Jerome Delvin
District 1
Shon Small
District 2
James Beaver
District 3

Board of County Commissioners

Jerrod MacPherson
County Administrator

Matt Rasmussen
Deputy County Administrator

To view items in detail, click on highlighted areas.

Notice: Meeting provided by Live-Broadcast and Telephonically as follows:

Live-Broadcast @ link below:
https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181

Telephonically by:
Dial: 509 222-2310
Meeting ID: 4961#
Attendee Access Code: 4961#

AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, July 21, 2020

9:00 AM **Call to Order**

Approval of Minutes

- **July 2, 2020 Special**
- **July 14, 2020**

Review Agenda

Consent Agenda

Animal Control

a. Line Item Transfer, Fund No. 0000-101, Dept. 137

Commissioners

b. One-Time Payment Authorization to City of Kennewick for Metro Contribution
c. Contract w/Washington State Military Department for E911 Services

District Court

d. Line Item Transfer, Fund No. 0000-101, Dept. 111

Human Services

e. Ratifying First Amended Agreement w/DAMI TOO for Meal Delivery to Quarantined Individuals

f. Ratifying First Amended Agreement w/Traum Ventures for Additional Hotel Rooms to Homeless Population During COVID-19

g. First Amended Contract w/Washington State Department of Commerce, Community Services and Housing Division, Housing Assistance Unit for Consolidated Homeless Grant

Information Technology

h. Emergency Purchase of Twenty Body Temperature Kiosks from Pacific Office Automation

Juvenile

i. Contract w/Rick Schuknecht POF Polygraph Service

Office of Public Defense

j. Amending Superior Court Public Defense Agreement w/Eric Scott for Docket Change to District Court

k. Superior Court Public Defense Agreement w/Bart Tomerlin

l. Superior Court Public Defense Agreement w/Danielle Purcell

m. Terminating Superior Court Public Defense Agreement w/Ryan Swinburnson

Parks

n. Contract w/The Tri-Cities Shooting Association for The "Canyon Road" Improvement at the Rattlesnake Mountain Shooting Facility Funding

Public Safety

o. Line Item Transfer, Fund No. 0148-101, Dept. 115

Public Works

p. Line Item Transfer, Fund No. 0155-101, Dept. 000

Sheriff

q. Agreement w/WA Association of Sheriffs & Police Chiefs for Participation in Registered Sex Offender Address & Residency Verification Program

Public Comment ~ *for public engagement during Commissioners' meetings, please use the public comments phone line at*:

Dial: 509 460-4941

Public Hearing ~ *for public engagement during public hearings below, please use the following phone line @ 509 460-4941*

Ordinance Amendment to BCC 11.11.60 – OA 2020-001 ~ G Wendt

Ordinance Amendment to BCC 9.08.020 – OA 2020-002 ~ G Wendt

Short Plat Vacation – SPV 2020-001 – G Wendt & M Cooke

Scheduled Business

PEDA Update ~ Deb Heintz

2021 Governmental Affairs Consulting Agreement ~ S Palmus

Setting Salaries for Elected Officials for Years 2023 & 2024 Discussion ~ M Rasmussen

Other Business

Executive Session

Potential Litigation ~ Commissioners

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Special Board Meeting
Thursday, July 2, 2020, 5:00 p.m.
Meeting provided by Video Live-Broadcast and Telephonically

Present: Chairman James Beaver
Commissioner Shon Small (via/teleconference)
Commissioner Jerome Delvin (via/teleconference)
County Administrator Jerrod MacPherson
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Deputy County Administrator Matt Rasmussen; IT Manager Robert Heard; Adam Fyall, Sustainable Development; Finance Manager Linda Ivey; Clerk Josie Delvin; Robert Blain, Director of Operations/Capital Assets; DPA Ryan Brown.

Covid-19 Update

County Administrator Jerrod MacPherson said the special meeting was to consider moving Benton County from Phase 1 to modified Phase 1 (1.5), known as the Benton County Road to Recovery Plan and Moving Benton County to a Modified Phase 1.

Additionally, the Board of Health had a meeting to approve the road to recovery plan and adopted it at today's special meeting.

He requested the Board approve the resolution as presented and authorize him to submit the Resolution to the Washington State Board of Health by email today.

MOTION: Commissioner Delvin moved to approve the Benton County Road to Recovery Plan Moving Benton County into a Modified Phase 1 (1.5) of the Safe Start Washington Plan in Response to the Covid-19 Pandemic, as presented, with authorization from the Secretary of Health. Commissioner Small seconded.

Discussion

Commissioner Delvin said they had been working toward this for some time and during the Governor's visit, he heard compelling reasons from the health care agencies, community and business leaders, law enforcement, and mental health agencies, to allow Benton County to open under the modified phase 1. He heard the community was committed and also put a two week pause on moving into next phases. Commissioner Delvin said the modified phase 1 (1.5) included the following:

a. Construction as permitted in Phase 2 guidance (new construction projects can occur);

DRAFT

b. Manufacturing as permitted in Phase 2 guidance (non-essential manufacturing);
c. Restaurants for outdoor seating only at 50% of existing outdoor capacity;
d. In-store retail at 15% indoor capacity with indoor activities limited to 30 minutes;
e. Personal services at 25% indoor capacity
f. Dog groomers at 25% indoor capacity;
g. No gatherings with people outside of the household except for small behavioral health support groups of ≤5 people.

Commissioner Delvin added this would take effect immediately and businesses under those conditions needed to have their plans submitted and guidance on site.

Mr. MacPherson stated the County had an email set up for businesses to submit their plans to the County and a drop box in front of the Health District building (painted in yellow) so anyone could drop off plans in person. He added that the electronic submittal was open now and would suffice to meet the requirements of the Governor.

Upon vote, the motion carried unanimously.

Resolution

2020-439: Approving the Benton County Road to Recovery Plan and Moving Benton County to a Modified Phase 1 of the Safe Start Washington Plan in Response to the Covid-19 Pandemic

There being no further business before the Board, the meeting adjourned at 5:14 p.m.

_____ _____

Clerk of the Board Chairman

DRAFT

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Tuesday, July 14, 2020, 9:00 a.m.
Meeting provided by Video Live-Broadcast and Telephonically

Present: Chairman James Beaver
Commissioner Shon Small (via/teleconference)
Commissioner Jerome Delvin (via/teleconference)
County Administrator Jerrod MacPherson
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Matt Rasmussen, Deputy County Administrator; IT Manager Robert Heard; Adam Fyall, Sustainable Development Manager; DPA Ryan Brown; PA Andy Miller; Douglas D'Hondt, County Engineer; Greg Wendt, Planning Manager; Michelle Cooke, Planner; DPA Stephen Hallstrom; Linda Ivey, Finance Manager; Human Services Manager Kyle Sullivan; Commander Steve Caughey; Commander Jon Law; Mari Clark, Human Services; Shyanne Palmus, Communications Coordinator; Katie Gillies, Sheriff's Office.

Approval of Minutes

The Minutes of June 30, 2020 were approved.

Review Agenda

An executive session was added to discuss potential litigation.

