$) case equivalent.
- (f) An appointment involving a seventy-two (72) hour hold shall not count as any type of case equivalent.
- (g) Except as may be otherwise 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.

Throughout the term of this Agreement, the Franklin County Superior Court Clerk and the Franklin County District Court Clerk shall each 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. Said Court clerks shall provide copies of such records to the County and the Benton-Franklin County Superior Court Administrator on a monthly basis. Attorney shall have the burden of proof in the event that Attorney disagrees with any such records.

9. **CLIENT ELIGIBILITY.** The Court, consistent with applicable laws, rules and standards, shall solely determine the eligibility of any particular person for representation by Attorney under this Agreement. If Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive such publicly-provided representation under the standards established by the Court, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Court of such possibility for purposes of the Court taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Court 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 Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in a criminal action in which Attorney has not been appointed by the Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

for purposes of the 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 by the Court to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of relevant law, appropriate communication with the client, review of potential plea alternatives, and the preparation for and appearance on behalf of the client in all stages of court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing 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.

Attorney shall open, compile and maintain an appropriate case file for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such file in its 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.

12. **TELEPHONE CONSULTATIONS.** In addition to providing legal services in the Court-appointed matters set forth in paragraph 5 above, Attorney shall be reasonably available to accept telephone calls from persons in custody on a felony matter who are legally entitled to make such calls under any applicable state and/or federal laws or rules. Attorney understands and acknowledges that all law enforcement agencies enforcing felony violations within the jurisdiction of the County and its Courts are legally required to maintain a list containing the names and telephone numbers of all attorneys who have contracted with the County to accept court appointments to represent indigent persons and that such list is legally required to be made available to all persons in custody requesting to speak with legal counsel. Attorney further understands and acknowledges that an indigent person's legal right to defense counsel cannot be limited by the normal office and working hours of court-appointed attorneys and that, accordingly, it may be necessary on occasion for Attorney to accept telephone calls from persons in custody during non-business hours.

If the County continues to maintain a collect-call telephone system for calls made from the County jail, the County shall reimburse the Attorney on a quarterly basis for any actual documented and specifically-identified expense incurred by Attorney in receiving any such collect calls.

Attorney shall provide any necessary legal services and representation to those persons in custody who contact and consult with Attorney via telephone

during any proceedings required by applicable law or court rule. If and when the Court subsequently determines that any such person is eligible to receive Court-appointed counsel and Attorney is appointed by the Court to represent such person, Attorney shall continue to represent such person during and in all matters and proceedings set forth in paragraph 5 above.

13. **TELEPHONE NUMBERS AND NOTICES.** Attorney shall provide written notice to the following-listed persons and agencies that sets forth Attorney's office telephone number and Attorney's home telephone number or such other number(s) where Attorney may be regularly and generally contacted via telephone for purposes of this Agreement:

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

TO: Franklin County Prosecuting Attorney
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

TO: Franklin County Superior Court
c/o Court Administrator
7320 W. Quinault
Kennewick, WA 99336

TO: Franklin County Superior Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

TO: Franklin County District Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

TO: Franklin County Sheriff
Franklin County Courthouse
1015 Fifth Avenue
Pasco, WA 99301

TO: Pasco Chief of Police
Pasco Police Department
Pasco City Hall
525 N. 3rd Ave.
Pasco, WA 99301

TO: Connell Chief of Police
Connell Police Department
Connell City Hall
Connell, WA 99326

TO: Commander of the Washington State Patrol
Kennewick Detachment
Route 7, Box 12450
Kennewick, WA 99337

Attorney shall also provide the above-described written notice to any other law enforcement agency designated to Attorney in writing by the Courts. Attorney shall provide the above-described notice and information to the above-listed and designated recipients immediately upon entering into this Agreement and shall subsequently provide immediate written notice of any and all changes to such information to all such recipients.

A telephone number for Attorney that reaches an answering/message service or a recorded message or answering machine does not comply with the requirements of this paragraph unless the answering/message service is actually capable of putting the person calling in immediate contact with Attorney.

14. **MONTHLY BASE COMPENSATION.** As base compensation for Attorney's performance and rendering of services hereunder, the County shall pay Attorney the sum of \$5,693.16 per month.

Attorney acknowledges and agrees that the above-stated monthly payments to Attorney shall immediately cease in the event that this Agreement is terminated for any reason prior to the termination date specified in paragraph 1 above. For example, if this Agreement is subsequently terminated effective August 31, 2006, the above-stated \$5,693.16 monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-owing and unpaid amounts for services rendered hereunder prior to such termination date.

Attorney acknowledges and agrees that the above-stated compensation amount is reasonable and equitable and that (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide and/or

sexually violent predator cases) such compensation shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney during the term of this Agreement up to the above-stated annual maximum total of one hundred forty (140) case equivalents.

15. **HOMICIDE CASE COMPENSATION.** Attorney shall receive additional compensation for appointments to homicide cases in any degree (exclusive of capital cases) at the rate of \$60.00 per hour up to a maximum aggregate amount of \$7,500.00 per case. Attorney shall receive additional compensation for homicide capital cases at the rate of \$65.00 per hour (or at the rate of \$75.00 per hour if Attorney has obtained capital case certification from either the Court and/or the Washington Supreme Court pursuant to Washington State Superior Court Special Proceedings Criminal Rule 2 (as now existing or hereafter amended)) up to a maximum aggregated amount of \$30,000.00 per case (or such greater aggregated amount as may be specifically approved by the Court in a particular case).

Payment of any such additional compensation is based on time expended 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.

As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a payment voucher to the County 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). Attorney's administrative time expended to prepare and submit such vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the Court's review and final approval for payment. Attorney shall submit such payment vouchers to the County 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.

16. **SEXUALLY VIOLENT PREDATOR CASE COMPENSATION.** Attorney shall receive additional compensation for appointments to sexually violent predator cases under RCW Chapter 71.09 *et seq.* at the rate of \$65.00 per hour; provided that, the hourly rate payable to Attorney for services actually rendered in such cases outside of the Tri-Cities area (e.g., to attend hearings in western

Washington) shall be at such higher rate as negotiated and agreed to by Attorney and the County on a case-by-case basis; and provided further that, the County shall be entitled to receive and retain any and all reimbursement paid by the state of Washington for such cases.

Payment of any such additional compensation is based on time expended 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.

As a precondition to Attorney being paid the above-mentioned additional compensation for a sexual predator case, Attorney shall be required to submit a payment voucher to the County that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10) 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). Attorney's administrative time expended to prepare and submit such vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the Court's review and final approval for payment. Attorney shall submit such payment vouchers to the County 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.

17. **ADDITIONAL COMPENSATION.** In the event Attorney's total case equivalents for appointments under this Agreement exceed the maximum totals set forth and discussed in paragraph 7 above, Attorney shall be entitled to receive additional compensation for each appointment that exceeds the maximum case equivalent totals as follows:

- | | | |
|-----|--|------------------------------------|
| (a) | Criminal filings in Franklin County
Superior Court | \$400/\$750
(if trial required) |
| (b) | All other matters in Franklin County
Superior Court | \$150 |
| (c) | Criminal filings disposed of in Franklin
County District Court (provided that
there shall be no compensation for any | |

district court filing that is subsequently
filed in Franklin County Superior Court). \$200

(d) All other matters in Franklin County
District Court \$100

Within sixty (60) days of Attorney becoming entitled to receive additional compensation under this paragraph, Attorney shall submit a payment voucher to the County that specifically references and identifies each excess appointment that serves as the basis for additional compensation and the exact amount of additional compensation being requested as a result thereof. Upon receipt of such payment voucher from Attorney, the County, assuming it does not dispute such payment voucher, shall pay the additional compensation to Attorney within sixty (60) days thereafter. Provided that, notwithstanding the above, the County shall have the right to deny payment of any voucher for additional compensation under this paragraph that is not timely submitted to the County within the above-stated requisite sixty (60) day period.

18. **COSTS AND EXPENSES.** Both parties recognize that in certain circumstances the need may arise for Attorney to incur certain out-of-pocket expenses for indigent defense-related items such as, without limitation, private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of travel, meals and lodging.

