

PENDING APPROVAL

OKLAHOMA COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM REQUEST SHEET

FOR THE WEDNESDAY, APRIL 28TH, 2010 AGENDA

DEPARTMENT: SHERIFF

REQUESTED BY: Major John Waldenville x-1010

REQUISITION NO.: 11006191

REQUISITION SHEET ATTACHED: X YES N/A

NAME OF FUNDS: General Fund- General Government

FUND NUMBERS: 1001.1100.54451.2010

DOES THE AGENDA ITEM CONTAIN PRIVACY-PROTECTED OR SECURITY INFORMATION? _____ YES X NO

AGENDA ITEMS CONTAINING PRIVACY-PROTECTED OR SECURITY INFORMATION WILL NOT BE HYPERLINKED TO THE AGENDA.

NUMBER OF ORIGINAL DOCUMENTS TO BE RETURNED TO YOUR DEPARTMENT: One.

AGENDA ITEM READS AS FOLLOWS: Discussion and possible action to approve a contract amendment with J Ted Bonham for legal services in the case of Davis vs Board of County Commissioners of Oklahoma; John Whetsel, individually, et al, Case No CIV-08-875-M.

APPROVED BY DA
(If Applicable)

APPROVED BY ENGINEER
(If Applicable)

APPROVED BY PURCHASING
(If Applicable)

 4/14/2010

ASSISTANT DISTRICT ATTORNEY

COUNTY ENGINEER

PURCHASING AGENT

Please initial that document has been reviewed for privacy-protected or security information

DISTRICT ATTORNEY: _____ YES _____ N/A

COUNTY CLERK: _____ YES _____ N/A

Indicate any privacy-protected information that exists _____

(NOTE: THE CHAIRMAN/CHIEF DEPUTY MUST APPROVE ALL EMERGENCY REQUESTS FOR ANY ITEM SUBMITTED AFTER THE DEADLINE)

DATE OF REQUEST: _____ APPROVED BY: _____

CHAIRMAN

REQUEST FOR DISTRICT ATTORNEY LEGAL SERVICES

THIS FORM IS TO BE USED TO REQUEST ADVICE AND/OR REPRESENTATION FROM THE DISTRICT ATTORNEY'S OFFICE REGARDING THE COUNTY OF OKLAHOMA, COUNTY OFFICIALS AND EMPLOYEES AS REQUIRED BY SECTIONS 215.4, 215.5, 215.25 AND 215.26 OF TITLE 19 OF THE OKLAHOMA STATUTES.

IF ADVICE IS SOUGHT, THE REQUEST MUST BE SIGNED BY AN ELECTED COUNTY OFFICER. THIS FORM MUST BE FILLED OUT AND SUBMITTED TO THE CIVIL DIVISION OF THE OKLAHOMA COUNTY DISTRICT ATTORNEY'S OFFICE IN A TIMELY MANNER. ALL RESPONSES TO REQUESTS FOR ADVICE WILL BE IN WRITING.

IF THE REQUEST IS FOR LEGAL REPRESENTATION UNDER 19 O. S. SECTION 215.25, THE REQUEST MUST BE SUBMITTED IN WRITING EARLY ENOUGH TO PERMIT THE DISTRICT ATTORNEY'S OFFICE ADEQUATE TIME TO COMPLETE A THOROUGH "GOOD-FAITH-AND-COURSE-OF-EMPLOYMENT" INVESTIGATION AS CONTEMPLATED BY 19 O.S. SECTION 215.26.

DATE OF REQUEST: 4/16/2010

COUNTY DEPARTMENT MAKING REQUEST: Sheriff

STATE WITH SPECIFICITY, WHAT THE REQUEST IS AND WHY THE ASSISTANCE OF THE DISTRICT ATTORNEY'S OFFICE IS NEEDED: Request review of contract amendment with J Ted Bonham for legal services in the case of Davis vs Board of County Commissioners of Oklahoma; John Whetsel, individually, et al, Case No CIV-08-875-M.

