

KITTITAS COUNTY
LEGAL SERVICES AGREEMENT --
APPOINTMENT OF SPECIAL DEPUTY PROSECUTING ATTORNEY

THIS AGREEMENT is made and entered into this _____ day of December, 2011, by and between the Kittitas County Prosecuting Attorney ("PROSECUTOR"), Kittitas County ("COUNTY"), a governmental entity organized and existing in accordance with the State of Washington statutory provisions, and Rockney L. Jackson "Rocky Jackson") of Menke Jackson Beyer Ehlis & Harper, LLP ("ROCKY JACKSON" or "JACKSON"), a legal services private limited partnership with offices at 807 North 39th Avenue, Yakima, Washington 98902.

WHEREAS, RCW 36.27.020 provides that the County Prosecuting Attorney shall be the legal adviser to all county officers in all matters relating to their official business; appear for and represent the state and county, subject to the supervisory control and direction of the attorney general, in all criminal and civil proceedings in which the state or the county may be a party; prosecute all criminal and civil actions in which the state or the county may be a party; and defend all suits brought against the state or the county, among other duties specifically enumerated.

WHEREAS, RCW 36.27.040 allows the County Prosecuting Attorney to appoint a Special Deputy Prosecutor upon a contract or fee basis, whose authority shall be limited to the purposes stated in the writing signed by the prosecuting attorney and filed in the county auditor's office, and for whose acts the County Prosecuting Attorney remains responsible and which appointment may be revoked by the County Prosecuting Attorney at will.

WHEREAS, RCW 36.16.070 provides that in cases where the duties of any county office are greater than can be performed by the person elected to fill it, the officer may employ deputies and other necessary employees with the consent of the Board of County Commissioners.

WHEREAS, the County PROSECUTOR desires to appoint ROCKY JACKSON as a Special Deputy Prosecuting Attorney ("Special Deputy"), to limited duties which are demonstrated to be greater than can be performed by the County Prosecuting Attorney and his regularly designated Deputy Prosecuting Attorney ("DPA") who is an employee of Kittitas County, which appointment as Special Deputy is set out in the attached **APPOINTMENT OF SPECIAL DEPUTY PROSECUTING ATTORNEY**, with this Legal Services Agreement being attached, incorporated by reference and specifically made a part thereof, and with the duties and terms as specifically outlined below, representing the COUNTY in labor relations and employment matters.

THE PARTIES agree to the following terms and conditions:

ARTICLE I – STATEMENT OF WORK

1. ROCKY JACKSON, or any other lawyer member of JACKSON's law firm as applicable and as requested by JACKSON, is authorized to represent the COUNTY in matters relating to labor and personnel relations, limited as defined in this Agreement. All references hereinafter identifying ROCKY JACKSON or JACKSON shall include without limitation JACKSON's law firm and shall include any other lawyer member or employee, or any administrative assistant or agent of JACKSON's firm as applicable and as requested by JACKSON, when in JACKSON's judgment referral or delegation of in-house legal work is deemed necessary. The term "in-house" for purposes of this Agreement shall mean work performed within JACKSON's law firm at his request.
2. The matters referred to ROCKY JACKSON as Special Deputy shall pertain primarily to union negotiations and unfair labor practice charges, and other matters may also be referred to JACKSON concerning grievances, mediations, arbitrations, and related issues as directed by the County PROSECUTOR in his discretion, whenever the PROSECUTOR and his DPA are unable to complete such work due to unavailability or other workload, or whenever the PROSECUTOR, in his discretion, asks JACKSON to perform such work with the PROSECUTOR'S DPA as Second Chair.
3. It shall be the responsibility of ROCKY JACKSON to notify the County PROSECUTOR and his DPA, of the details of all verbal advice given to the COUNTY by JACKSON or other members and employees of his law firm, whether to or through the Kittitas County Human Resources Director ("HR Director"), the Board of County Commissioners ("BOCC"), or otherwise.
4. It shall further be the responsibility of ROCKY JACKSON and other members and employees of his law firm, if applicable, to copy the PROSECUTOR, his DPA and the HR Director on all emails, memoranda, pleadings, briefing, notices, billings, and all other written communications sent to and from JACKSON or other members or employees of his firm, in connection with work undertaken pursuant to this Agreement while JACKSON is performing work on behalf of the COUNTY. Such copies may be sent by email unless such communication is infeasible in a particular circumstance.
5. When performing work on behalf of the COUNTY, JACKSON shall invite the participation of the PROSECUTOR and his DPA to all meetings to be held: (a) with the County HR Director and his/her designee; (b) with members of the BOCC; (c) with any other persons related to COUNTY business at any other meetings; or (d) to be present at the conduct of any negotiations, mediations, arbitrations, hearings or court appearances. When JACKSON is responsible for representing the COUNTY at any such meetings or proceedings as authorized by the County PROSECUTOR, the DPA shall have the option of participating as Second Chair. If either the County PROSECUTOR or his DPA should be absent from such meetings or proceedings, JACKSON shall report to the PROSECUTOR and his DPA the details and outcome of such meetings.