Attorney shall be entitled to receive reimbursement for the actual cost of such 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 Court order that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rule(s). Such 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 indigent defense-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to its employees under the County's then-existing employee travel-related policies and rules.

In addition to any other prerequisites imposed by court rule(s), as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a payment voucher to the County that descriptively identifies the specific expenditure(s) for which reimbursement is

sought and that has attached thereto a copy of the Court order(s) that specifically pre-approved and authorized such expenditure(s) together with attached copies of all written payment receipts relating to such incurred expenditure(s). 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 County within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

19. **ADDITIONAL ASSISTANCE.** The parties recognize that Attorney may from time-to-time be appointed to handle certain Class-A felony matters hereunder in Franklin County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Court appoint one (1) of the other three (3) Indigent 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 criminal indigent defense appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extremely 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 three (3) members of the Indigent Defense Panel.

20. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney hereby agrees to and shall fully indemnify the County and hold the County, its representatives, officers, employees, and agents fully harmless 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, 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 the terms of this Agreement. In the event any suit or legal proceeding is brought against the County or any of its 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 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 representatives, officers, employees or agents in such suits or other legal proceedings. The indemnification and hold harmless provisions of this paragraph shall survive the termination of this Agreement.

21. **INSURANCE.** Throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to perform services or duties hereunder, Attorney shall obtain and continuously maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount **not less than \$500,000.00 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 \$5,000.00.** Said policy shall include coverage as an additional insured for any other attorney(s) acting for or on behalf of Attorney in the performance of this Agreement. Said policy shall provide professional liability insurance coverage for any errors and/or omissions by Attorney during the course of performing legal services under this Agreement, and shall further require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered. Said policy shall also comply with all applicable state of Washington insurance requirements and shall be issued by an insurance company authorized to conduct business and issue insurance in the state of Washington. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated and acting Risk Manager with written proof and confirmation that such insurance policy and coverage has been obtained and Attorney shall provide the Risk Manager with annual written proof and confirmation that such insurance policy and coverage continues to exist no later than by January 15th of each year during the term of this Agreement.

22. **CLIENT COMPLAINTS; PERFORMANCE MONITORING.** In the event the Franklin County Superior Court Clerk and/or the Franklin County District Court Clerk receive an oral or written communication from a defendant represented by Attorney under this Agreement that in substance asserts a complaint over the quality or timeliness of the legal defense services rendered to such defendant by Attorney, the Clerk shall request and obtain a written, signed, and dated complaint from the defendant that specifically describes and details the relevant alleged facts and circumstances underlying the defendant's asserted complaint, whereupon the Clerk shall promptly provide the County with a copy of such written complaint. Upon receiving such complaint from the Clerk, the County, without limitation to any other action it may deem necessary/appropriate to pursue under this Agreement, shall forward a copy of the complaint to Attorney and request and obtain Attorney's written response thereto (which Attorney shall promptly prepare and provide), whereupon the County shall forward copies of the complaint and Attorney's response to the Court for purposes of the Court reviewing such documentation and implementing any necessary/appropriate action with Attorney and/or the defendant to address and resolve the complaint.

Additionally, during the term of this Agreement, the County reserves the right and discretion to periodically ask the Court and/or the Court Clerk to provide the County with a written evaluation/assessment of the quality of Attorney's performance of indigent defense services and related duties and obligations under

this Agreement. The County may (but shall not be obligated to) provide Attorney with notice of request/obtainment of such evaluation/assessment and/or with a copy of such evaluation/assessment.

23. **TERMINATION.** In the event that the Court enters an order that prohibits or disqualifies Attorney from receiving any further Court 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 or 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 fully liable to the County for any additional costs or expenses incurred by the County relating to such substitute appointment(s) in addition to any other damages sustained by the County arising out of Attorney's conduct and breach.

In addition to the automatic termination provisions above, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any material provision of this Agreement by giving Attorney ten (10) days advance written notice of termination, which notice shall specify the reason(s) for the termination. 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.

In addition to the above provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with no less than ninety (90) days advance written notice of such election.

In any event, consistent with the provisions of paragraph 14 above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid by the County for all services duly performed by Attorney under this Agreement up to the date of termination. Further, 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 date of termination unless Attorney is expressly barred or prohibited from doing so by Court order.

24. **INDEPENDENT CONTRACTOR.** The parties understand, acknowledge, and agree that Attorney is not an employee of the County and that Attorney, as of the date of this Agreement and throughout its entire term, is and will be acting and operating as a fully independent contractor. In that regard, the

County shall have no authority or duty to directly control or supervise the direct performance of Attorney's duties or services hereunder, which control and supervisory capacity is fully and ultimately vested within the inherent power and discretion of the Court.

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

Provided that, however, Attorney and any of the other three (3) Indigent Defense Panel attorneys may mutually agree to make temporary, substitute appearances for each other on routine criminal docket matters and routine court hearings on an as-needed basis provided that Attorney is actually and unavoidably unavailable and provided that such 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. Any compensation or consideration (if any) to be paid or given by Attorney to the other Indigent Defense Panel attorneys for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and the other Indigent Defense Panel attorneys, and said other attorneys shall not be entitled to receive any additional compensation from the County for such substitution(s).

Provided further that, however, in the event that 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 Indigent Defense Panel attorneys during such temporary absence, Attorney may seek and obtain the assistance of another attorney to make temporary, substitute appearances for Attorney during such absence on routine criminal 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 County) 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 defense 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.

Any compensation or consideration (if any) to be paid or given by Attorney to such other non-panel 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). Attorney acknowledges and agrees that Attorney

shall be strictly 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 21 above) and that Attorney shall be strictly liable for any and all damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

26. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process it deems appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in performing indigent criminal defense services.

27. **OTHER APPOINTMENTS.** Except for the Court appointments expressly contemplated and provided for in this Agreement, Attorney shall not enter into any other contract/agreement/arrangement to receive appointments from any other court to perform public defense or prosecution services.

28. **JUDICIAL SERVICE.** Attorney shall not serve in any judicial capacity (including judge pro tem or court commissioner) in or for any court located within the County on any matter. Further, Attorney shall not serve in any judicial capacity (including judge pro tem or court commissioner) in any case in which the County is a party or in any case in which the state of Washington is a party and is represented by the County's Prosecuting Attorney's Office or an appointed special deputy of such office.

29. **AGREEMENT TO RE-NEGOTIATE.** In the event that Attorney's annual appointments and resulting case equivalent totals hereunder amount to seventy-five percent (75%) or less of the above-stated one hundred forty (140) annual maximum case equivalent totals for any calendar year during the term of this Agreement, the parties agree that, at the County's request, they will negotiate in good faith an equitable and appropriate reduction in the amount of Attorney's monthly base compensation for the following calendar year. In the event that the parties fail to reach a negotiated and agreed reduction in the amount of Attorney's monthly base compensation, the issue will be resolved by the parties pursuant to the provisions of paragraph 36 below.

30. **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. Any new statutory requirement, court rule, and/or appellate court decision relating to indigent criminal defense services effective subsequent to the effective date of this Agreement shall be subject to further negotiation and agreement between the parties.

31. **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.

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

33. **BINDING EFFECT.** Strictly subject to the above restriction against assignment, this Agreement shall be binding upon Attorney's heirs, legal representatives, successors, and assigns.

34. **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.

35. **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.

36. **DISPUTE RESOLUTION.** 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 parties shall equally share and pay the mediator's fees and expenses.