ATTACH ADDITIONAL DOCUMENTS AS APPROPRIATE. (NOTE: Advice, reviews and approvals as to "form and legality" are based on the documentation and information provided to the District Attorney's Office. Please provide all relevant information when requesting an opinion or review from the District Attorney's Office).

John Whetsel
COUNTY OFFICER

.....
DATE RECEIVED BY DISTRICT ATTORNEY: 4/16/10

REPLY BY DISTRICT ATTORNEY: Reviewed

RECEIVED
APR 16 2010
CIVIL DIVISION
DISTRICT ATTORNEY

By: *David Prater*
DAVID PRATER
DISTRICT ATTORNEY

STATE OF OKLAHOMA
OKLAHOMA COUNTY
RECORDED & FILED
2010 APR 16 P 3:34
CIVIL DIVISION
DISTRICT ATTORNEY

OKLAHOMA COUNTY INCOMPLETE REQUISITIONS REPORT

DATE PRINTED--: 04-15-2010

Requisition No--: 11006191
Requisition Type--: Purchase Requisition
Creation Date--: 04-15-2010
Description--: Professional legal services

Requester	Qty/Amt	Unit Price	Line Amt	Category
Holt, Bradford C	25,000	\$ 1.00	\$25,000.00	SERVICE PROFESSIONAL
Item Description: Contract amendment for legal services in case number CIV-08-875-M, Davis v. BOCC, Whetzel, individually, et al.				
Vendor: J TED BONHAM PC				
Distribution: 1001.1100.54451.20%0				
Requisition Total:				\$25,000.00

Approval Action (Circle One)

Approve Forward Reject

Forward To : _____

Note : _____

Signature: _____

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BONHAM & HOWARD

A Professional Association

Attorneys at Law

www.bonhamandhoward.com

J. Ted Bonham- Oklahoma City Office

E-Mail: jtedbonham@sbcglobal.net

Oklahoma City Office:

Land Mark Towers West
3555 N.W. 58th Street, Suite 200
Oklahoma City, OK 73112
Telephone: (405) 943-6650
Facsimile: (405) 943-6655

Tulsa Office:

Bank of America Center
15 West 6th, Ste. 2066
Tulsa, Oklahoma 74119
Telephone: (918) 744-7440
Facsimile: (918) 744-9358

Thursday, April 15, 2010

Sheriff John Whetsel
201 N. Shartel Avenue
Oklahoma City, Oklahoma 73102

RE: **TOMMY LEE DAVIS** vs Board of County Commissioners of Oklahoma; John Whetsel, individually, et al.; United States District Court for the Western District of Oklahoma: Case No.: **CIV-08-875-M**

(First Amended Contract requesting an additional \$25,000.00 per conditions of No. 8 of this Contract and letter to Commissioners dated April 15, 2010)

Dear Sheriff Whetsel:

This letter confirms the terms of our representation of Sheriff John Whetsel, individually, by Bonham & Howard, a professional association, and the agreement entered by and among John Whetsel, hereinafter referred to as ("Whetsel"), the Board of County Commissioners of the County of Oklahoma, State of Oklahoma, hereinafter referred to as "Board", and J. Ted Bonham of the law firm of Bonham & Howard, hereinafter referred to as "Bonham".

1. **Scope of Engagement.** Our firm will represent Sheriff John Whetsel individually in the defense of the referenced lawsuit (the "Lawsuit") brought under Title 42, United States Code, Section 1983.
2. **Representations and Warranties.** We represent and warrant that all attorneys working on the Lawsuit are licensed to practice in Oklahoma and have been admitted to the United States District Court for the Western District of Oklahoma. Further, all attorneys working on the Lawsuit are covered by at least One Million Dollars (\$1,000,000) in malpractice insurance.