Consent Agenda

MOTION: Commissioner Small moved to approve the consent agenda items "a" through "v" Commissioner Delvin seconded and upon vote, the Board approved the following:

Assessor
a. Line Item Transfer, Fund No. 0129-101, Dept. 000

Auditor
b. Canvassing Board Appointment

Board of Equalization
c. Line Item Transfer, Fund No. 0000-101, Dept. 103

Clerk
d. Increasing 5 Cash Drawers; Amending Resolution 2013-222

Corrections

e. Contract Renewal & Addendum w/LexisNexis for External Hard Drive Prison Solutions for Case Law & Revised Codes of WA State
f. Purchase of Weapons, Air Tasers & Electronic Incapacitation Devices from Axon Enterprises
g. Contract w/Tower Plaza Cleaners & Laundromat for Dry Cleaning & Laundry Services
h. Contract w/Columbia Cleaners for Dry Cleaning & Laundry Services
i. Second Contract Amendment w/Summit Food Service for Inmate Population Meal

Human Services

j. Agreement w/Entrust Community Services for Employment Services
k. Agreement w/The Arc of Tri-Cities for Spanish Outreach Staffing
l. Agreement w/The Arc of Tri-Cities for Special Olympics Staffing & Supplies
m. Line Item Transfer, Fund No. 0108-101, Dept. 560

Juvenile

n. Award & Contract w/Lutheran Community Services Northwest for Functional Family Therapy

Parks

o. Contract w/Intermountain West Insulation & Garage Doors for the Badger Mountain Westgate Trail Head Maintenance Building Insulation Project

Public Works

p. Contract w/Cliff Thorn Construction for the Annex Restroom Renovation Project
q. Accepting Work Performed by Boyd's Tree Service for 2019 Brush Cutting Area
r. Accepting Work Performed by Banlin Construction for Public Services Building Project
s. Accepting Work Performed by Banlin Construction for Justice Center Restroom Renovation
t. Contract w/Stripe Rite for 2020 Pavement Marking
u. Purchase of 100 Grader Blade Cutting Edges From Pape Machinery
v. Line Item Transfer, Fund No. 0101-101, Dept. No. 500

Public Comment

None.

Public Hearing – Adopting Legislation to Authorize A Sales and Use Tax for Affordable & Supportive Housing

Kyle Sullivan read into the record a statement for members of the public to call into the public comment line if they wanted to provide testimony for the public hearing.

Kyle Sullivan said he came before the Board at the end of 2019 with a resolution of intent to move forward drafting a tax ordinance implementing Substitute House Bill 1406. This would allow the County to retain a portion of local sales tax in the amount of 0.0146 % and apply to affordable and supportive housing. He said both the cities and counties were allowed to collect the tax, but the cities were not interested in collecting the tax. He said they would treat it similar to the 2060 funds. Additionally, all proper notices were provided for the public hearing process.

Commissioner Delvin asked about the cities' decision to not take the tax. Mr. Sullivan said they were not interested in collecting the tax however, wanted to have the County do it and work in partnership to decide how the money was spent.

Commissioner Small asked about the projected revenue and Mr. Sullivan said at the time it was initially considered, the estimated revenue was $600,000 to $700,000 per year (as a 20-year tax credit for capital projects).

As there was no one present to testify (no one called into the public comment line), public testimony was closed.

MOTION: Commissioner Delvin moved to approve the resolution and adopt the ordinance implementing the additional sales tax collection and authorize the creation of the Affordable and Supportive Housing Fund as presented. Commissioner Small seconded and upon vote, the motion carried.

Public Hearing – 2020/2025 Six Year Road Program

Doug D'Hondt, County Engineer, read into the record a statement for members of the public to call into the public comment line if they wanted to provide testimony for the public hearing.

Mr. D'Hondt said this was an amendment to the Six-Year Road Program, a formality they must undertake, because they were ready to begin construction of the 2017 Roadside Improvement Project in the amount of $435,000 to improve the roadsides to make them safer.

As there was no one present to testify (no one called into the public comment line), public testimony was closed.

MOTION: Commissioner Delvin moved to approve the 2020-2025 Six-Year Road Program to include the 2017 Roadside Improvement Project as presented. Commissioner Small seconded and upon vote, the motion carried.

Preliminary Plat Approval - SUB 2020-001 – Grace Estates

Mr. Wendt said the preliminary plat approvals were all closed record and the Board would not be accepting any new testimony.

Michelle Cooke and Greg Wendt presented the Grace Estates preliminary plat application to subdivide approximately 9.37 acres into 7 residential lots. The Planning Commission held an open record hearing and voted unanimously to forward a positive recommendation to the Board of Commissioners, subject to eight (8) findings of fact and eighteen (18) conditions of approval.

MOTION: Commissioner Delvin moved to adopt the Planning Commission's Recommendations, Findings of Fact and Conditions as the Board's own and approve the preliminary plat of Grace Estates – SUB 2020-001 as recommended by the Planning Commission. Commissioner Small seconded and upon vote, the motion carried.

Preliminary Plat Approval - SUB 2020-002 – Orchard View

Michelle Cooke and Greg Wendt presented the Shaw Vineyard Estates preliminary plat application to subdivide approximately 71.10 acres into 8 residential lots. The Planning Commission held an open record hearing and voted unanimously to forward a positive recommendation to the Board of Commissioners, subject to eight (8) findings of fact and sixteen (16) conditions of approval.

MOTION: Commissioner Delvin moved to adopt the Planning Commission's Recommendations, Findings of Fact and Conditions as the Board's own and approve the preliminary plat of Orchard View - SUB 2020-002 as recommended by the Planning Commission. Commissioner Small seconded and upon vote, the motion carried.

Preliminary Plat Approval - SUB 2020-003 – Shaw Vineyard Estates

Michelle Cooke and Greg Wendt presented the Orchard View preliminary plat application to subdivide approximately 9.1 acres into 29 residential lots. The Planning Commission held an open record hearing and voted unanimously to forward a positive recommendation to the Board of Commissioners, subject to eight (8) findings of fact and twenty (21) conditions of approval.

MOTION: Commissioner Small moved to adopt the Planning Commission's Recommendations, Findings of Fact and Conditions as the Board's own and approve the preliminary plat of Shaw Vineyard Estates - SUB 2020-003 as recommended by the Planning Commission. Commissioner Delvin seconded and upon vote, the motion carried unanimously.

CARES Act Community Support Grant Program with TRIDEC

Adam Fyall presented the agreement with TRIDEC to assist the County with the implementation of the CARES Act grant. Mr. Fyall said the grant would provide support for the County's own needs, the Health District and $3.5 million for the business community. Additionally, the money needed to be spent by October 31, 2020.

The business grants would be a one-time cash grant to be dispersed as follows:

- $2.5 million for smaller businesses – up to $15,000 per business
- $50,000 – up to 10 grants for medium businesses
- $100,000 – up to 5 grants for larger businesses

TRIDEC planned to host the program on their website tomorrow and grants would be awarded by a weighted lottery.

MOTION: Commissioner Delvin moved to approve the agreement between Benton County and TRIDEC as presented. Commissioner Small seconded and upon vote, the motion carried.