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. Each party to the action shall be responsible for the payment of one-half of the fees and expenses of the arbitrator(s). The provisions of RCW Chapter 7.04 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) 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

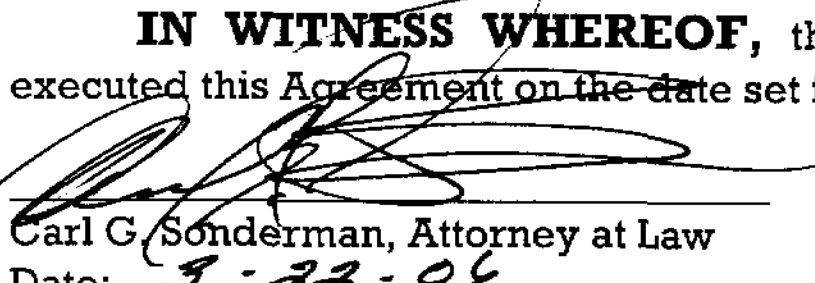
Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue 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.

37. **NOTICE TO PARTIES.** Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's address specified and set forth in paragraph 13 above. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 above.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

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


Carl G. Sonderman, Attorney at Law

Date: 3-22-06

**Franklin County, Washington, a
municipal corporation**

By: 

Neva J. Corkrum
Chair/Member
Board of County Commissioners

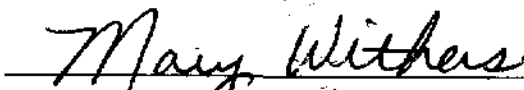
By: 

Robert E. Koch
Chair Pro Tem/Member
Board of County Commissioners

By: 

Frank H. Brock
Member
Board of County Commissioners

ATTEST:


Clerk of the Board

Signed and dated this 29th day of
MARCH, 2006.

FRANKLIN COUNTY RESOLUTION NO. 2006 174

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY,
WASHINGTON

**RE: ESTABLISHING A PENSION AND DISABILITY PLAN FOR RESERVE
OFFICERS, ADMINISTERED THROUGH THE STATE BOARD OF
VOLUNTEER FIREFIGHTERS**

and

**AUTHORIZING CREATION OF REVENUE LINE ITEM 363.00.00.0520
(RESERVE OFFICERS PENSION & DISABILITY) AND EXPENDITURE
LINE ITEM 521.20.20.0010 (RESERVE OFFICERS PENSION &
DISABILITY) WITHIN THE 2006 CURRENT EXPENSE SHERIFF
BUDGET, NUMBER 001-000-520**

and

**INTER BUDGET TRANSFER IN THE AMOUNT OF \$4,000 FROM THE
2006 NON-DEPARTMENTAL BUDGET, NUMBER 001-000-700, LINE
ITEM 519.90.10.0001 (CONTINGENCY RESERVE) TO THE SHERIFF'S
BUDGET, NUMBER 001-000-520, LINE ITEM 521.20.20.0010 (RESERVE
OFFICERS PENSION & DISABILITY)**

WHEREAS, the Franklin County Sheriff notified the Board of Franklin County
Commissioners of the reserve officers desire to participate in the states pension and
disability plan; and

WHEREAS, R.C.W. 41.24 allows the State Board for Volunteer Firefighters and
Reserve Officers to administer the Volunteer Firefighters' and Reserve Officers' Relief
and Pension Act; and

WHEREAS, membership in the Volunteer Firefighters and Reserve Officers Pension and
Disability Plan is available to Franklin County reserve officers, pending approval by the
Franklin County Board of Commissioners and passage of a resolution or ordinance
allowing participation; and

WHEREAS, the attached information packet explains the State Board of Volunteer
Firefighters and Reserve Officers program; and

WHEREAS, Franklin County will allow officers to both buy back credit for years of
service and make pension payments for prior years of service, *provided that* Franklin
County will not make pension payments for prior years of service; and

WHEREAS, it is necessary to establish a revenue and expenditure line item within the
Sheriff's budget and transfer funds accordingly; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative
authority of Franklin County and desires to enter into this arrangement as being in the
best interest of Franklin County;

Franklin County Resolution No. 2006 174

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Reserve Officers Pension & Disability Plan

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners approves establishing a Pension and Disability Plan for Franklin County Reserve Officers, administered through the State Board of Volunteer Firefighters and Reserve Officers.

BE IT FURTHER RESOLVED the Franklin County Board of Commissioners authorizes creation of revenue line item 363.00.00.0520 (Reserve Officers Pension & Disability) and expenditure line item 521.20.20.0010 (Reserve Officers Pension & Disability) within the 2006 Current Expense Sheriff Budget, Number 001-000-520.

BE IT FURTHER RESOLVED the Franklin County Board of Commissioners approves an inter budget transfer in the amount of \$4,000 from the 2006 Non-Departmental Budget, Number 001-000-700, line item 519.90.10.0001 (Contingency Reserve) to the Sheriff's Budget, Number 001-000-520, line item 521.20.20.0010 (Reserve Officers Pension & Disability).

DATED this 29th day of March 2006.

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


Neva J. Corlum, Chair


Robert E. Koch, Chair Pro Tem

Attest:


Clerk to the Board


Frank H. Brock, Member

Originals: Auditor
Minutes
State Board of Vol. Firefighters & Reserve Officers

cc: Sheriff

State Board of Volunteer Firefighters and Reserve Officers

(Pension and Disability plan)

2006 174

Board for Volunteer Firefighters and Reserve Officers

Olympia Forum Building
605 E 11th Avenue #112
PO Box 114
Olympia, WA 98507

Phone: (360) 753-7318
Toll Free: (877) 753-7318
Fax: (360) 586-1987
www.bvff.wa.gov

Questions and answers about the program: (The answers below and other information may be obtained by visiting)

- 1. Question:** What is required prior to membership in the Volunteer Firefighters and Reserve Officers Pension and Disability Plan ?

Answer:

- a) Prior to any Reserve Officer joining the plan the County Commissioners or City Council must pass a resolution or ordinance allowing the participation.
- b) The State Board recommends ~~that each department~~ that each department require a physical examination to determine if they are physically fit for the job. The State Board will pay a portion of the cost of each examination.
- c) The State Board also recommends ~~that departments~~ that departments require prospective members pass some form of physical agility test to be sure that they are capable of the type of work required of them.

- 2. Question:** When can a Reserve Officer join the plan ?

Answer: First of all membership in the plan is optional for each Reserve Officer. After a resolution or ordinance is passed pension fees for all members who choose to join are due with the annual disability ~~fees~~ ~~fees~~ fees. Thereafter all fees must be submitted with the annual report (normally between January 1st and March 1st) or a 1% per month penalty will be assessed for late payments. **NOTE:** A Reserve Officer may make his/her first payment into the plan at anytime during the year that he/she joins. After that they are due annually.

State Board of Volunteer Firefighters and Reserve Officers

(Pension and Disability plan)

3. Question: What is the cost to join the pension and disability plan ?

Answer: Fees are as indicated below per Reserve Officer (fees may change each year):

a) Pension Plan: (2006 fees)

- \$30.00 annually paid by the Member or Department.
- \$95.00 annually paid by the Department.

b) Disability Plan: (2006 fees)

- \$100.00 annually paid by the department.

4. Question: How does the Pension Plan pay out ?

Answer: The minimum requirements for vesting or qualifying for a pension under the Volunteer Firefighters' Pension Plan are ten years of service and one payment into the pension fund. The amount of the pension vested increases for each five years of service beyond the minimum ten years and for each pension payment made. The maximum pension is vested with 25 of service and 25 payments into the pension fund. Many of the smaller pensions compute to a monthly payment of less than \$50.00. These pensions are paid as one time lump-sum settlements based upon the value of the annuity. All pensions which compute to more than \$50.00 are paid in monthly payments for as long as the member lives and cease upon his or her death or upon the death of both the member and her or his spouse if the Joint/Survivor Option is chosen. (see attached Pension Tables)

5. Question: Can you cancel or terminate from the plan ?

Answer: Yes, you can cancel or terminate from the plan at any time. But only the fees that the Reserve Officer paid in are refundable. The fees paid by the Department are not refundable.

6. Question: As a Reserve Officer in good standing with the pension and/or disability plan, I become a Deputy Sheriff full time, what happens to my plan ?

Answer:

- a)** You may elect to have it remain in the plan and it will be paid per the pension tables attached depending on how long you were a active Reserve Officer.
- b)** You may elect a refund, but only fees paid by the member are refundable.