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3. **Personnel.** J. Ted Bonham and Jeffrey D. Black ("Black") will be primarily responsible for representing the Client in the Lawsuit. It is understood that Bonham may request other employees/associates of Bonham & Howard to appear or assist in the preparation of Whetsel's defense. It is further understood that it may be necessary for Bonham to retain the services of professionals, or expert witnesses, on behalf of Whetsel as it relates to the representation herein. Bonham and Black will be available to Whetsel for such consultation and assistance as Whetsel requests. All communications from Whetsel to this firm should be addressed to the attention of Bonham or Black. Member and associate attorneys, legal interns, legal assistants, and law clerks employed by or under contract with our firm will be utilized as needed under Bonham's and/or Black's supervision. It is our firm's practice to send copies of all correspondence, pleadings, documentation and other work product to Whetsel when received or generated by our firm, unless otherwise instructed by Whetsel. Our firm will direct such information and other communications to Whetsel at the address shown above, or at such other address that Whetsel requests.

4. **Conflicts of Interest.** Our firm is not aware of any existing matters involving conflicts of interest between Whetsel and other clients of our firm. We do not anticipate accepting future representation adverse to Whetsel's interest; however, because of the complex nature of our firm's practice, unforeseen conflicts might arise. If such a conflict does arise, our firm reserves the right to represent any other client and also reserves the right to withdraw from representation of Whetsel in any matter that has been referred to us if our withdrawal is necessary to resolve a conflict of interest. Our firm will be entitled to make the final determination of whether withdrawal from representation of Whetsel in a particular matter is necessary to resolve a conflict of interest.

5. **Conflicts with County.** We represent and warrant that we have not and will not represent any person at any time in a claim or lawsuit naming as defendant the Board of County Commissioners of Oklahoma County (the "Board") any Oklahoma County Commissioner, Court Clerk, County Clerk, Treasurer, Assessor, or Sheriff, either in the officer's official or individual capacity, in a case brought under the Governmental Tort Claims Act in Title 51, Oklahoma Statutes, Section 152, *et seq.*, or under the Civil Rights Act in Title 42, United States Code, Section 1983.

6. **Fees; Expenses.** Our firm's legal fees are computed on an hourly basis for the hours that are expended by the firm's professional and paraprofessional personnel (legal interns, law clerks, legal assistants). Schedule "1" to this letter sets forth our firm's customary hourly charges for our billing personnel that we propose to charge for services rendered on Whetsel's behalf. The schedule also lists the rate we charge for office expenses, such as photocopying, faxing, and long distance calls. Any charges incurred by our firm for costs charged by third parties, including, but not limited to, charges for expert or other witness fees, demonstrative exhibits, deposition costs, transcripts, Internet research, copies, postage, exhibits, photographs, graphics, computer presentations or other items shall be advanced by Bonham, and charged to the County at the same cost charged to our firm; that is, our firm will not mark up the costs. Our firm will provide photocopies of all invoices from

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third parties when our firm submits statements to Whetsel and to the Board, as provided in paragraph 7 below.

7. **Billing Procedures.** Our firm will submit statements of account to Whetsel and to the Board on a monthly basis. Each statement will be reviewed and transmitted by Bonham and/or Black, and will contain a disclosure of the time expended by each person on a daily basis, a brief description of the services rendered, a description of expenses advanced, together with true and complete photocopies of invoices from third parties.

Bonham shall be paid the sum of \$200.00 per hour for professional legal services rendered on behalf of Whetsel for general representation; \$250.00 per hour for court time. Computations for billing herein are based upon the nearest one-tenth of an hour with a minimum billing of one-tenth (1/10th) of an hour, or six minutes, for services less than six minutes duration.