Supplemental Appropriation Requests

Linda Ivey requested the Board go to public hearing on August 4, 2020 for the following budget adjustments:

- Current Expense, Cares Act, Dept. 139 - $11,099,000 – creating a new department so they could isolate and identify expenditures with the grant
- Current Expense, Sheriff Patrol, Dept. 121, $110,800 (for 2019-2020 budget) - for BJA – STOP School Violence Program grant

MOTION: Commissioner Delvin moved to go to public hearing on August 4, 2020 for the budget adjustments for Current Expense, Dept. 139 and Current Expense, Dept. 121 as amended to reflect the amount of $110,000, even though grant was $250,000 (this is the amount for 2019-2020 budget). Commissioner Small seconded an agreed to the amendment. Upon vote, the motion carried.

Ratifying First Amendment to DSHS Agreement for Employment Services Programs

Kyle Sullivan & Mari Clark presented the agreement to be ratified. Mr. Sullivan said the timing was very critical and he had Mr. MacPherson sign the agreement as it was expiring on the same date the new agreement needed to be executed. He said that was not how the DSHS agreements were normally executed, so he didn't expect this to happen again.

MOTION: Commissioner Delvin moved to approve the resolution as presented ratifying the First Amendment to Agreement No. 1963-58964 Between Developmental Disabilities Administration and Human Services. Commissioner Small seconded and upon vote, the motion carried.

Amendment #1 to Benton County Emergency Services Interlocal Agreement

Matt Rasmussen presented the amendment to the current interlocal agreement to address a project they had been working on, to authorize expenditures for communications on Red Mountain. He said they were ready to move forward with design and construction of the communications site, all parties have agreed, and Benton County was the last group to consider the amendment.

MOTION: Commissioner Small moved to approve Amendment No. 1 to the 2018 Seconded Amended and Restated Interlocal Agreement for Benton County Emergency Services, as presented. Commissioner Delvin seconded and upon vote, the motion carried.

2021-2022 Public Safety Sales Tax Funding Recommendation

Matt Rasmussen and Shyanne Palmus presented the selection committee's funding recommendations. Mr. Rasmussen said they were looking for direction to proceed as recommended or modify. Additionally, the outside agencies had to apply every two-year cycle, however the internal requests were considered "new" and their current programs were already included in the baseline budget.

Also, when they put out the call for projects, Benton County was in a better position with sales tax, however they were currently experiencing approximately $100,000 per month drop in revenue. Based on that, they reduced the projects/programs funded from the initial estimate of $4 million to a total $3.6 million.

Commissioner Delvin said it was his understanding there was some potential "mental health dollars" available to fund the Corrections Mental Health Program separately. Mr. Rasmussen said there was another funding mechanism they could use and would be exploring that possibility. Additionally, t was a funding source that was not subject to ending in a few years.

MOTION: Commissioner Small moved to approve the 2021-2022 Public Safety Sales Tax funding recommendations as presented, and direct staff to proceed with the necessary contracting or budget process, for final approval at a later date. Commissioner Delvin seconded and upon vote, the motion carried.

Joint Purchasing Agreement w/Benton Fire District No. 2 for Shallow Water Rescue Boat

Commander Jon Law & Ron Duncan, Fire #2 Chief, presented a memorandum of understanding and Interlocal Joint Purchasing Agreement for the purchase of a shallow water rescue boat for the Yakima River.

Commander Law said their ability to respond to rescues on the Yakima River was extremely limited and currently their only option was having Columbia Basin Dive respond.

Chief Duncan said they formed a committee and spent six months researching this and found a boat that was really made for shallow water rescue. Additionally, they spent money and time training for swift water rescue and this agreement would help solidify a quicker response than what they could get from Columbia Dive Rescue.

The boat would be housed at Fire District 2 and the Sheriff's office would be able to quickly get to the fire station and get on the boat with them.

Mr. Duncan said they raised $27,000 in donations and the remainder of their portion was coming out of reserves. Benton County's portion would be paid for by the Boating Safety & Patrol Fund in the amount of $35,000.00.

MOTION: Commissioner Delvin moved to approve the Interlocal Joint Purchasing Agreement, MOU and Resolution between Benton Fire Protection District #2 and Benton County Sheriff's Office for the purchase of a RockProof Boat as presented. Commissioner Small seconded and upon vote, the motion carried.

Other Business

Covid-19 Update

Commissioner Delvin reported Benton County was getting good compliance for wearing masks and the numbers were going up. He said that hopefully when the Governor lifted the statewide pause, Benton County could ask to move to full Phase 2. Additionally, they would keep moving forward and would keep the communication going with the local businesses and state agencies.

Jerrod MacPherson announced the Board would go into executive session for up to one (1) hour in the executive conference room to discuss potential litigation.

The Board briefly recessed to reconvene in the Executive Conference Room.

Executive Session - Potential Litigation

The Board went into executive session at 10:05 a.m. for up to 1 hour to discuss potential litigation. Present were Chairman Beaver, Commissioners Small and Delvin (via/teleconference), Jerrod MacPherson, Matt Rasmussen, Cami McKenzie, PA Andy Miller, Ryan Brown, Stephen Hallstrom, Ryan Lukson (via/teleconference), and Otto Klein, Summit Law Group (via/teleconference). The Board came out at 11:00 a.m.

The Board briefly recessed, to reconvene back in the Commissioners' Conference Room.

Mr. Brown announced that no decisions were made in executive session, but direction was given.

Accounts Payable

Check Date: 06/26/2020

EFT's #: 1315-1338
Transfers #: 06262001-06262008
Total all funds: $1,422,231.22

Warrant #: 207606-207727
Total all funds: $796,428.05

Check Date: 07/02/2020

EFT's: 1339-1340
Total all funds: $13,024.58

Transfers #: 7022001-7022005
Total all funds: $326,262.72

Warrant #: 207753-207845
Total all funds: $316,146.78

Payroll

Check Date: 07/02/2020

Payroll Checks
Warrant #: 242627-242672
Direct Deposit #: 154027-154626
Total all funds: $2,391,938.57

Payroll Deductions/Transfers
Taxes #: 101200701-101200711
ACH #: 1341-1347
Total all funds: $2,370,116.90

Payroll Deductions/Warrants
Warrant #: 207745-207752
Total all funds: $131,983.73

Tort Claim

CC 2020-14: Received on July 9, 2020 from Jeffrey Allen Roberts

Resolutions

2020-440: Line Item Transfer, Fund No. 0129-101, Dept. 000
2020-441: Line Item Transfer, Fund No. 0000-101, Dept. 103
2020-442: Increasing 5 Cash Drawers; Amending Resolution 2013-222
2020-443: Contract Renewal & Addendum w/LexisNexis for External Hard Drive Prison Solutions for Case Law & Revised Codes of WA State
2020-444: Purchase of Weapons, Air Tasers & Electronic Incapacitation Devices from Axon Enterprises
2020-445: Contract w/Tower Plaza Cleaners & Laundromat for Dry Cleaning & Laundry Services
2020-446: Contract w/Columbia Cleaners for Dry Cleaning & Laundry Services
2020-447: Second Contract Amendment w/Summit Food Service for Inmate Population Meal
2020-448: Agreement w/Entrust Community Services for Employment Services
2020-449: Agreement w/The Arc of Tri-Cities for Spanish Outreach Staffing
2020-450: Agreement w/The Arc of Tri-Cities for Special Olympics Staffing & Supplies
2020-451: Line Item Transfer, Fund No. 0108-101, Dept. 560
2020-452: Award & Contract w/Lutheran Community Services Northwest for Functional Family Therapy
2020-453: Contract w/Intermountain West Insulation & Garage Doors for the Badger Mountain Westgate Trail Head Maintenance Building Insulation Project