State Board of Volunteer Firefighters and Reserve Officers

(Pension and Disability plan)

7. Question: How does the Disability Plan work ?

Answer: Member cost for Disability Plan is \$100.00 annually (2006 fees), is optional and should be paid by the Department.

- a) Disability compensation is provided for any member who, as a result of an injury in the performance of duty, is unable to work at his/her regular occupation for a period of six months. ~~disability benefit plan~~
- b) If after 6 months the injured member is still unable to work at any job as a result of his/her injury, disability compensation computed at a different rate may be authorized.
- c) If an injured member sustains a permanent partial disability as a result of an accident, she or he may contact the State Board for an examination to determine the extent of disability. A permanent partial disability settlement will be offered according to the report of an independent examining physician or panel in accordance with tables adopted by the Department of Labor and Industries.
- d) The State Board will reimburse for mileage traveled for treatment outside the members' home area.
- e) If a member is killed during the performance of duty, death and funeral benefits as well as a survivors' pension for the spouse and/or surviving dependent children are provided. The State Board should be contacted immediately so that the claim can be processed as quickly as possible.

II. Pension Plan - Optional (Municipality must, by ordinance or resolution, allow participation.)



Pension Tables
(effective 07/01/03)
DOWNLOAD (MS WORD)

A. Fees

1) Annual fees for firefighters

a) Municipality fee is \$30.00

b) Member fee is \$30.00

2) Annual fees for EMSD volunteers and reserve officers

a) Municipality fee set by State Board

1. Set at annual October meeting for following year

2. Set to cover total actuarial cost of participation less member's fee

b) Member fee is \$30.00

3) Municipality may choose to pay member's fee.

4) No more than 25 annual pension payments may be paid.

a) Member's \$30.00 fee, if paid by member, is refundable upon leaving service

b) Fees paid by municipality are not refundable.

5) Initial enrollment in the pension plan can be made at any time of the year.

B. Benefits

1) Pension Calculation [Base pension X service percent = age 65 pension]

a) Step 1 - Base pension

1. \$50.00 plus \$10.00 for each year paid-in.

2. Maximum is \$300.00 for 25 years paid-in.

b) Step 2 - Service percent

1. 10-14 years of service = 20% of base pension

2. 15-19 years of service = 35% of base pension

3. 20-24 years of service = 75% of base pension

4. 25+ years of service = 100% of base pension

c) Step 3 - Age election percent option -

100% at age 65 or 92% at age 64 or 84% at age 63 or

76% at age 62 or 68% at age 61 or 60% at age 60

2) Joint-Survivor Option - Applies only to those serving after 07/01/89

a) Reduced pension based on the difference in age between the fire-fighter and his/her spouse

b) Continues to the spouse upon the member's death

c) If spouse precedes member in death, pension will be increased to unreduced amount

d) With additional reduction for age at time of death, will be paid to spouse of deceased member who dies before drawing pension

3) If any pension computes to less than \$50.00, it will be paid as a one time lump-sum settlement equal to the value of the annuity.

4) Service credit is given for service rendered prior to enrollment in the pension plan, although pension fees cannot be paid for those years.

STATE BOARD FOR VOLUNTEER FIREFIGHTERS & RESERVE OFFICERS

PO Box 114 Olympia, WA 98507

Phone: (360) 753-7318 Toll Free: (877) 753-7318 Fax: (360) 586-1987

Pension Tables (effective 07/01/2003)

Base Pension = \$50.00 + \$10.00 for each year paid in.

20% X Base Pension for 10-14 years SERVICE

Pmts	60% @ age 60	68% @ age 61	76% @ age 62	84% @ age 63	92% @ age 64	100% @ age 65	Pmts
1	7.20	8.16	9.12	10.08	11.04	12.00	1
2	8.40	9.52	10.64	11.76	12.88	14.00	2
3	9.60	10.88	12.16	13.44	14.72	16.00	3
4	10.80	12.24	13.68	15.12	16.56	18.00	4
5	12.00	13.60	15.20	16.80	18.40	20.00	5
6	13.20	14.96	16.72	18.48	20.24	22.00	6
7	14.40	16.32	18.24	20.16	22.08	24.00	7
8	15.60	17.68	19.76	21.84	23.92	26.00	8
9	16.80	19.04	21.28	23.52	25.76	28.00	9
10	18.00	20.40	22.80	25.20	27.60	30.00	10
11	19.20	21.76	24.32	26.88	29.44	32.00	11
12	20.40	23.12	25.84	28.56	31.28	34.00	12
13	21.60	24.48	27.36	30.24	33.12	36.00	13
14	22.80	25.84	28.88	31.92	34.96	38.00	14
15	24.00	27.20	30.40	33.60	36.80	40.00	15

35% X Base Pension for 15-19 years SERVICE

Pmts	60% @ age 60	68% @ age 61	76% @ age 62	84% @ age 63	92% @ age 64	100% @ age 65	Pmts
1	12.60	14.28	15.96	17.64	19.32	21.00	1
2	14.70	16.66	18.62	20.58	22.54	24.50	2
3	16.80	19.04	21.28	23.52	25.76	28.00	3
4	18.90	21.42	23.94	26.46	28.98	31.50	4
5	21.00	23.80	26.60	29.40	32.20	35.00	5
6	23.10	26.18	29.26	32.34	35.42	38.50	6
7	25.20	28.56	31.92	35.28	38.64	42.00	7
8	27.30	30.94	34.58	38.22	41.86	45.50	8
9	29.40	33.32	37.24	41.16	45.08	49.00	9
10	31.50	35.70	39.90	44.10	48.30	52.50	10
11	33.60	38.08	42.56	47.04	51.52	56.00	11
12	35.70	40.46	45.22	49.98	54.74	59.50	12
13	37.80	42.84	47.88	52.92	57.96	63.00	13
14	39.90	45.22	50.54	55.86	61.18	66.50	14
15	42.00	47.60	53.20	58.80	64.40	70.00	15
16	44.10	49.98	55.86	61.74	67.62	73.50	16
17	46.20	52.36	58.52	64.68	70.84	77.00	17
18	48.30	54.74	61.18	67.62	74.06	80.50	18
19	50.40	57.12	63.84	70.56	77.28	84.00	19
20	52.50	59.50	65.50	73.50	80.50	87.50	20

All pensions which compute to less than \$50.00 per month will be paid as a one time lump-sum settlement.

75% X Base Pension for 20-24 years SERVICE:

Pmts	60% @ age 60	68% @ age 61	76% @ age 62	84% @ age 63	92% @ age 64	100% @ age 65	Pmts
1	27.00	30.60	34.20	37.80	41.40	45.00	1
2	31.50	35.70	39.90	44.10	48.30	52.50	2
3	36.00	40.80	45.60	50.40	55.20	60.00	3
4	40.50	45.90	51.30	56.70	62.10	67.50	4
5	45.00	51.00	57.00	63.00	69.00	75.00	5
6	49.50	56.10	62.70	69.30	75.90	82.50	6
7	54.00	61.20	68.40	75.60	82.80	90.00	7
8	58.50	66.30	74.10	81.90	89.70	97.50	8
9	63.00	71.40	79.80	88.20	96.60	105.00	9
10	67.50	76.50	85.50	94.50	103.50	112.50	10
11	72.00	81.60	91.20	100.80	110.40	120.00	11
12	76.50	86.70	96.90	107.10	117.30	127.50	12
13	81.00	91.80	102.60	113.40	124.20	135.00	13
14	85.50	96.90	108.30	119.70	131.10	142.50	14
15	90.00	102.00	114.00	126.00	138.00	150.00	15
16	94.50	107.10	119.70	132.30	144.90	157.50	16
17	99.00	112.20	125.40	138.60	151.80	165.00	17
18	103.50	117.30	131.10	144.90	158.70	172.50	18
19	108.00	122.40	136.80	151.20	165.60	180.00	19
20	112.50	127.50	142.50	157.50	172.50	187.50	20
21	117.00	132.60	148.20	163.80	179.40	195.00	21
22	121.50	137.70	153.90	170.10	186.30	202.50	22
23	126.00	142.80	159.60	176.40	193.20	210.00	23
24	130.50	147.90	165.30	182.70	200.10	217.50	24
25	135.00	153.00	171.00	189.00	207.00	225.00	25

