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

Amending Agreement Recorded
Under 2010-000743

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

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

RECITALS

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

3. The financial officer of Kennewick initially administered a Metro Drug Forfeiture Fund consisting of the proceeds of forfeitures, federal grants and court ordered contributions. In January 1990, the City of Pasco took over administration of the Metro Drug Forfeiture Fund. In January of 2009 the City of Kennewick took over all administrative functions except for financial administration. Effective July 1, 2009, the City of Kennewick took over the financial administrative function and control of the Metro Drug Forfeiture Fund.
4. On December 30, 2009, the Cities of Kennewick, Richland and Pasco and the Counties of Benton and Franklin entered into a revised Metro Interlocal Agreement reflecting this transfer of administrative duties to the City of Kennewick.
5. In January 2010 the City of West Richland notified the member agencies of Metro of its desire to rejoin Metro. This Agreement is to formalize the participation of West Richland as a member agency.
6. The federal government has appropriated monies to the State of Washington to fund a coordinated state-wide narcotics control program. These funds were administered by DCD until the Spring of 1993, at which time DCD became the State of Washington Department of Community, Trade, and Economic Development (“CTED”). The Department of Commerce or a successor state agency will continue to administer these funds.
7. Based upon established criteria, the parties are eligible to apply for a grant to assist them in their efforts to combat controlled substances trafficking. Department of Commerce desires to enter into a contract with one participating jurisdiction, to be named in the grant application as the applicant jurisdiction, and which shall have the duty of administering the grant on behalf of the participating jurisdictions.
8. The parties desire to enter into an Agreement to enable the applicant jurisdiction to receive the grant, to administer the grant, and to be responsible for compliance with its terms on behalf of the participating jurisdictions.
9. The City of Kennewick has consented to act as the applicant jurisdiction with regard to future applications to Department of Commerce and any funds supplied by a Department of Commerce grant.
10. Chapter 39.34 RCW provides that local jurisdictions may enter into cooperative agreements in order to best serve the needs of their local communities.

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

SECTION 1 – DEFINITIONS

- a. “Application” means an application submitted to Department of Commerce for a controlled substance law task force grant.

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

- j. "Operations Board" shall mean the law enforcement policy body for Metro and will consist of the Chiefs of Police of Kennewick, Pasco, Richland, West Richland, and the Sheriffs and Prosecuting Attorneys of Benton and Franklin Counties. It shall recommend the budget for the grant funds and their disbursement and be responsible for preparing applications for any additional grants or renewal of the CTED grant. The Support Services Executive Director of the City of Kennewick shall be a non-voting member of the Operations Board for purposes of advisement on financial and fund administrative matters. Prosecuting Attorneys shall refrain from voting on purely investigative issues. The Kennewick Police Chief shall serve as chairperson.
- k. "Paid Vouchers" means all purchase orders, invoices, payroll, records, etc., to back up expenditures by participating jurisdictions.

SECTION 2 – PURPOSE

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

SECTION 3 – GENERAL DUTIES OF THE PARTIES

The parties have or shall:

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

SECTION 4 – DURATION/WITHDRAWAL/TERMINATION

- a. This Agreement shall commence immediately upon its execution by all of the parties and filing with the auditors for Benton and Franklin counties and shall continue until terminated by the jurisdictions.
- b. The grant from Department of Commerce is made for one year at a time, beginning July 1st of each year. Any party may withdraw from Metro effective the beginning of the next grant year by giving written notice by April 1st of that year to the parties subject to this

Agreement. A party that withdraws from Metro before termination of Metro as defined in Section 4.c shall forfeit 100% of their share of the Metro Forfeiture Fund equity and assets.

- c. Termination of this Agreement shall only occur upon written mutual agreement of all the parties that are at the time of termination participants in Metro and subject to this Agreement. The written agreement for termination shall be executed by April 1st of any given year to be effective July 1st of that year.