2020-454: Contract w/Cliff Thorn Construction for the Annex Restroom Renovation Project
2020-455: Accepting Work Performed by Boyd's Tree Service for 2019 Brush Cutting Area
2020-456: Accepting Work Performed by Banlin Construction for Public Services Building Project
2020-457: Accepting Work Performed by Banlin Construction for Justice Center Restroom Renovation
2020-458: Contract w/Stripe Rite for 2020 Pavement Marking
2020-459: Purchase of 100 Grader Blade Cutting Edges From Pape Machinery
2020-460: Line Item Transfer, Fund No. 0101-101, Dept. No. 500
2020-461: Adopting Legislation to Authorize a Sales and Use Tax for Affordable and Supportive Housing in Accordance with RCW 82.14.540 Establishing the Affordable and Supportive Housing Fund, Fund Number 0159-101
2020-462: Approving the Amendment of the 2020-2025 Six-Year Road Program to Include the 2017 Roadside Improvement Project
2020-463: Preliminary Plat Approval - SUB 2020-001 - Grace Estates
2020-464: Preliminary Plat Approval – SUB 2020-002 - Orchard View
2020-465: Preliminary Plat Approval - SUB 2020-003 - Shaw Vineyard Estates
2020-466: Approval of Standard Service Agreement Between Benton County and The Tri-City Development Council for Assistance with Implementing Benton County's Coronavirus Aid, Relief, and Economic Security Act Community Support Grant Program
2020-467: Ratifying First Amendment to DSHS Agreement Number 1963-58964 Between the Developmental Disabilities Administration within Department of Social and Health Services and Benton County Department Of Human Services
2020-468: Approving Amendment No 1 to the 2018 Second Amended and Restated Interlocal Agreement for Benton County Emergency Services for the Purpose of Funding an Additional Communications Site
2020-469: Interlocal Joint Purchasing Agreement and Memorandum of Understanding Between Benton Fire District No 2 and Benton County for Shallow Water Rescue Boat

There being no further business before the Board, the meeting adjourned at approximately 11:00 a.m.

_____ _____

Clerk of the Board Chairman

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

cc: B. Chilton; Auditor; File

C. Brown

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Animal Control Dept Nbr: 137

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
554.301	3201	Vehicle Fuel	$500
TOTAL			$500

TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
554.301	3503	Computer Software	$500
TOTAL			$500

Explanation:

Creat Line Item 0000101.137.00000.554.301.3503 to appropriate funding in computer software for ArcGIS Online Field Worker Account.

Prepared by: Carin Brown Date: 7/15/20

Approved ☐ Denied ☐ Date: _____

_____
Chairman

_____
Member

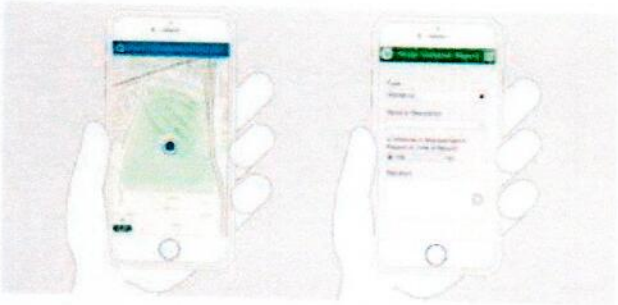
_____
Member

ArcGIS Online FIELD WORKER ACCOUNT

WHAT IT IS:

A membership to ArcGIS Online that allows you to collect and view data right in the field and anywhere else you may need it

ArcGIS Online allows data to be viewed and shared across many platforms and many people



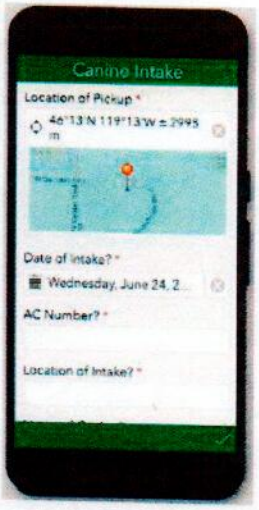
WHAT YOU GET:

- ✓ **Field access to the Canine Intake map**
- ✓ **Directly input your data into the map**
- ✓ **Export collected data for additional use**
- ✓ **Customizable to your needs**
- ✓ **View and add data anytime, anywhere**

WHAT IT COSTS:

$350/year to maintain license which includes Field Worker Account and access to ArcGIS Online

The GIS Department will provide all technical support for the service



HOW IT WILL HELP:

Data collection in one spot, on your phone, with or without Wi-Fi

Replaces need for paper tracking

Can add and share data and review map instantly

No more need for monthly updates and replication of data

Increased communication between departments

Add an image of the dog while inputting data

Can keep data private or share publicly if needed

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	One-time Payment to City of Kennewick for Metro Contribution
Presenter:	N/A
Prepared By:	Matt Rasmussen
Reviewed By:	Jerrod MacPherson

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

Benton County has historically participated in the region wide Metro program along with Franklin County and the major cities. Starting in 2018 the grants that traditionally provided the majority of Metro funding began to dry up resulting in a shortfall in the metro budget. Benton and Franklin Counties agreed to help cover said shortfall through June of 2019. Since then the metro program has continued operating while a new agreement was worked out to address on-going budget shortfalls.

Benton County has received 4 invoices from the City of Kennewick, the administrative agency for metro, since the previous arrangement ended in June 2019. Two of those invoices have been paid but the other two were placed on hold pending extension of the agreement. The open invoices are numbers 014239 and 014382 totaling $56,250. A new agreement is nearly complete however it appears to be in the best interest of the County to pay the open invoices separate of that agreement.

Fiscal Impact

Amount: **$56,250**

Fund: **Public Safety Sales Tax**

Recommendation

Staff recommends that the Board approve payment of the two invoices.