6. In the PROSECUTOR's discretion, noncompliance with any of the above provisions may result in termination of this Agreement after notice given under Article V, below.

ARTICLE II – FEES AND COSTS

The COUNTY agrees to pay ROCKY JACKSON pursuant to billings by his law firm, effective _____, 2011, on the following basis:

- A. The COUNTY shall pay for JACKSON's services the sum of One Hundred Seventy-Five Dollars (\$175.00) per hour for legal services inclusive of representation at the state and federal court, PERC, arbitration, interest arbitration or other administrative proceeding. The billings will be based on a quarter (.25) hour minimum.
- B. The COUNTY shall pay for JACKSON's services the sum of One Hundred Sixty Dollars (\$160.00) per hour for attorney services involving labor negotiations, mediations, legal services related to personnel issues and other legal issues authorized by the PROSECUTOR on behalf of the COUNTY. Attorney services may also be billed at One Hundred Sixty Dollars (\$160.00) per hour by other in-house employment law attorneys working on COUNTY matters at JACKSON's request. The billings will be based on a quarter (.25) hour minimum.
- C. The COUNTY shall pay JACKSON's law firm Eighty Dollars (\$80.00) per hour for support services by administrative assistants on all work performed by assistants working at JACKSON's law firm under JACKSON's direction or under the direction of another in-house employment law attorney at JACKSON's request.
- D. The COUNTY shall reimburse JACKSON for expenses subject to approval by the BOCC: meals; telephone calls; copies; faxes; postage; legal resource and research materials; and other applicable expenses as approved by the BOCC.
- E. ROCKY JACKSON agrees to bill at the hourly rate for travel time, plus mileage at the IRS mileage rate, currently fifty-five and one-half cents (55.5¢) per mile.
- F. Time spent by JACKSON and his law firm for review and acceptance of this Agreement shall not be considered time billable to the COUNTY under this Agreement.

ARTICLE III – TERMS OF PAYMENT

1. The COUNTY's payment to ROCKY JACKSON as Special Deputy shall be based upon the billings submitted by JACKSON's firm, supported by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, costs incurred as set forth in the above Article II, and the total dollar payment requested. Where required, the COUNTY

shall, upon receipt of appropriate documentation, compensate JACKSON pursuant to billings by his law firm, no more often than monthly, through the County voucher system, for JACKSON's services as set forth in this Agreement.

2. All billings by JACKSON and his firm shall be paid from funds in the HR budget.
3. Upon receipt of JACKSON's billing, the COUNTY shall have thirty (30) days in which to pay JACKSON's billing for the month requested.
4. In the event JACKSON has failed to timely perform any obligation under this Agreement, then upon written notice the COUNTY may withhold all monies due and payable to JACKSON, without penalty, until such failure to perform is cured or otherwise adjudicated.
5. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the COUNTY will provide prior notice to JACKSON that the COUNTY will not be obligated to make payment for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the COUNTY in the event this provision applies.