100% X Base Pension for 25 or more years SERVICE:

Pmts	60% @ age 60	68% @ age 61	76% @ age 62	84% @ age 63	92% @ age 64	100% @ age 65	Pmts
1	36.00	40.80	45.60	50.40	55.20	60.00	1
2	42.00	47.60	53.20	58.80	64.40	70.00	2
3	48.00	54.40	60.80	67.20	73.60	80.00	3
4	54.00	61.20	68.40	75.60	82.80	90.00	4
5	60.00	68.00	76.00	84.00	92.00	100.00	5
6	66.00	74.80	83.60	92.40	101.20	110.00	6
7	72.00	81.60	91.20	100.80	110.40	120.00	7
8	78.00	88.40	98.80	109.20	119.60	130.00	8
9	84.00	95.20	106.40	117.60	128.80	140.00	9
10	90.00	102.00	114.00	126.00	138.00	150.00	10
11	96.00	108.80	121.60	134.40	147.20	160.00	11
12	102.00	115.60	129.20	142.80	156.40	170.00	12
13	108.00	122.40	136.80	151.20	165.60	180.00	13
14	114.00	129.20	144.40	159.60	174.80	190.00	14
15	120.00	136.00	152.00	168.00	184.00	200.00	15
16	126.00	142.80	159.60	176.40	193.20	210.00	16
17	132.00	149.60	167.20	184.80	202.40	220.00	17
18	138.00	156.40	174.80	193.20	211.60	230.00	18
19	144.00	163.20	182.40	201.60	220.80	240.00	19
20	150.00	170.00	190.00	210.00	230.00	250.00	20
21	156.00	176.80	197.60	218.40	239.20	260.00	21
22	162.00	183.60	205.20	226.80	248.40	270.00	22
23	168.00	190.40	212.80	235.20	257.60	280.00	23
24	174.00	197.20	220.40	243.60	266.80	290.00	24
25	180.00	204.00	228.00	252.00	276.00	300.00	25

FRANKLIN COUNTY RESOLUTION 2006 175

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY,
WASHINGTON

**RE: INDEPENDENT CONTRACTOR AGREEMENT (BETWEEN FRANKLIN
COUNTY AND SUSAN D. HENWOOD) TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT PERSONS CHARGED WITH CRIMES
IN THE COURTS OF FRANKLIN COUNTY, WASHINGTON (DISTRICT
COURT) EFFECTIVE JANUARY 1, 2006 THROUGH DECEMBER 31, 2008**

WHEREAS, the Franklin County Board of Commissioners placed an advertisement seeking qualified attorneys to receive court appointments on an independent contractor basis to perform legal defense services for indigent persons charged with crimes in Franklin County District Court, as contracts expired December 31, 2005; and

WHEREAS, Attorney Susan Henwood expressed a desire and willingness to serve as legal defense for indigent persons; and

WHEREAS, pursuant to R.C.W. 36.01.010 and R.C.W. 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the county and have the care of county property and management of county funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into this agreement as being in the best interest of Franklin County;

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the attached Independent Contractor Agreement (between Franklin County and Susan D. Henwood) to provide legal representation to indigent persons charged with crimes in the courts of Franklin County, Washington (District Court) effective January 1, 2006 through December 31, 2008.

APPROVED this 29th day of March 2006.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON


Neva J. Corkrum, Chair


Robert E. Koch, Chair Pro Tem


Frank H. Brock, Member

Attest:


Clerk to the Board

Originals: Auditor
Minutes
Susan Henwood

cc: District Court Administrator
Prosecuting Attorney
Tim Klashke

**INDEPENDENT CONTRACTOR AGREEMENT TO
PROVIDE LEGAL REPRESENTATION TO INDIGENT
PERSONS CHARGED WITH CRIMES IN THE COURTS
OF FRANKLIN COUNTY, WASHINGTON**

2006 175

THIS AGREEMENT shall be deemed made and effective as of the 1st day of January, 2006, and is entered into by and between the **COUNTY OF FRANKLIN, WASHINGTON**, a state of Washington municipal corporation (hereinafter referred to as the "County"), and **SUSAN D. HENWOOD**, an Attorney at Law (hereinafter referred to as "Attorney").

**THIS AGREEMENT IS ENTERED INTO BASED UPON THE
FOLLOWING FACTS:**

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney has experience in defending persons charged with crimes and desires to contract with the County to provide legal defense services to indigent persons charged with crimes alleged to have been committed within the County's jurisdictional boundaries.

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

1. **TERM.** This Agreement shall be deemed effective for all purposes as of the 1st day of January, 2006, and shall continue thereafter for a period of **three (3) years** through and including the **31st day of December, 2008**, unless earlier terminated pursuant to paragraph 20 below. Provided that, however, Attorney shall be fully obligated to continue representing all persons whom Attorney has been appointed hereunder to represent through the final conclusion of the case or matter in which Attorney was appointed to represent such persons notwithstanding that such continued representation may require Attorney to perform such services and representation after the termination date of this Agreement.

2. **OFFICE LOCATION.** Attorney presently and regularly maintains an office for the practice of law at 1776 Fowler, Ste. 30, Richland, Washington 99352. Attorney's current local office telephone number is (509) 366-8078. Throughout the entire term of this Agreement, Attorney shall continue to maintain such office and telephone number; 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 number to another Tri-Cities local telephone number provided that Attorney provides advance written notice of such change(s) to the County, the Franklin County Prosecuting Attorney, the Franklin County District Court, the Franklin County District Court Clerk, the Franklin County Superior Court, and the Franklin County Superior Court Clerk.

3. **LICENSE AND QUALIFICATION.** As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; has not been 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.

This Agreement shall be subject to termination pursuant to paragraph 20 below in the event that Attorney fails to comply with any material provision of this Agreement; in the event that Attorney's license to practice law in the state of Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction determines and expressly finds that Attorney has rendered ineffective assistance of counsel to a criminal defendant; 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.

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 criminal actions in Benton and Franklin counties 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 for whom Attorney is appointed to represent under this Agreement. During each calendar year throughout 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 relating to criminal defense. Attorney shall provide the County with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each such calendar year. Additionally, during each calendar year throughout the term of this Agreement, 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"). The County may provide Attorney's name and address to the

WOPD for purposes of the WOPD notifying Attorney of such upcoming training seminars. Attorney shall provide the County 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.

Attorney further represents and warrants that, throughout the entire term of this Agreement, Attorney will have adequate time in Attorney's private law practice caseload and regular personal schedule and will have adequate office support staff services, office resources, and office equipment to competently undertake and effectively and efficiently perform all services required under this Agreement. Attorney further represents and warrants that Attorney's private law practice and personal schedule will not unduly or unreasonably 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 indigent 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 to the alleged criminal charge(s) and keeping such persons reasonably apprised as to the status of their case. No later than by the 10th day of each month during the term of this Agreement, Attorney shall provide the County with a written report showing the total number and types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and court-appointed cases under the Benton County District/Superior Court contract mentioned in paragraph 24 below) in which Attorney provided legal services during the preceding month, the total number of court-appointed cases under this Agreement in which Attorney provided legal services during the preceding month, and the 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 court-appointed cases under this Agreement.

4. **OTHER INDIGENT DEFENSE AGREEMENT.** On or about the date of this Agreement, it is contemplated that the County will enter into a substantially similar (but separate and independent) agreement with one (1) other licensed attorney to provide criminal defense services to indigent persons in Franklin County District Court. Attorney agrees to cooperate and coordinate with said other attorney and the Franklin County District Court to establish and effectuate a process to ensure an efficient and equitable distribution of appointments between Attorney and said other attorney (sometimes hereinafter the criminal defense panel comprised by Attorney and said other attorney shall be referred to as the "District Court Indigent Defense Panel"), and Attorney further agrees that the County has no responsibility for, or any involvement in, the establishment or implementation of such process.