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A ONE-TIME PAYMENT TO THE CITY OF KENNEWICK FOR THE BENTON COUNTY CONTRIBUTION TO THE METROPOLITAN CONTROLLED SUBSTANCE ENFORCEMENT GROUP (METRO) USING PUBLIC SAFETY SALES TAX FUNDS

WHEREAS, for several decades Benton and Franklin County along with their respective cities have been cooperating to combat violations of controlled substance laws under various informal and formal agreements the most recent of which was authorized by Benton County Resolution 2017-398; and

WHEREAS, historically the Metro program has been primarily funded by grants including the Byrne JAG Grant and the High Intensity Drug Trafficking Area (HIDTA) grant along with contributions from the Drug Enforcement Administration (DEA); and

WHEREAS, in 2018 the HIDTA grant program stopped and the Byrne JAG Grant began to fluctuate in amount and timing of funding resulting in shortfalls in the Metro program; and

WHEREAS, in order to ensure the program could continue Benton County entered into an amendment to the 2017 Metro agreement under Resolution 2018-218 to address the funding shortfall with additional contributions from the Counties using Public Safety Sales Tax funds; and

WHEREAS the amendment only addressed funding shortfalls through June of 2019 and the Counties and Cities have been working on another agreement to address the on-going shortfalls; and

WHEREAS the Metro program has been incurring costs since July 2019 but Benton County has not been paying into the program since the agreement outlining the County's contribution had expired; and

WHEREAS, it seems reasonable to continue the contribution agreed upon under Resolution 2018-218 through the end of the 2020 Metro Budget Cycle and a new agreement is expected to be effective July 1, 2020 to address shortfalls going forward; and

WHEREAS, costs for the Metro program appear to be a legitimate use of Public Safety Sales Tax funds and the Board of County Commissioners desire to ensure the Metro program has adequate funding.

NOW, THEREFORE, BE IT RESOLVED that the Board of Benton County Commissioners hereby authorize a one-time payment of $56,250 to the City of Kennewick for the Benton County contribution to the Metro program covering the 3rd and 4th quarters of the 2020 Metro Budget Cycle utilizing Public Safety Sales Tax funds.

Dated this _____ day of _____ 2020.

Chairman of the Board

Chairman Pro Tem

Attest……
Clerk of the Board

Member

Constituting the Board of County Commissioners of Benton County, Washington

cc: Commissioners M. Rasmussen

CITY OF KENNEWICK
P.O. BOX 6108
KENNEWICK, WA 99336-0108
(509) 585-4264
(509) 585-4383 FAX
http://www.ci.kennewick.wa.us

INVOICE 014239

DATE	**01/09/2020**
ACCOUNT	**3156**
AMT DUE	**28,125.00**

<<< DUPLICATE INVOICE >>>

BENTON COUNTY
ATTN: SHON SMALL
PO BOX 190
PROSSER, WA 99350

AMOUNT PAID _____

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

CITY OF KENNEWICK

DESCRIPTION	AMOUNT
Metro Contribution 3rd Quarter of FY 2020 Metro Contribution Amount Due 28,125.00	28,125.00
Total Amount Due:	28,125.00

ACCOUNT NO. 3156 PAYABLE UPON RECEIPT 28,125.00

Please Remit to: CITY OF KENNEWICK
P.O. BOX 6108
KENNEWICK, WA 99336-0108
(509) 585-4264

rcvd 4·27·20 Comm's

CITY OF KENNEWICK
P.O. BOX 6108
KENNEWICK, WA 99336-0108
(509) 585-4264
(509) 585-4383 FAX
http://www.ci.kennewick.wa.us

INVOICE

014382

DATE	**04/22/2020**
ACCOUNT	**3156**
AMT DUE	**28,125.00**

BENTON COUNTY
ATTN: SHON SMALL
PO BOX 190
PROSSER, WA 99350

AMOUNT PAID _____

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Please Remit to: CITY OF KENNEWICK
P.O. BOX 6108
KENNEWICK, WA 99336-0108
(509) 585-4264

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING CONTRACT #E21-008 BETWEEN BENTON COUNTY AND WASHINGTON STATE MILITARY DEPARTMENT FOR E911

WHEREAS, in order for Benton County to be reimbursed for certain approved incurred eligible expenses as described in WAC 118-66-050 and E911 policies, Benton County must enter into a contract with the Washington State Military Department; and

WHEREAS, Benton County Emergency Services recommends entering into Contract #E21-008 with the Washington State Military Department for reimbursement of those approved incurred eligible expenses, as described in WAC 118-66-050 and the E911 policies, that are necessary to operate Enhanced 911 countywide; **NOW THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby approves the attached Contract #E21-008 between Benton County and the Washington State Military Department for reimbursement of those approved incurred eligible expenses, as described in WAC 118-66-050 and the E911 policies, that are necessary to operate Enhanced 911 countywide; and

BE IT FURTHER RESOLVED Washington State Military Department shall reimburse Benton County with a total reimbursement amount not to exceed $50,184 as stated in the attached contract; and

BE IT FURTHER RESOLVED the attached contract commences July 1, 2020 and expires August 15, 2021.

Dated this.....day of....., 2020

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest……
Clerk of the Board

SECO COUNTY Coordinator Professional Development (CPD) Contract SFY2021

CONTRACT FACE SHEET

1. Contractor Name and Address: **Benton County Agency (COUNTY)** **Post Office Box 190** **Prosser, Washington 99350**	2. Contract Amount: **$ 50,184**	3. Contract Number **E21-008**
4. Contractor's Contact Person, phone number: **Kim Lettrick/509.942.8595** **k.lettrick@bces.wa.gov**	5. Contract Start Date **July 1, 2020**	6. Contract End Date **August 15, 2021**
7. MD Program Manager/phone number: **Teresa Lewis / 253.512.7481** **teresa.lewis@mil.wa.gov**	8. Data Universal Numbering System (DUNS #): **945671287**	9. UBI # (state revenue): **035-000-971**

10. Funding Authority: **Washington State Military Department** and **State Enhanced 911 Funds**

11. Funding Source Agreement #: **RCW 38.52.510, .540, .545** **WAC Chapter 118-66**	12. Program Index# & Obj/SubObj: **7928A, 79281 and 79283 NZ**	13. CFDA # & Title: **NA**	14. TIN or SSN: **91-6015119**

15. Service Districts: (BY LEGISLATIVE DIST): **8th & 16th** (BY CONGRESSIONAL DIST): **4th**	16. Service Area by County(ies): **Benton**	17. Women/Minority-Owned, State Certified? ☒ N/A ☐ NO ☐ YES, OMWBE #

18. Contract Classification: ☐ Personal Services ☐ Client Services ☒ Public/Local Gov't ☐ Collaborative Research ☐ A/E ☐ Other	19. Contract Type (check all that apply): ☒ Contract ☐ Grant ☐ Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency
20. Contractor Selection Process: ☒ "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Advertised? ☐ YES ☒ NO	21. Contractor Type (check all that apply): ☐ Private Organization/Individual ☐ For-Profit ☒ Public Organization/Jurisdiction ☒ Non-Profit ☐ VENDOR ☐ SUBRECIPIENT ☒ OTHER

22. BRIEF DESCRIPTION:

This is a reimbursement contract per WAC 118-66-050 and the Washington State Military Department (DEPARTMENT) State E911 Coordination Office (SECO) policies, which are incorporated by reference. Reimbursements amounts are detailed in the attached Budget Sheet (Attachment E).

IN WITNESS THEREOF, the DEPARTMENT and COUNTY (Parties) have executed this Contract on the day and year last specified below. This Contract Face Sheet, Special Terms and Conditions (Attachment A), General Terms & Conditions (Attachment B), Statement of Work (Attachment C), SECO Contract Reimbursement Schedule (Attachment D), and the Budget Sheet (Attachment E), govern the rights and obligations of the Parties to this Contract.