ARTICLE IV – COORDINATION OF WORK

1. Work will be coordinated through the PROSECUTOR's office, with cooperation of the Kittitas County Human Resources ("HR") Director who may undertake such contact at the direction of the PROSECUTOR or his DPA, or in the event that the PROSECUTOR and his DPA cannot respond due to unavailability or other workload, within the restrictions set forth in Article I above.
2. Such contact by the HR Director shall follow the HR Director's affirmative statement to ROCKY JACKSON (or any lawyer, administrative assistant or other employee working at JACKSON's firm) that he/she is authorized or has otherwise been unable to contact the PROSECUTOR and his DPA in an emergency situation which the HR Director shall memorialize in writing, with copies to the PROSECUTOR, the DPA, and JACKSON. JACKSON's services are inclusive of time spent by partners, associates and staff on matters involving the COUNTY inclusive of in-person representation, document preparation and dissemination, scheduling, faxing, conference calls and other activities directly related to services.

ARTICLE V – TERM AND TERMINATION OF AGREEMENT

1. This Agreement shall become effective _____, 2011, and shall continue in force thereafter on a year-to-year basis subject to either or both parties providing thirty (30) calendar days written notice to the other party of termination or of desire to negotiate different terms and conditions.

2. Either party may terminate this Agreement by providing said thirty (30) days' written notification to the other party as follows: (a) personally delivered; (b) sent by courier with proof of delivery; or (c) sent certified mail, return receipt requested, postage prepaid, whereby under each method the notice shall be delivered or sent to the other party at the party's last known address of record. It shall be the responsibility of each party to keep the other party apprised of any change of address.
3. Evidence of signature may be provided to the other party via facsimile or email attachment. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies of such signed counterparts (e.g., PDF or facsimile copies) may be used in lieu of the originals for any purpose.
4. The COUNTY may terminate this Agreement in whole or in part whenever the County PROSECUTOR determines in his sole discretion that such termination is in the best interests of the COUNTY. If this Agreement should be terminated in accord with this paragraph, JACKSON shall be entitled to payment for actual work performed. Termination of this Agreement by the COUNTY during the term, whether for default or for convenience, shall not constitute a breach of contract by the COUNTY.
5. This Agreement is approved and authorized by the County PROSECUTOR, as evidenced by the attached APPOINTMENT OF SPECIAL DEPUTY PROSECUTING ATTORNEY. The PROSECUTOR reserves the right to revoke this Agreement and Special Appointment, with or without notice, for unethical behavior by JACKSON or other in-house attorney delegated by JACKSON, which violates the Washington State Rules of Professional Conduct, if such should occur.

ARTICLE VI – INDEPENDENT CONTRACTOR RELATIONSHIP

1. The Special Deputy's services shall be furnished by ROCKY JACKSON and, where applicable, by other members and employees of his law firm, as an Independent Contractor. Nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made and all services performed hereunder shall be made and performed pursuant to this Agreement by JACKSON as an independent Contractor.
2. JACKSON acknowledges that the entire compensation for this Agreement is specified within this Agreement, and no person employed by JACKSON or his law firm is entitled to any COUNTY benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Kittitas County employees.

3. JACKSON and his law firm will defend, indemnify and hold harmless the COUNTY, its Additional Insureds, officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this Article VI.
4. JACKSON's performance of all or part of this Agreement shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment by the COUNTY of any person working for JACKSON's firm, or anyone working for the COUNTY under this Agreement on JACKSON'S behalf, at the present time or in the future.
5. No portion of this Agreement may be assigned or subcontracted to any other law firm or entity without the express written approval of both the County PROSECUTOR and the BOCC.

ARTICLE VII – TAXES

1. JACKSON understands and acknowledges that the COUNTY will not withhold Federal or State income taxes. All compensation received by JACKSON and his law firm will be reported to the Internal Revenue Service at the end of the calendar year in accord with applicable IRS regulations.
2. It is JACKSON's responsibility to make necessary estimated tax payments throughout the year, if any, and JACKSON and his firm are solely liable for any tax obligation arising from JACKSON's performance of this Agreement.
3. JACKSON and his law firm hereby agree to indemnify the COUNTY against any demand to pay taxes arising from the failure of JACKSON and his law firm to pay taxes on compensation earned pursuant to this Agreement.