SECTION 5 – TASK FORCE

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

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

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

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

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

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

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

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

- d. The Executive Board, by majority vote may, in the event that any party to this Agreement fails at any time during the term of this Agreement to provide or maintain the commitment of personnel to Metro as set forth above, impose the following penalties on the party in breach of this Agreement.
 - (1) The forfeiture of all (100%) of the party's share of forfeiture fund (see section 8.) equity and assets; and
 - (2) The immediate payment upon determination of amount to the Metro Drug Forfeiture Fund of an amount equal to any loss of federal and/or state grant funds for the operating year arising from or caused by the party's failure to provide or maintain their commitment of personnel to Metro.

SECTION 6 – ADMINISTRATION

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

In the event that there is any recapture of grant funds by the Department of Commerce pursuant to the provisions of the City of Kennewick contract with it, the jurisdictions shall share responsibility on the pro-rata basis as set forth in Section 7.b of this Agreement. However, in the event that there is a recapture of grant funds originally disbursed due to an

identifiable discretionary expenditure of any jurisdiction or agency, that jurisdiction or agency shall bear the sole responsibility for payment and indemnify the City of Kennewick for any loss of funds it may suffer due to any such recapture.

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

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

SECTION 7 – ACQUISITION AND USE OF EQUIPMENT

- a. In the event that any equipment is acquired with grant funds received from Department of Commerce, the parties agree to use the equipment only for specified program purposes during the life of the grant. All equipment purchased by Kennewick on behalf of Metro using grant funds shall be owned by the applicant jurisdiction, the City of Kennewick. After the grant period ends, the parties agree to use the equipment only for controlled substance enforcement purposes and to dispose of said property as set forth in Section 7.b unless federal and state requirements provide for a different disposition.
- b. Upon termination of this Agreement, all equipment contributed by the jurisdictions shall be returned to the contributing agency. All property and equipment purchased with monies from the LNCPF or with monies from the Metro Drug Forfeiture Fund shall be distributed

so as not to violate Section 7.a above, and on a pro-rata basis as set forth below, and this property shall be used by the receiving party only for controlled substance enforcement purposes unless federal and state requirements provide for a different disposition. The Operations Board shall see to it that a separate inventory for property and equipment purchased from each fund shall be kept and, if money from the LNCPF is used to reimburse any other fund for any property and equipment purchased, the property or equipment shall be transferred to the LNCPF inventory. This inventory shall go back to at least January, 1988, and continue for the duration of this Agreement. Upon termination of this Agreement, the items purchased with monies from the LNCPF fund or with monies from the Metro Drug Forfeiture Fund shall be distributed to each participating jurisdiction under a formula that divides the cumulative number of investigators assigned to Metro by each jurisdiction starting with the fiscal year ended June 30, 2005, and continuing through the most recently completed fiscal year by the cumulative total of investigators assigned to Metro by all participating jurisdictions during this same period. Jurisdictions shall only receive credit in the calculation for those investigators that remain assigned to Metro for the entirety of a fiscal year. At such time that a jurisdiction removes all of the investigators that it had previously assigned to Metro, it shall also forfeit its right to any future distribution of accumulated assets under this section and be removed from the calculation. As of June 30, 2009, the result of the formula outlined in this section was as follows:

<u>Agency</u>	<u>Fiscal Year Ended June 30</u>					<u>Total</u>	<u>%</u>
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>		
City of Kennewick	2.00	2.00	2.00	2.00	2.00	10.00	28.57%
City of Pasco	2.00	2.00	2.00	2.00	2.00	10.00	28.57%
City of Richland	1.00	1.00	1.00	1.00	1.00	5.00	14.29%
City of West Richland*	-	-	-	-	-	-	0.0%
Benton County	1.00	1.00	1.00	1.00	1.00	5.00	14.29%
Franklin County	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>5.00</u>	<u>14.29%</u>
Total Investigators	7.00	7.00	7.00	7.00	7.00	35.00	100.00%

*Accrual of credit for participation by West Richland per the formula described above shall begin July 1, 2010

SECTION 8 – FUND ADMINISTRATION AND FORFEITURES

- a. All property, proceeds from property, and cash forfeited pursuant to RCW 69.50.505 by Metro operations and all other contributions to the Metro Drug Forfeiture Fund shall be managed and disbursed as provided in this Section. On or before July 1, 2009, all such forfeited property, all proceeds in the Metro Drug Forfeiture Fund and/or LNCPF fund and all accounting records related to such were transferred from the City of Pasco to the City of Kennewick.