In the event of an inconsistency in this contract, unless otherwise provided, the inconsistency shall be resolved by giving precedence in the following order:

(a) Applicable State Statutes and Regulations
(b) Statement of Work
(c) Special Terms and Conditions
(d) General Terms and Conditions, and
(e) any other provisions of the contract incorporated by reference.

This contract contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the Parties.

WHEREAS, the Parties have executed this contract on the day and year last specified below.

FOR THE DEPARTMENT:

_____

Signature Date

Regan Anne Hesse, Chief Financial Officer
Washington State Military Department

FOR THE COUNTY:

_____

Signature Date

James Beaver, Chair
Benton County Board of Commissioners

SPECIAL TERMS AND CONDITIONS

I. INTRODUCTION:

The DEPARTMENT, through the SECO, coordinates and facilitates the implementation and operation of 911 emergency communications throughout the state. It is authorized to enter into agreements for statewide services and to reimburse COUNTY for eligible expenses from appropriated excise tax revenue retained in the state E911 account.

II. KEY PERSONNEL:

The individuals listed below shall be considered Key Personnel; however, either party may designate a substitute by advance written notification to the other party.

COUNTY:		DEPARTMENT:	
Name:	Kim Lettrick	**Name:**	Teresa Lewis
Title:	Communications Manager	**Title:**	SECO E911 County Assistance Program Manager
E-Mail:	k.lettrick@bces.wa.gov	**E-Mail:**	teresa.lewis@mil.wa.gov
Phone:	509.942.8595	**Phone:**	253.512.7481

III. ADMINISTRATIVE REQUIREMENTS:

The Parties shall use the following to determine allowable cost principles: State Office of Financial Management (OFM) Regulations-State Administrative and Accounting Manual (SAAM) and the Local Government Budget and Accounting Reporting System (BARS).

IV. ELIGIBLE EXPENSES AND PRIORITIES ESTABLISHED BY THE LEGISLATURE:

Priorities for expenditure of state E911 funds have been established by both the state legislature and the DEPARTMENT:

A. RCW 38.52.540(1) provides that funds from the state E911 account should be "used only to support the statewide coordination and management of the enhanced 911 system, for the implementation of wireless enhanced 911 statewide, for the modernization of enhanced 911 emergency communications systems statewide, and to help supplement, within available funds, the operational costs of the system, including adequate funding of counties to enable implementation of wireless enhanced 911 service and reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 911 service pursuant to negotiated contracts between the counties or their agents and the radio communications service companies";

B. RCW 38.52.540(3) provides that the State E911 Coordinator is "authorized to enter into statewide agreements to improve the efficiency of enhanced 911 services for all counties and shall specify by rule the additional purposes for which moneys, if available, may be expended from this account";

C. RCW 38.52.545 provides that "In specifying rules defining the purposes for which available state enhanced 911 may be expended, the state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, must consider base needs of individual counties for specific assistance. Priorities for available enhanced 911 funding are as follows: (1) To assure that 911 dialing is operational statewide; (2) To assist counties as necessary to assure that they can achieve a basic service level for 911 operations; and (3) To assist counties as practicable to acquire items of a capital nature appropriate to modernize 911 systems and increase 911 effectiveness";

D. WAC 118-66-020 reiterates the E911 funding purposes and priorities established by the legislature;

E. WAC 118-66-040 describes COUNTY eligibility for funding; and

F. WAC 118-66-050 lists expenses that "may be eligible for reimbursement based on a reasonable prioritization by the state E911 coordinator" and "in accordance with the purposes and priorities established by statute and regulation".

V. THE PARTIES AGREE THAT THE FOLLOWING ELIGIBLE EXPENSES AND PRIORITIES ARE ESTABLISHED IN CONTRACT:

A. Consistent with the statutes and regulations cited, this contract allows reimbursement solely for certain approved eligible expenses described in WAC 118-66-050 incurred by the COUNTY, in support of 911 calls originating in the county, including eligible expenses in the following prioritization: (1) 911 statewide dialing, (2) 911 basic service, and (3) capital items. This contract includes Statewide Services that benefit all counties and do not require local revenue to be expended prior to reimbursement through county contracts. Statewide services reimbursed through this contract include:

1. Coordinator Professional Development (CPD), including travel expenses for attending the following: Advisory Committee meetings, Advisory Committee Subcommittee meetings, two Coordinator Forums, the APCO State Conference, State Supported training, and National Conference attendance;
2. Reimbursement of selected Public Education expenses, selected 911 Salaries, benefits and training;
3. 911 Call Receiver training; pre-approved NG911 modernization expenses and interpretative services;
4. Connection to the Emergency Services Internet Protocol Network (ESINet).
   a. Payment for ESINet services and the originating network trunking, are contingent upon available funding, only for eligible approved expenses identified in RCW 38.52.545 and WAC 118-66-050.
   b. To receive ESINet services, the county must enter into, and require all staff for all PSAPs operated within the county, a non-disclosure agreement with SECO for confidential information.
   c. In the advent of the unavailability or loss of state funding, responsibility for the continued operation of the statewide 911 network, and all related costs, including the ESINet, will be transferred to the individual counties, on a pro rata basis

B. Expenses.

1. General Reimbursement Requirements for COUNTY:
   a. Contingent upon funding availability, reimbursement will be made only for eligible approved expenses identified in RCW 38.52.545 and WAC 118-66-050;
   b. Approved eligible expenses will be reimbursed at amounts not to exceed limits established in SECO Policy, see Section VII D of this contract;
   c. In the event, funding will not cover all contract eligible amounts, individual line items will be funded in full or not at all;
   d. Funding is for use in the primary Public Safety Answering Points (PSAP) only, unless otherwise specified in applicable DEPARTMENT policy, see Section VII D of this contract;

2. Ineligible Items:
   Expenses not listed in WAC 118-66-050(1), (2) and/or (3), and not directly associated with the operation of the 911 System are not eligible for state financial assistance or reimbursement under this contract.

3. Expense Documentation and Approval:
   a. COUNTY must submit documentation of eligible expenses to the DEPARTMENT; including identification of vendor, warrant number, date, and applicable 911 eligible expense categorization as set out in Section VII E below;
   b. COUNTY must submit eligible Monthly Expense Reports and/or requests for reimbursement, so they are received by the DEPARTMENT by the last day following the month in which payment was made, including additional hard copy documentation required by an "Action Plan" due to audit findings;
   c. Expenses contained in Monthly Expense Reports not submitted by the last day following payment, including additional hard copy documentation as required by "Action Plans", will not be reimbursed;
   d. Monthly Expense Reports will be processed in the order received by the DEPARTMENT;

e. The DEPARTMENT may request additional documentation and/or information from COUNTY pertaining to reimbursement requests, and any delay in providing the requested information may result in delay in reimbursement or reduced reimbursement;
f. All approved training expenses must be submitted as a whole after the training with the exception of conference registration fee, which may be submitted for reimbursement in advance.
g. Training expenses are exempt from the 30-day submittal requirement but must be submitted for reimbursement within 90 days of the actual training.
h. Prior to purchasing or leasing any equipment or software, the COUNTY must submit a written quote to the DEPARTMENT for review and approval. Without prior written approval, the purchase or lease will not be eligible for reimbursement by the DEPARTMENT.