8. **Condition of County's Payment.** Bonham submits an estimate of the projected fees and expenses with regard to this Lawsuit for the Board to encumber the amount of **Twenty-Five Thousand and No/100 Dollars (\$25,000.00)** against which Bonham will file claims for any fees, costs, or expenses as they become due and payable. Any projection provided will constitute a good faith estimate to assist the Board in projecting future costs and, unless otherwise specifically agreed, the projection will not constitute a guaranteed fee for the matter. If, at any time, we determine that our firm's work or expenses to be advanced could exceed the estimate, our firm agrees to immediately advise each member of the Board in writing to allow the Board to encumber additional public funds. **WE ACKNOWLEDGE THAT THE BOARD CANNOT, BY LAW, PAY OUR FIRM ANY AMOUNT IN EXCESS OF THE AMOUNT ENCUMBERED BY THE BOARD. FURTHER, IF OUR FIRM PERFORMS WORK OR ADVANCES EXPENSES THAT CAUSE THE ENCUMBERED AMOUNT TO BE EXCEEDED, SUCH EXCESS CANNOT AND WILL NOT BE PAID BY THE BOARD, BUT WILL REMAIN THE RESPONSIBILITY AND LIABILITY OF OUR FIRM.**

9. **Termination.** In the event our firm's representation of Whetsel is terminated at any time and for any reason, our firm agrees to cooperate in all ways reasonably requested by the Board and Whetsel in the transfer of pending matters to successor legal counsel. All files generated by our firm are the property of our firm; however, on payment of our out-of-pocket expenses, copies of our files will be made available to Whetsel. **Whetsel and the Board understand that the practice of law is not an exact science, and that Bonham cannot guarantee the outcome of this or any litigation.** Whetsel and the Board further understand that Bonham's representation of Whetsel may be compromised by positions that he, or former counsel, have taken in pending matters at the time Bonham undertakes to represent Whetsel's individual interest.

10. **Entire Agreement.** This letter and the attached schedule contain the entire agreement between Whetsel, the Board and our firm, and is binding on all parties. Any deletions, additions or


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changes must be evidenced by a written agreement expressly modifying this document and signed by the Board, Whetsel, and our firm. Whetsel further understands that conversations about his legal affairs with Bonham are privileged and confidential, and that Bonham may not disclose information from his conversations to others, including the Board, without Whetsel's prior permission. Accordingly Whetsel agrees to tell Bonham the truth at all times, to disclose all details surrounding his legal affairs, to provide all information which may pertain to his defense, and to respond promptly to all requests for information from Bonham.

We remain available to address any questions or comments concerning our employment. If the foregoing is acceptable, please execute this letter at the places indicated and return it to our firm, retaining copies for your files. We are pleased to represent Whetsel and look forward to being of service.

Respectfully submitted,




For the Firm

ACCEPTANCE

The undersigned hereby accepts Bonham & Howard, a professional association, as special legal counsel, on the foregoing terms.

SIGNED AND ACCEPTED this 15TH day of APRIL, 2010.



John Whetsel, Sheriff of Oklahoma County

cc: County Commissioner Ray Vaughn, District 3
Oklahoma County Office Building, Room 621
320 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102

County Commissioner Willa Johnson, District 1
Oklahoma County Office Building, Room 202
320 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102

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County Commissioner Brian Maughan, District 2
Oklahoma County Office Building, Room 101
320 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102

RECEIVED by the **BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA**

COUNTY on this _____ day of _____, 2010.

**BOARD OF COUNTY COMMISSIONERS OF
OKLAHOMA COUNTY, OKLAHOMA**

By _____
Chairman

ATTEST:

By _____
Member

County Clerk

By _____
Member

Approved as to form and legality this 16 day of April, 2010.

Assistant District Attorney

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SCHEDULE "1"

Attorneys and Billing Rates:

		<u>General</u>	<u>In Court Fee</u>
J. Ted Bonham	(TB)	\$ 200.00	\$ 250.00
Jeffrey D. Black	(JB)	\$ 200.00	\$ 250.00
James W. Swank	(JS)	\$ 200.00	\$ 250.00
William Blaik	(WB)	\$ 200.00	\$ 200.00

Paraprofessionals and Billing Rates:

\$ 60.00

Rate of Cost for:

Copying: 15 cents per page.
Faxing: No Charge
Long Distance Actual charge incurred by firm.