5. **COURT APPOINTMENTS; SCOPE OF REPRESENTATION.** During the term of this Agreement, Attorney agrees to and shall accept court appointments

to represent eligible indigent persons (regardless of their race, color, national origin, age, marital status, sexual orientation, handicap, or political or religious affiliation) on any criminal matter in Franklin County District Court ("District Court") and in certain limited criminal matters in Franklin County Superior Court ("Superior Court") in which publicly-provided counsel is furnished or required by law (sometimes hereinafter, when the context permits, said courts are collectively referred to as the "Court"). Without limitation, such representation shall include the investigation of the underlying facts, the research of relevant law, appropriate communication with the client, review of potential plea alternatives, and the preparation for and appearance in all stages of court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing proceedings, and post-conviction reviews.

More specifically, Attorney shall accept court appointments on the following criminal matters:

- (a) Any non-felony criminal matter filed in District Court in which publicly provided counsel is furnished or required by law.
- (b) Any appeal or statutory writ from District Court or any municipal court filed in Superior Court.
- (c) Any felony matter filed in District Court or Superior Court up to a maximum of two (2) appointments per calendar year. A matter initially filed as a felony in District Court and subsequently-filed as a felony in Superior Court shall be deemed as being one (1) matter.
- (d) Any material witness matter filed in Superior Court up to a maximum of four (4) appointments per calendar year.

Without limitation to Attorney's duty to initially meet with an indigent defendant 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 indigent defendant is jailed/imprisoned), Attorney shall arrange to meet in person (face-to-face) with the defendant as soon as possible but no later than 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 defendant). Additionally, throughout Attorney's representation of any indigent defendant under this Agreement, Attorney shall maintain appropriate contact/communications with the defendant so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall apprise the defendant 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 defendant). Without limiting any of the foregoing, with regard to any post-appointment court

hearing involving an "in custody" defendant, Attorney shall contact (either in person or via telephone) such defendant to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

Attorney agrees to and shall represent all persons whom Attorney is appointed by the Court to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a retained-fee basis. Without limitation in that regard, Attorney's duties hereunder shall also include 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.

Attorney shall open, compile and maintain an appropriate case file for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such file in its 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.

6. **CONTINUED REPRESENTATION.** In the event that a change of venue is granted to a person for whom Attorney has been appointed to represent under this Agreement, Attorney shall continue to represent such person in the court to where venue is transferred without additional compensation. Further, as mentioned above, Attorney's obligation to provide legal representation under this Agreement includes the obligation to timely and fully complete all cases or matters encompassed by 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 or matters encompassed by this Agreement following its termination shall not in any way entitle Attorney to receive any additional compensation.

7. **NUMBER OF APPOINTMENTS.** For each calendar year during the term of this Agreement, Attorney agrees to and shall accept Court appointments hereunder to represent indigent persons up to a maximum of **two hundred (200) total "case equivalents" per year.** The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the year in which a case equivalent is to be counted under this paragraph. Attorney shall accept additional case appointments in excess of the above-stated annual maximum total provided that Attorney shall be entitled to receive additional compensation at the rate specified in paragraph 14 below.

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

- (a) An appointment to any appeal or statutory writ from District Court or any municipal court filed in Superior Court shall be counted as being one (1) case equivalent if an "Anders" brief is required and shall be counted as five (5) case equivalents if the matter requires substantive issues to be addressed.
- (b) An appointment regarding a probation violation filed in District Court shall be counted as being a one-half (1/2) case equivalent.
- (c) An appointment to any matter in which Attorney is initially appointed but withdraws prior to the trial readiness/omnibus hearing for any reason (including, but not limited to, because of substitution of retained counsel or a conflict of interest) shall not count as any type of case equivalent.
- (d) 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 court and Attorney continues representing the same person in such matter (e.g., if Attorney was appointed to represent a person on a 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 and shall count as a one-half (1/2) case equivalent.
- (e) Except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving a single charge or 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.

Throughout the term of this Agreement, the Franklin County Superior Court Clerk and the Franklin County District Court Clerk shall each 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. Said Court clerks shall provide copies of such records to the County and the Benton-Franklin County Superior Court Administrator on a monthly basis. Attorney shall have the burden of proof in the event that Attorney disagrees with any such records.

9. **CLIENT ELIGIBILITY.** The Court, consistent with applicable laws, rules and standards, shall solely determine the eligibility of any particular person for representation by Attorney under this Agreement. If Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive such publicly-provided representation under the standards established by the Court, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Court of such possibility for purposes of the Court taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Court 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 Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in a criminal action in which Attorney has not been appointed by the Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

11. **TELEPHONE CONSULTATIONS.** In addition to providing legal services in the Court-appointed matters set forth in paragraph 5 above, Attorney shall be reasonably available to accept telephone calls from persons in custody on non-felony matters who are legally entitled to make such calls under any applicable

state and/or federal laws or rules. Attorney understands and acknowledges that all law enforcement agencies enforcing criminal violations within the jurisdiction of the County and its Courts are legally required to maintain a list containing the names and telephone numbers of all attorneys who have contracted with the County to accept court appointments to represent indigent persons and that such list is legally required to be made available to all persons in custody requesting to speak with legal counsel. Attorney further understands and acknowledges that an indigent person's legal right to defense counsel cannot be limited by the normal office and working hours of court-appointed attorneys and that, accordingly, it may be necessary on occasion for Attorney to accept telephone calls from persons in custody during non-business hours.

If the County continues to maintain a collect-call telephone system for calls made from the County jail, the County shall reimburse the Attorney on a quarterly basis for any actual documented and specifically-identified expense incurred by Attorney in receiving any such collect calls.

Attorney shall provide any necessary legal services and representation to those persons in custody who contact and consult with Attorney via telephone during any proceedings required by applicable law or court rule. If and when the Court subsequently determines that any such person is eligible to receive Court-appointed counsel and Attorney is appointed by the Court to represent such person, Attorney shall continue to represent such person during and in all matters and proceedings set forth in paragraph 5 above.

12. **TELEPHONE NUMBERS AND NOTICES.** Attorney shall provide written notice to the following-listed persons and agencies that sets forth Attorney's office telephone number and Attorney's home telephone number or such other number(s) where Attorney may be regularly and generally contacted via telephone for purposes of this Agreement:

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

AND TO: Franklin County Prosecuting Attorney
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

AND TO: Franklin County Superior Court
c/o Court Administrator
7320 W. Quinault
Kennewick, WA 99336

AND TO: Franklin County Superior Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

AND TO: Franklin County District Court Clerk
Franklin County Courthouse
1016 N. Fourth Ave.
Pasco, WA 99301

AND TO: Franklin County Sheriff
Franklin County Courthouse
1015 Fifth Avenue
Pasco, WA 99301

AND TO: Pasco Chief of Police
Pasco Police Department
Pasco City Hall
525 N. 3rd Ave.
Pasco, WA 99301

AND TO: Connell Chief of Police
Connell Police Department
Connell City Hall
Connell, WA 99326

AND TO: Commander of the Washington State Patrol
Kennewick Detachment
Route 7, Box 12450
Kennewick, WA 99337

Attorney shall also provide the above-described written notice to any other law enforcement agency designated to Attorney in writing by the Courts. Attorney shall provide the above-described notice and information to the above-listed and designated recipients immediately upon entering into this Agreement and shall subsequently provide immediate written notice of any and all changes to such information to all such recipients.

A telephone number for Attorney that reaches an answering/message service or a recorded message or answering machine does not comply with the requirements of this paragraph unless the answering/message service is actually capable of putting the person calling in immediate contact with Attorney.

13. **MONTHLY BASE COMPENSATION.** As base compensation for Attorney's performance and rendering of services hereunder, the County shall pay Attorney the sum of **\$2,703.50 per month.**

Attorney acknowledges and agrees that the above-stated monthly payments to Attorney shall immediately cease in the event that this Agreement is terminated for any reason prior to the termination date specified in paragraph 1 above. For example, if this Agreement is subsequently terminated effective August 31, 2006, the above-stated \$2,703.50 monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-owing and unpaid amounts for services rendered hereunder prior to such termination date.