VI. PERFORMANCE PERIOD AND PAYMENT:

Payment by the DEPARTMENT to the COUNTY shall only be made as reimbursement for eligible expenses approved by the DEPARTMENT and incurred between **July 1, 2020** and **June 30, 2021** which is also known as the performance period. Work started prior to July 1, 2020 and/or not complete by June 30, 2021 will be considered outside the performance period and therefore not eligible for reimbursement. The COUNTY shall not request payment in anticipation of expenditures not yet incurred.

VII. THE COUNTY AGREES TO:

A. **Local Funding:** The COUNTY warrants that it has authorized collection of the local E911 excise tax authorized under RCW 82.14B.030(1), RCW 82.14B.030(2) and/or RCW 82.14B.030(3) and that these funds are being used for wireline and/or wireless eligible expenses listed in WAC 118-66 to operate the E911 system in the county. Consistent with RCW 38.52.540(2), the COUNTY will not request, receive or expend funds under this contract for wireline and wireless eligible expenses if it has not imposed the maximum county E911 tax allowed under RCW 82.14B.030(1) for switched access lines, and will not request, receive or expend funds under this contract for wireless eligible expenses if it has not imposed the maximum county E911 tax allowed under RCW 82.14B.030(2) for radio access lines.

B. **Use of Funding:** The COUNTY warrants that the funds provided by the DEPARTMENT as described in the Budget Sheet (Attachment E), shall be used by the COUNTY solely for reimbursement of those approved incurred eligible expenses as described in WAC 118-66-050 and the SECO policies incorporated herein that are necessary to operate E911 countywide. Reimbursement shall be made consistent with SECO policies, as set out in Section VII D of this contract, for approved expenses described in WAC 118-66 that are incurred between **July 1, 2020** and **June 30, 2021**.

C. **Consolidation:** If the COUNTY receives funds under this contract in support of a consolidated Primary Public Safety Answering Point (PSAP), the COUNTY warrants to maintain and operate the consolidated PSAP for three (3) years from the date of the consolidation and thereafter for the life of this contract. Failure to comply with this requirement requires the COUNTY to repay all funds and will result in a recapture of funds as provided in the General Terms and Conditions. For purposes of this contract, a consolidated PSAP is one operated by or on behalf of a county as the primary PSAP for all operations of 911 call-taking and call transfer activities in that county. The consolidated PSAP may also be engaged in, pursuant to interlocal agreement, the dispatching of public safety resources serving several jurisdictions. A primary PSAP is one that initially answers all 911 calls within the county.

D. **SECO Policies:** The COUNTY agrees to abide by all of the following SECO Policies, as written and/or amended, available at SECO Policies Link and incorporated by reference:

- SECO County Contract Policy (PDF)
- SECO Public Education Policy (PDF)
- SECO Statewide Services Support Policy (PDF)
- SECO Salaries and Benefits Summary (PDF)

E. **Reimbursement Requests and Reporting Requirements:** Not more often than monthly, the COUNTY shall submit invoice vouchers (Form A-19) to the DEPARTMENT requesting reimbursement for expenses. The COUNTY agrees to use forms and/or systems provided by the DEPARTMENT for necessary reports.

In addition to any reports as may be required elsewhere in this contract, the COUNTY shall prepare and submit the following reports to the DEPARTMENT's Key Personnel:

Financial Reports	#/Copies	Completion Date
Monthly Expense Reports	**1**	**No later than the last day following the end of the month**
Local Travel Policy/Procedures	**1**	**30 days after signatures on this contract and then annually.**
3rd Quarter Review	**1**	**March 31, of each year**
Training Certification(s)	**1**	**June 30, of each year**
Final Reimbursement Request	**1**	**July 31, 2021**

All contract work must not start prior to July 1, 2020 and must be delivered, installed/completed and accepted by June 30, 2021; although certain reports may be submitted by July 31, 2021 as described above. Final billing not received by July 31, 2021, may not be processed.

F. **Attendance Obligations:** The COUNTY agrees to send the designated County 911 personnel to the following events:

- Advisory Committee Meetings: The COUNTY agrees to send the 911 County Coordinator or designee to as many of the Advisory Committee meetings as possible each year, but no less than three-quarters of the scheduled Advisory Committee meetings per contract period; and
- Coordinator Forums & APCO State Conference: The COUNTY agrees to send the 911 County Coordinator or designee and additional appropriate 911 representatives to the Spring and Summer Coordinators Forum and to the Fall APCO State Conference of each contract period; and
- Public Education Training: The COUNTY agrees to send the 911 Public Education Coordinator or appropriate 911 representative to attend the Public Education Forum or a public education class per contract period and participate in half of the scheduled Public Education Subcommittee meetings; and
- Training Coordinator Training: The COUNTY agrees to send the 911 Training Coordinator or appropriate 911 representative to attend the Training Forum or a training class per contract period and participate in half of the scheduled Training Subcommittee meetings, in accordance with the Statement of Work (Attachment C).

G. **Reallocation of Funds:** The COUNTY is allowed to reallocate funds within the coordinator professional development category as needed. Budget categories are as specified or defined on the budget sheet of the contract. Any changes to budget categories other than in compliance with this paragraph will not be reimbursed.

H. **Compliance with Law:** The COUNTY will comply with all state and federal laws applicable to counties.

VIII. CONDITIONED UPON COUNTYS FULFILLMENT OF ITS CONTRACT ABOVE THE MILITARY DEPARTMENT AGREES TO THE FOLLOWING:

A. Within thirty (30) days of receipt and approval of signed, dated invoice vouchers (state form A-19), satisfactory completion of tasks, and documentation of costs, reimburse the COUNTY up to the maximum of **$50,184**, or actual cost, whichever is lower, pursuant to the schedule set out in the SECO Contract Reimbursement Schedule (Attachment D) and as authorized by this Contract and WAC 118-66.

B. If a question arises about the requested reimbursement, the COUNTY will be notified via e-mail and/or telephone call and will have five (5) working days to provide the requested information. If information satisfactory to the DEPARTMENT has not been provided within that time, the expense in question will be subtracted and the balance of approved eligible incurred expenses will be processed for reimbursement.