- b. The City of Kennewick shall administer the Metro Drug Forfeiture Fund and shall make expenditures from the fund only as appropriately directed. All interest attributed to investment of monies in the Metro Drug Forfeiture Fund shall be deposited into the fund. This fund shall be established so that it may accept court ordered contribution or other contributions as well as funds disbursed by the federal government or other agencies involving the enforcement of controlled substance laws. Disbursements from this fund shall be for controlled substance enforcement purposes.
- c. To the extent that RCW 69.50.505 requires that the forfeiture funds be deposited in the current expense fund of the jurisdiction in which the forfeiture takes place, that requirement shall be met by depositing said funds in the Metro Drug Forfeiture Fund. Forfeitures shall be in accordance with RCW 69.50.505 or other applicable law and all funds which may be retained by the local jurisdiction as a result of said forfeiture shall be deposited into the Metro Drug Forfeiture Fund.
- d. All property forfeited pursuant to Metro operations shall be immediately delivered to Metro for use in Metro operations, unless use of such property is declined by the Operations Board, in which case the jurisdiction in which the forfeiture took place may use the property in accordance with RCW 69.50.505. The City of Kennewick shall see to it that a proper inventory is kept of all the property seized, whether or not it has yet been forfeited, and of its sale or other disposition.
- e. The Operations Board may authorize the transfer of forfeited property of any law enforcement agency in this state upon application for the exclusive use of enforcing the provisions of Chapter 69.50.505 RCW as now or hereafter amended.
- f. Firearms confiscated as a result of Metro operations will be placed into Metro evidence and the disposal of the firearms will occur after adjudication of the case in court and at the direction of the Operations Board.
- g. Upon termination, the Executive Director of Support Services of the City of Kennewick, or his or her designee, using established governmental accounting standards, shall determine the balance of the LNCPF and the Metro Drug Forfeiture Fund available for distribution as of the termination date. All jurisdictions shall share in the amount available for distribution on a pro-rata basis as set forth in section 7.b. Any balances that become available for distribution within the LNCPF and the Metro Drug Forfeiture Fund after the date of termination, including but not limited to, the net proceeds derived from any property that was seized or forfeited prior to the termination date, shall be distributed in the same manner. Funds distributed may be used for the expansion of controlled substance enforcement purposes and may not supplant pre-existing funding services unless otherwise authorized by applicable law.

- h. In order to ensure compliance with this Agreement, the parties agree that all forfeitures made pursuant to RCW 69.50.505 by each party shall be disclosed to the Operations Board. The Operations Board shall review each case to determine if the action was a Metro operation. The decision of the Operations Board shall be binding upon all parties. However, Metro operations shall expressly not include drug arrests and forfeitures which are incidental to an unrelated activity, e.g., a routine traffic stop, arrests and forfeitures from operations which were made after consultation with and agreement of the Metro supervisor that Metro would not participate; and cases which are not considered a Metro case for prosecution purposes.

SECTION 9 – ARBITRATION

The parties agree that any dispute arising from this Agreement relating to the distribution of monies and of property or penalty provisions shall be submitted to an arbitrator for a binding decision pursuant to Chapter 7.04 RCW unless the parties agree to another manner of arbitration. If the parties cannot agree on an arbitrator(s), the court shall appoint an arbitrator from a list compiled as follows: each party shall submit a list of three persons not associated with any of the parties who have agreed to act as an arbitrator and each party may strike up to two names from the total list thereby compiled. The court shall select an arbitrator from among the names remaining unless there be none, in which case the court shall select an arbitrator not associated with any of the parties.