Attorney further acknowledges and agrees that the above-stated compensation amount is reasonable and equitable and that (except for any additional compensation earned and paid pursuant to paragraph 14 below) such compensation shall constitute Attorney's full and exclusive compensation hereunder for all cases and matters handled by Attorney during the term of this Agreement.

14. **ADDITIONAL COMPENSATION.** In the event that Attorney's annual total case equivalents for appointments under this Agreement exceed the maximum total set forth in paragraph 7 above, Attorney shall be entitled to receive additional compensation at the rate of \$85.00 for each case equivalent that exceeds such annual maximum total.

Within sixty (60) days of Attorney becoming entitled to receive additional compensation under this paragraph, Attorney shall submit a payment voucher to the County that specifically references and identifies each excess case equivalent that serves as the basis for additional compensation and the exact amount of additional compensation being requested as a result thereof. Upon receipt of such payment voucher from Attorney, the County, assuming it does not dispute such payment voucher, shall pay the additional compensation to Attorney within sixty (60) days thereafter. Provided that, notwithstanding the above, the County shall have the right to deny payment of any voucher for additional compensation that is not timely submitted to the County within the above-stated requisite sixty (60) day period.

15. **COSTS AND EXPENSES.** Both parties recognize that in certain circumstances the need may arise for Attorney to incur certain out-of-pocket expenses for indigent defense-related items such as, without limitation, private investigator fees, interpreter fees, scientific test fees, expert witness fees, and costs of travel, meals and lodging.

Attorney shall be entitled to receive reimbursement for the actual cost of such 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 Court order that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rule(s). Such 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 indigent defense-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to its employees under the County's then-existing employee travel-related policies and rules.

In addition to any other prerequisites imposed by court rule(s), as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a payment voucher to the County that descriptively identifies the specific expenditure(s) for which reimbursement is sought and that has attached thereto a copy of the Court order(s) that specifically pre-approved and authorized such expenditure(s) together with attached copies of all written payment receipts relating to such incurred expenditure(s). 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 County within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

16. **ADDITIONAL ASSISTANCE.** The parties recognize that Attorney may from time-to-time be appointed hereunder to handle certain Class-A felony matters in Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Superior Court appoint the other District Court Indigent Defense Panel attorney to assist Attorney in such matter, with the other attorney being appointed to assist Attorney in the same manner as any other criminal indigent defense appointment. Attorney acknowledges and agrees that the provisions of this paragraph may be pursued and utilized only under extremely extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work and/or accepting an inordinately greater amount of responsibility than the other District Court Indigent Defense Panel attorney.

17. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney hereby agrees to and shall fully indemnify the County and hold the County, its representatives, officers, employees, and agents fully harmless 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, 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 the terms of this Agreement. In the event any suit or legal proceeding is brought against the County or any of its 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 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 representatives, officers, employees or agents in such suits or other legal proceedings. The indemnification and hold harmless provisions of this paragraph shall survive the termination of this Agreement.

18. **INSURANCE.** Throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to perform services or duties hereunder, Attorney shall obtain and continuously maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount **not less than \$500,000.00 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 \$5,000.00.** Said policy shall include coverage as an additional insured for any other attorney(s) acting for or on behalf of Attorney in the performance of this Agreement. Said policy shall provide professional liability insurance coverage for any errors and/or omissions by Attorney during the course of performing legal services under this Agreement, and shall further require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered. Said policy shall also comply with all applicable state of Washington insurance requirements and shall be issued by an insurance company authorized to conduct business and issue insurance in the state of Washington. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated and acting Risk Manager with written proof and confirmation that such insurance policy and coverage has been obtained and Attorney shall provide the Risk Manager with annual written proof and confirmation that such insurance policy and coverage continues to exist no later than by January 15th of each year during the term of this Agreement.

19. **CLIENT COMPLAINTS; PERFORMANCE MONITORING.** In the event the Franklin County Superior Court Clerk and/or the Franklin County District Court Clerk receive an oral or written communication from a defendant represented by Attorney under this Agreement that in substance asserts a complaint over the quality or timeliness of the legal defense services rendered to such defendant by Attorney, the Clerk shall request and obtain a written, signed, and dated complaint

from the defendant that specifically describes and details the relevant alleged facts and circumstances underlying the defendant's asserted complaint, whereupon the Clerk shall promptly provide the County with a copy of such written complaint. Upon receiving such complaint from the Clerk, the County, without limitation to any other action it may deem necessary/appropriate to pursue under this Agreement, shall forward a copy of the complaint to Attorney and request and obtain Attorney's written response thereto (which Attorney shall promptly prepare and provide), whereupon the County shall forward copies of the complaint and Attorney's response to the Court for purposes of the Court reviewing such documentation and implementing any necessary/appropriate action with Attorney and/or the defendant to address and resolve the complaint.

Additionally, during the term of this Agreement, the County reserves the right and discretion to periodically ask the Court and/or the Court Clerk to provide the County with a written evaluation/assessment of the quality of Attorney's performance of indigent defense services and related duties and obligations under this Agreement. The County may (but shall not be obligated to) provide Attorney with notice of request/obtainment of such evaluation/assessment and/or with a copy of such evaluation/assessment.

20. **TERMINATION.** In the event that the Court enters an order that precludes Attorney from receiving any further Court 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 or 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 fully liable to the County for any additional costs or expenses incurred by the County relating to such substitute appointment(s) in addition to any other damages sustained by the County arising out of Attorney's conduct and breach.

In addition to the automatic termination provisions above, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any material provision of this Agreement by giving Attorney ten (10) days advance written notice of termination, which notice shall specify the reason(s) for the termination. 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.

In addition to the above provisions regarding termination, either party may elect to terminate this Agreement without cause or reason by providing the other party with no less than ninety (90) days advance written notice of such election to terminate.

In any event, consistent with the provisions of paragraph 13 above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid by the County for all services duly performed by Attorney under this Agreement up to the date of termination. Further, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of or reason for termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the date of termination unless Attorney is expressly barred or prohibited from doing so by Court order.

21. **INDEPENDENT CONTRACTOR.** The parties understand, acknowledge, and agree that Attorney is not an employee of the County and that Attorney, as of the date of this Agreement and throughout its entire term, is and will be acting and operating as a fully independent contractor. In that regard, the County shall have no right, authority, or duty to directly control or supervise the direct performance of Attorney's duties and services hereunder, which control and supervisory capacity is fully and ultimately vested within the inherent power and discretion of the Court.

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

Provided that, however, Attorney may make mutually acceptable arrangements with the other District Court Indigent Defense Panel attorney to have said other attorney make temporary, substitute appearances for Attorney on routine criminal docket matters and routine court hearings on an as-needed (but limited and infrequent) basis provided that Attorney is actually and unavoidably unavailable and provided that such 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. Any compensation or consideration (if any) to be paid or given by Attorney to the other District Court Indigent Defense Panel attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and the other District Court Indigent Defense Panel attorney, and said other attorney shall not be entitled to receive any additional compensation from the County for such substitution(s).

Provided further that, however, in the event that 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 District Court Indigent Defense Panel attorney during such temporary absence, Attorney may seek and obtain the assistance of another

attorney to make temporary, substitute appearances for Attorney during such absence on routine criminal 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 County) 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 defense 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.

Any compensation or consideration (if any) to be paid or given by Attorney to such other non-panel 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). Attorney acknowledges and agrees that Attorney shall be strictly 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 18 above) and that Attorney shall be strictly liable for any and all damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

23. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process it deems appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in performing indigent criminal defense services.