ARTICLE VIII – REGULATIONS AND REQUIREMENTS; NONDISCRIMINATION

This Agreement shall be subject to all laws, rules and regulations of the United States of America and the State of Washington and its political subdivisions, and to any other provisions of law. The COUNTY is an equal opportunity employer.

1. **NONDISCRIMINATION IN EMPLOYMENT.** In the performance of this Agreement, JACKSON and his law firm will not discriminate against any employee or applicant for employment on grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap; 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 worker involved. Such action shall include, but shall not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. JACKSON and his firm shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

2. NONDISCRIMINATION IN SERVICES. JACKSON and his firm will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.
3. SAFEGUARDS AGAINST DISCRIMINATION. If any assignment and/or subcontracting are ever authorized by the County PROSECUTOR and the COUNTY, said assignment or subcontract shall include appropriate safeguards against discrimination. JACKSON and his firm shall take such action as may be required to ensure full compliance with the provisions of this Article VIII.

ARTICLE IX – CONFIDENTIALITY; RIGHT TO REVIEW

1. CONFIDENTIALITY. JACKSON and his law firm, and all of their employees, agents and representatives, shall maintain the confidentiality of all information provided by the COUNTY or acquired by JACKSON in performance of this Agreement, except upon the prior written consent of the County PROSECUTOR or an order entered by a court after having acquired jurisdiction over the COUNTY. JACKSON and his firm shall immediately give to the COUNTY notice of any judicial proceedings seeking disclosure of such information. JACKSON and his firm shall indemnify and hold harmless the COUNTY, its Additional Insureds, officials, agents or employees from all loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from JACKSON's breach of this provision.
2. RIGHT TO REVIEW. This contract is subject to review by any Federal, State or COUNTY Auditor. The COUNTY or its designee shall have the right to review and monitor the financial and service components of this Agreement by whatever means are deemed expedient by the COUNTY. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by COUNTY agents or employees, inspection of all records or other materials which the COUNTY deems pertinent to this Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. JACKSON and his firm shall preserve and maintain all financial records and

records relating to the performance of work under this Agreement for the applicable record retention period after contract termination, and shall make said records available for such review, within Kittitas County, State of Washington, upon request.

ARTICLE X – DEFENSE AND INDEMNITY AGREEMENT

JACKSON and his law firm agree to and shall defend, indemnify and hold harmless the COUNTY, its Additional Insureds, appointed and elective officers, agents and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the COUNTY, its Additional Insureds, its elected or appointed officials, agents, or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whenever such injury to persons or damage to property is due to the negligence of JACKSON and his firm, its employees, agents or representatives, except only such injury or damage as shall have been occasioned by the sole negligence of the COUNTY, its Additional Insureds, appointed or elected officials, agents, or employees. It is further provided that no liability shall attach to the COUNTY by reason of entering into this Agreement, except as expressly provided herein.

ARTICLE XI – INDUSTRIAL INSURANCE WAIVER

With respect to the performance of this Agreement and as to claims against the COUNTY, its Additional Insureds, officers, agents and employees, JACKSON and his firm expressly waive any immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to the firm's employees, and agree that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of JACKSON and his firm. **This waiver is mutually negotiated by the parties to this Agreement.**

ARTICLE XII – INSURANCE

1. JACKSON shall secure and maintain in effect at all times during performance of this Agreement such insurance as will protect JACKSON, his firm, and the firm's employees, agents and representatives, as well as the Additional Insureds from all claims, losses, harm, costs, liabilities, damages and expenses arising out of professional liability claims, personal injury (including death) or property damage that may result from performance of this Agreement, whether such performance is by JACKSON, his firm members, employees, agents or representatives.
2. JACKSON shall provide proof of insurance for:

- A. Professional Liability. JACKSON shall obtain and maintain professional legal liability or professional errors and omissions coverage appropriate to JACKSON's profession. The coverage will have a limit of not less than Two Million Dollars (\$2,000,000) per claim, and Five Million Dollars (\$5,000,000) annual aggregate. The coverage will apply to liability for a professional error, act or omission arising out of JACKSON's and his firm's services under this Agreement. JACKSON will provide evidence of such professional liability coverage to the COUNTY.
- B. Workers' Compensation Insurance. JACKSON will maintain workers' compensation insurance as required by Title 51 RCW, and will provide evidence of coverage to the COUNTY.