SECTION 10 – LIABILITY

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

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

Nothing herein shall be interpreted to:

- a. Waive any defense arising out of RCW Title 51.
- b. Limit the ability of a participant to exercise any right, defense, or remedy which a party may have with respect to third parties or the officer(s) whose action or inaction give rise to loss, claim or liability, including, but not limited to, an assertion that the officer(s) was acting beyond the scope of his or her employment.
- c. Cover or require indemnification or payment of any judgment against any individual or Agency for intentionally wrongful conduct outside the scope of employment of any individual or for judgment for punitive damages against any individual or Agency.

Payment of punitive damage awards, fines or sanctions shall be the sole responsibility of the individual against whom said judgment is rendered and/or his or her Agency employer, should that employer elect to make said payment voluntarily. This Agreement does not require indemnification of any punitive damage awards or for any order imposing fines or sanctions.

SECTION 11 – AMENDMENT

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

SECTION 12 – INTEGRATION

This Agreement and the application contain all the terms and conditions agreed upon by the parties, except necessary operational agreements between the law enforcement agencies of the respective jurisdictions pursuant to Chapter 10.93 RCW. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties. This Agreement shall expressly supercede all prior Agreements among the jurisdictions regarding Metro creation, operation, and administration.

Dated this 2ND day of MARCH, 2010.

CITY OF KENNEWICK


STEVE C. YOUNG, Mayor


Attest:


VALERIE J. LOFFLER, City Clerk

Approved As To Form:


LISA BEATON, City Attorney

CITY OF PASCO


JOYCE OLSON, Mayor


METRO INTERLOCAL AGREEMENT

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CITY OF RICHLAND


JOHN FOX, Mayor

Attest:


DEBRA BARHAM, Deputy City Clerk

Approved As To Form:


THOMAS O. LAMPSON, City Attorney

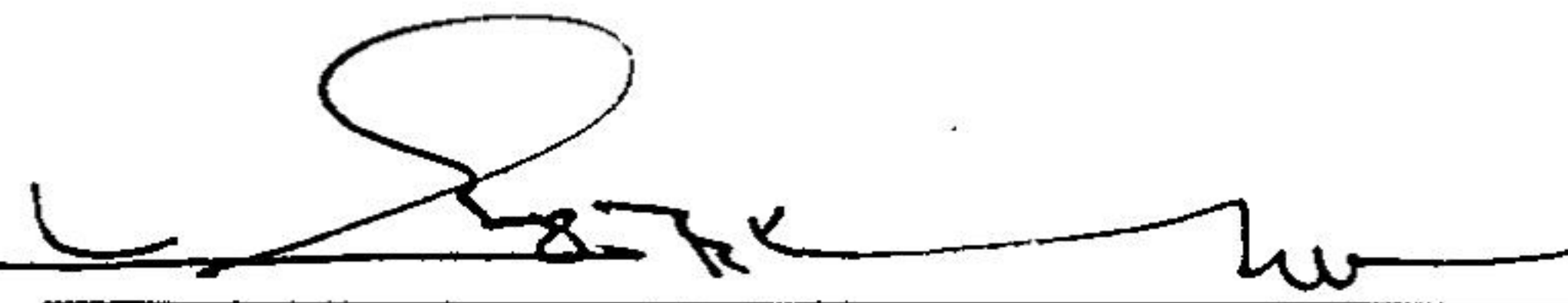
CITY OF WEST RICHLAND


DONNA NOSKI, Mayor

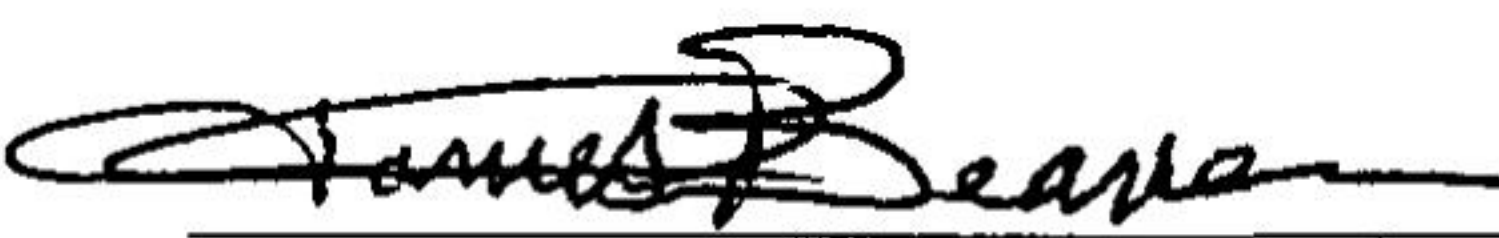
Attest:


DEBRA CLARK, City Clerk

Approved As To Form:



LELAND B. KERR, City Attorney

BENTON COUNTY



JAMES BEAVER Chairman

LEO M. BOWMAN - ABSENT

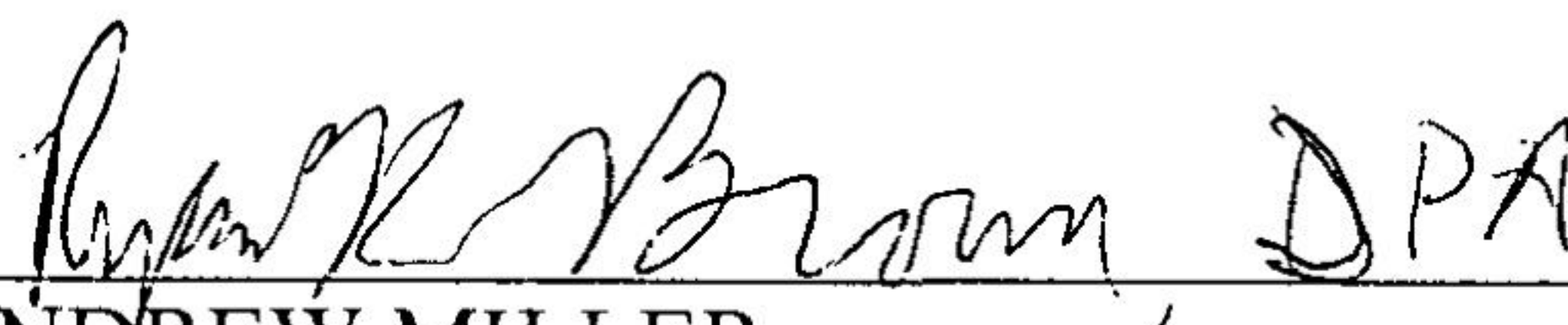
LEO BOWMAN, Commissioner


MAX BENITZ JR. Commissioner

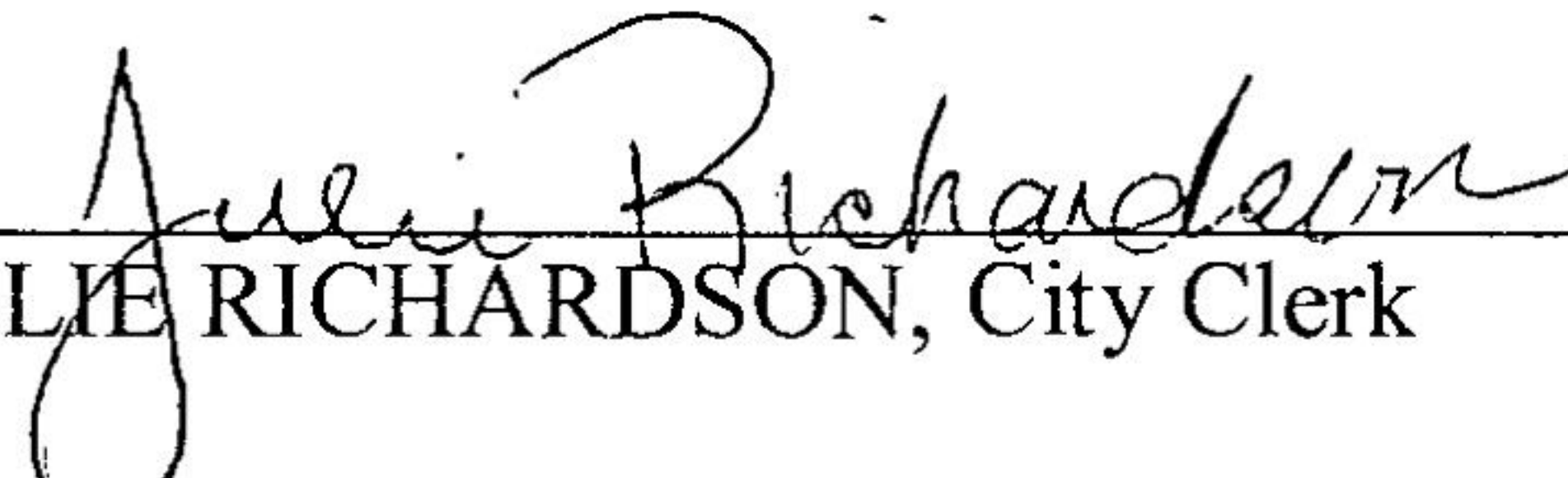
Attest:


CAMI MCKENZIE, Clerk of the Board


Approved As To Form:


ANDREW MILLER
Benton County Prosecutor

Attest:


JULIE RICHARDSON, City Clerk

Approved as to Form:


BRONSON BROWN, City Attorney

FRANKLIN COUNTY


RICK MILLER, Chairman

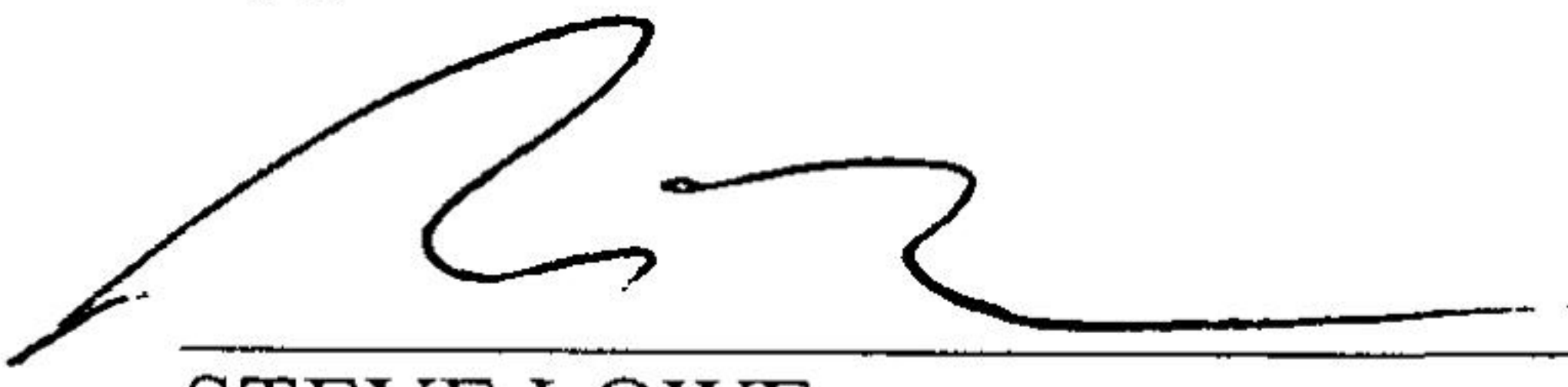

ROBERT E. KOCH, Commissioner


BRAD PECK, Commissioner

Attest:


MARY WITHERS, Clerk of the Board 3-3-2010

Approved As To Form:


STEVE LOWE
Franklin County Prosecutor