24. **OTHER APPOINTMENTS.** Except for the Court appointments expressly contemplated and provided for in this Agreement, Attorney shall not enter into any other contract/agreement/arrangement to receive appointments from any other court to perform public defense or prosecution services. Provided that, notwithstanding and without limitation to/waiver of the preceding sentence, Attorney may simultaneously provide indigent defense services for persons charged with civil contempt under a part-time contract with Benton County District/Superior Court on the express and indispensable condition that Attorney's duties and obligations under this Agreement shall always take precedence and receive preferential status and treatment over any conflicting duties and obligations of Attorney under said Benton County contract. Attorney hereby represents and warrants to the County that Attorney's duties and obligations under said Benton County contract shall never conflict with or interfere with Attorney's ability to timely and fully perform Attorney's duties and obligations under this Agreement. Attorney hereby further represents, warrants, and agrees that, to the extent that any

scheduled Benton County court proceedings (including, without limitation, hearings, trials or conferences) ever did conflict with any scheduled Franklin County Court proceedings, Attorney would be required to re-schedule the conflicting Benton County court proceedings so as to enable Attorney to attend and accommodate the Franklin County Court proceedings.

25. **JUDICIAL SERVICE.** Attorney shall not serve in any judicial capacity (including, without limitation, judge pro-tem or court commissioner) in or for any court located within the County on any matter. Further, Attorney shall not serve in any judicial capacity (including, without limitation, judge pro-tem or court commissioner) in any case in which the County is a party or in any case in which the state of Washington is a party and is represented by the County's Prosecuting Attorney's Office or an appointed special deputy of such office.

26. **AGREEMENT TO RE-NEGOTIATE.** In the event that Attorney's annual appointments and resulting case equivalent totals hereunder amount to seventy-five percent (75%) or less of the above-stated two hundred (200) maximum case equivalent total for any calendar year during the term of this Agreement, the parties agree that, at the County's request, they will negotiate in good faith an equitable and appropriate reduction in the amount of Attorney's monthly base compensation for the following calendar year. In the event that the parties fail to reach a negotiated and agreed reduction in the amount of Attorney's monthly base compensation, the issue will be resolved by the parties pursuant to the provisions of paragraph 33 below.

27. **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. Any new statutory requirement, court rule, and/or appellate court decision relating to indigent criminal defense services effective subsequent to the effective date of this Agreement shall be subject to further negotiation and agreement between the parties.

28. **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.

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

30. **BINDING EFFECT.** Strictly subject to the above restriction against assignment, this Agreement shall be binding upon Attorney's heirs, legal representatives, successors, and assigns.

31. **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.

32. **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.

33. **DISPUTE RESOLUTION.** 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 parties shall equally share and pay the mediator's fees and expenses.

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. Each party to the action shall be responsible for the payment of one-half of the fees and expenses of the arbitrator(s). The provisions of RCW Chapter 7.04 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) 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.

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

Board's address specified and set forth in paragraph 12 above. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 above.

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

.....

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

Susan D. Henwood WSPA #33843
 Susan D. Henwood, Attorney at Law
 Date: 03/28/06

**Franklin County, Washington, a
 municipal corporation**

By: Neva J. Corkrum
 Neva J. Corkrum
 Chair/Member
 Board of County Commissioners

By: Robert E. Koch
 Robert E. Koch
 Chair Pro Tem/Member
 Board of County Commissioners

By: Frank H. Brock
 Frank H. Brock
 Member
 Board of County Commissioners

ATTEST:

Mary Withers
 Clerk of the Board

Signed and dated this 29th day of
MARCH, 2006.

EXHIBIT 10
Franklin County Auditor

March 29, 2006

1016 North 4th Avenue
Pasco, WA 99301

ZONA LENHART, Auditor
509-545-3840 • Fax: (509) 545-2142
www.co.franklin.wa.us

P.O. Box 1451
Pasco, WA 99301

March 29, 2006

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

Action: As of this date, March 29, 2006,

Move that the following warrants be approved for payment:

FUND	WARRANT	AMOUNT
Expenditures	Range	Issued
Current Expense	50163-50182	\$149,401.79
Courthouse Renovation Fund	377	\$48,880.50
Current Expense	50183-50184	\$5,027.14
Election Equipment Revolving	317-318	\$6,269.48
Law Library	976	\$181.64

In the amount of 209,760.55. The motion was seconded by
And passed by a vote of 3 to 0

Accounting
545-3505

Elections
545-3538

Recording
545-3536

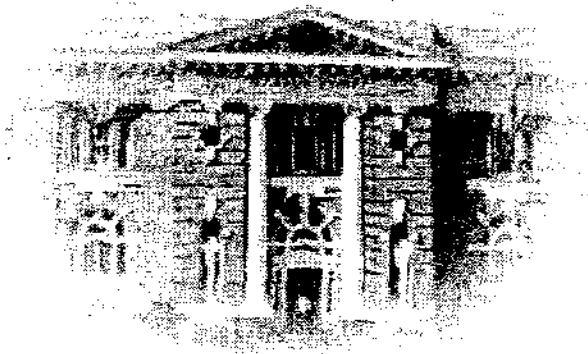
Licensing
545-3533

March 29, 2006

Neva J. Corkrum
District 1

Robert E. Koch
District 2

Frank H. Brock
District 3



Fred H. Bowen
County Administrator

Rosie H. Rumsey
Human Resources Director

Patricia L. Shults
Executive Secretary

Board of County Commissioners
FRANKLIN COUNTY

March 29, 2006

Mr. Vyrle Hill, Executive Director
Washington Counties Risk Pool
205 Clark Place S.E.
Olympia, WA 98501-4062

Re: Rescind Conditional Notice of Intent to Withdraw

Dear Vyrle:

Thank you for the informative presentation on March 22, 2006. We are pleased to inform you that we desire to remain a member of the Washington County Risk Pool, thus, rescinding our conditional notice of intent to withdraw.

We appreciate the comparative information, as it was essential in order for Franklin County to determine which pool to contract with. The Washington Rural Counties Insurance Program, along with the Washington Counties Risk Pool, offered an enlightening perspective to the elements and philosophy behind how the pools work. This assisted in the evaluation of the insurance programs that best address our casualty (liability) and property insurance needs.


Thank you again for your service to Franklin County. We look forward to a continued good working relationship.

Sincerely,

FRANKLIN COUNTY
BOARD OF COMMISSIONERS


Neva J. Corkrum, Chair


Robert E. Koch, Chair Pro Tem


Frank H. Brock, Member

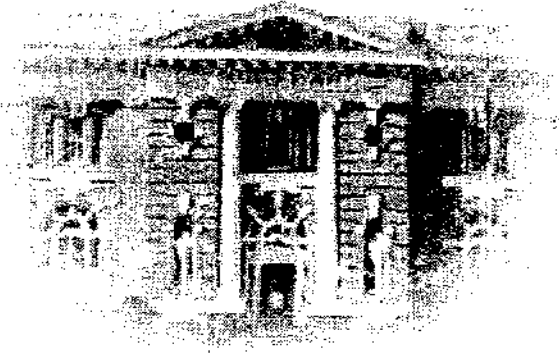
cc: Mike Croke, Willis of Seattle Corporation
Steve Lowe, Franklin County Prosecuting Attorney

March 29, 2006

Neva J. Corkrum
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Executive Secretary

Board of County Commissioners
FRANKLIN COUNTY

March 29, 2006

Mr. Scott Davis, Program Representative
Washington Rural Counties Insurance Program
Canfield & Associates
451 Diamond Drive
Ephrata, WA 98823

Dear Scott:

Thank you for the informative presentations on February 13 and March 22, 2006. We appreciate the comparative information, as it was essential in order for Franklin County to determine which pool to contract with. The decision was made to remain with the Washington Counties Risk Pool.

The Washington Rural Counties Insurance Program, along with the Washington Counties Risk Pool, offered an enlightening perspective to the elements and philosophy behind how the pools work. This assisted in the evaluation of the insurance programs that best address our casualty (liability) and property insurance needs.

Thank you again for your presentations and desire to work with Franklin County.

Sincerely,

FRANKLIN COUNTY
BOARD OF COMMISSIONERS


Neva J. Corkrum, Chair


Robert E. Koch, Chair Pro Tem


Frank H. Brock, Member

cc: Eric Homer, Canfield & Associates
Phil Riche, Canfield & Associates
Bob Vanderbilt, Ed Poe Agency