NOTE: No contract shall form until and unless a copy of the Certificates of Insurance with Endorsement, properly completed and in the amounts required, are attached hereto.

ARTICLE XIII – DISPUTES; VENUE AND GOVERNING LAW

1. DISPUTES. Differences between JACKSON and the County PROSECUTOR and/or the COUNTY arising under this Agreement shall be brought to the PROSECUTOR's and the COUNTY's attention at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken.
2. VENUE AND GOVERNING LAW. In the event that litigation should arise concerning the construction or interpretation of any terms of this Agreement, the venue of such action of litigation shall be in the Kittitas County Superior Court of the State of Washington. This Agreement shall be governed by the laws of the State of Washington.

ARTICLE XIV – COMMITMENTS, WARRANTIES AND REPRESENTATIONS

JACKSON represents and warrants to the COUNTY as follows:

1. JACKSON has the requisite power and authority to enter into and to perform his obligations under this Agreement.
2. JACKSON and his firm are not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially JACKSON's or his firm's ability to perform their obligations under this Agreement. JACKSON and his firm are not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects their operations or assets in the State of Washington, or their ability to perform their obligations under this Agreement.

3. None of the representations or warranties in this Agreement, and none of the documents, statements, certificates or schedules furnished or to be furnished by JACKSON in connection with this Agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact that is necessary to avoid making a statement contained therein appear misleading.

ARTICLE XV – MISCELLANEOUS

1. **OWNERSHIP OF ITEMS PRODUCED.** All writings, programs, data, public records or other materials, excluding work product, prepared by JACKSON and his firm in connection with performance of this Agreement shall be the property of the COUNTY, and upon request by the County PROSECUTOR, shall be sent to the County PROSECUTOR for retention.
2. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement embodies the entire Agreement between the COUNTY and JACKSON, and supersedes any and all prior agreements, regarding the Work. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written instrument signed by each of the parties, in accord with the standards set out in Article V, Section 3 above, and Article XVI, Section 3 below.
3. **NOTICE.** Except as provided elsewhere in this Agreement, for all purposes under this Agreement except service of process, notice of termination or modification shall be given by JACKSON to the County PROSECUTOR and to the Kittitas County Commissioners, 205 W 5th Ave, Suites 213 and 108, Ellensburg, WA 98926. Notice to JACKSON for all purposes under this Agreement shall be given to the address reflected on the signature page. Notice may be given by personal delivery, courier service with proof of delivery, or by depositing in the U.S. Mail, certified mail return receipt requested, first class postage prepaid.
4. **SEVERABILITY.** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.
5. **WAIVER.** Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
6. **SURVIVAL.** The provisions of Articles III (Sections 3 and 4), VI, VII, VIII, IX, X, XI, XII, XIV, and XV (Sections 1 and 5) shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

7. OTHER.

- A. The rights and remedies of the COUNTY set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights or remedies afforded to the COUNTY by law or by any other provisions of this Agreement.
- B. The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.
- E. JACKSON acknowledges and by signing this Agreement agrees that the Indemnification provisions set forth in Articles VI (Independent Contractor), VII (Taxes), IX (Confidentiality), and are totally and fully part of this Agreement and have been mutually negotiated by the parties.

THE PARTIES hereby indicates their agreement to the terms and conditions set forth hereinabove by their authorized signatures below.

ROCKNEY L. (“ROCKY”) JACKSON
Menke Jackson Beyer Ehlis & Harper LLP
807 North 39th Avenue
Yakima, Washington 98902

(Signature)

GREGORY L. ZEMPEL

Prosecuting Attorney, Kittitas County, Washington

Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
Kittitas County, Washington

By: _____
Chair

By: _____
Vice-Chair

By: _____
Commissioner