C. Within available funds, to provide ESINet services to the COUNTY.

GENERAL TERMS & CONDITIONS

1) **DEFINITIONS:** As used throughout this contract the following terms shall have the meanings set forth below:
   a. "**DEPARTMENT**" shall mean the Washington State Military DEPARTMENT (WMD), or any of the officers or other officers lawfully representing that DEPARTMENT and includes the State E911 Coordination Office (SECO).
   b. "**COUNTY**" shall mean the named county performing services under this contract or grant. It shall include any subcontractor retained by the COUNTY as permitted under the terms of this contract.
   c. "**Subcontractor**" shall mean one, not in the employment of the COUNTY, who is performing all or part of those services under this contract under a separate contract with the COUNTY. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
   d. **"PSAP"** means Public Safety Answering Point as defined in WAC 118-66.
   e. "**WAC**" is defined and used herein to mean the Washington Administrative Code.
   f. "**RCW**" is defined and used herein to mean the Revised Code of Washington.
2) **ACCESS TO PUBLIC RECORDS:**
   a. The Parties acknowledge that the DEPARTMENT is subject to the Public Records Act, Chapter 42.56 RCW, and that records prepared, owned, used or retained by the DEPARTMENT relating to the conduct of government or the performance of any governmental or proprietary function are available for public inspection or copying, except as exempt under RCW 42.56 or other statute which exempts or prohibits disclosure of specific information or records.
   b. The COUNTY shall provide access to data generated under this Contract to the DEPARTMENT and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the COUNTY's reports, including computer models and methodology for those models.
   c. Access to Data - State law prohibits state agencies from entering into agreements when the contractor could charge additional costs to the agency, the Joint Legislative Audit and Review Committee, or the Office of the State Auditor for access to data generated under the Contract, thus all such data will be provided at no additional expense. For the purposes of this requirement, "data" includes all information that supports the findings, conclusions and recommendations of the contractor's reports, including computer models and methodology for those models.
3) **ADVANCE PAYMENTS PROHIBITED**: No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the DEPARTMENT.
4) **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336,** 42 U.S.C. 12101 et seq. (also referred to as the "ADA") and its implementing regulations at 28 CFR Part 35. The COUNTY must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.
5) **ATTORNEY'S FEES:** Except as provided in the section entitled "Recapture Provisions", in the event of litigation or other action brought to enforce the terms of this Contract or alternate dispute resolution process, each party agrees to bear its own attorney's fees and costs.
6) **COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES**: The COUNTY shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the ADA; Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (e.g., Federal Acquisition Regulation 48 CFR Sec. 52.203-5); Public Disclosure (RCW 42.56); and safety and health regulations. In the event of the COUNTY's noncompliance or refusal to comply with any applicable law, regulation, executive order or policy, the DEPARTMENT may rescind, cancel, or terminate the Contract in whole or in part in its sole discretion. The COUNTY is responsible for all costs or liability arising from its failure to comply with applicable law, regulation, executive order or policy.
7) **CONTRACT MODIFICATIONS:** The Parties may, from time to time, request changes to the Contract. All mutually agreed changes shall be incorporated by written amendment. No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties, and any oral understanding or agreements shall not be binding. It is mutually agreed and understood that the

COUNTY is allowed to reallocate funds within the coordinator professional development section as needed.

8) **COUNTY NOT EMPLOYEE OF DEPARTMENT:** The COUNTY, and/or employees, sub-contractors or agents performing under this Contract, are not employees or agents of the DEPARTMENT in any manner whatsoever. The COUNTY will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington for any reason , nor will the COUNTY make any claim, demand, or application to or for any right, privilege or benefit applicable to an officer or employee of the DEPARTMENT or of the State of Washington, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under RCW 41.06. It is understood that if the COUNTY is another state agency, the officers and employees are employed by the State of Washington in their own right.

9) **DISCLOSURE:** The use or disclosure by any Party of any information concerning the DEPARTMENT, or its ESINet provider, for any purpose not directly connected with the administration of the DEPARTMENT's or the COUNTY's responsibilities with respect to services provided under this Contract is prohibited except by prior written consent of the DEPARTMENT or as required to comply with, RCW 42.56, the Public Records Act or court order. Disclosure of any information concerning the ESINet is controlled by the Non-Disclosure Agreement between the Parties.

10) **DISPUTES:** Except as otherwise provided in this Contract, when a bona fide dispute arises between the Parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The Parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the COUNTY, and a third party mutually agreed upon by both Parties. The team shall, by majority vote, resolve the dispute. The Parties agree that this dispute process shall be final and there will be no appeal of the decision.

11) **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Contract, venue shall be proper only in Thurston County. The COUNTY, by execution of this Contract, acknowledges the jurisdiction of the courts of Washington in this matter.

12) **HOLD HARMLESS:** The COUNTY agrees to defend, hold harmless, and indemnify the State of Washington and the DEPARTMENT, their officers, agents, employees, and assigns against any and all damages or claims from damages resulting or allegedly resulting from the COUNTY's performance or activities hereunder and that of any sub-contractor hired by the COUNTY.

13) **INSURANCE, INDUSTRIAL COVERAGE:** Prior to performing work under this contract, the COUNTY shall provide industrial insurance coverage for the COUNTY's employees, as may be required by Title 51 RCW. The DEPARTMENT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for a consultant or any subcontractor or employee of the COUNTY, which may arise during the performance of services under this contract. Before the start of any work required by this Contract, the COUNTY shall deliver to the DEPARTMENT certificates of insurance reflecting that the COUNTY has obtained all the insurance coverage required by this section.

14) **INSURANCE, GENERAL COVERAGE:** The DEPARTMENT and its officers, employees, and agents, while acting in good faith within the scope of their official duties, are covered by the State of Washington Self-Insurance Program and the Tort Claims Act (RCW 4.92.060 et seq.), and successful claims against the DEPARTMENT and its employees, officers, and agents in the performance of their official duties in good faith under this Contract will be paid from the tort claims liability account as provided in RCW 4.92.130. COUNTY hereby notifies the DEPARTMENT that as a County Government of the State of Washington and in accordance with Washington law, COUNTY has full loss coverage for itself, its officers, employees and agents, through self-insurance and/or the purchase of insurance. Upon the DEPARTMENT's request, COUNTY will provide the DEPARTMENT with details of its self-insured retention, proof of its additional insurance, and all loss coverage. This program of self-insurance and/or purchased insurance includes general liability, automobile liability, workers compensation and employers' liability.

15) **LEGAL RELATIONS:** To the extent permitted by applicable law, each party to this contract shall be responsible for injury or death to persons and damage to property resulting from negligence on the part of itself, its employees, agents, officers, contractors or subcontractors. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any third party.

16) **LIABILITY:** To the extent permitted by applicable law, each party to this contract shall be responsible for injury or death to persons and damage to property resulting from negligence on the part of itself, its employees, agents, officers, contractors or subcontractors. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any third party.

17) **LIMITATION OF AUTHORITY:** Only the assigned Authorized Signature for the DEPARTMENT or an assigned delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the authorized person.

18) **LOSS OF FUNDING:** In the event funding from state or federal sources is withdrawn, reduced, or limited in any way after the effective date of the Contract, the DEPARTMENT may suspend or terminate or renegotiate the Contract without cause under the "Termination" clause and without the thirty (30) day notice requirement.

19) **NONASSIGNABILITY:** Neither this Contract, nor any claim arising under this Contract, nor the work to be provided under this Contract, and any claim arising thereunder, shall be assigned or delegated by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

20) **NONDISCRIMINATION:** During the performance of this contract, the COUNTY shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

a. Nondiscrimination in Employment: The COUNTY shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or disabled veteran's status, or the presence of any sensory, mental, or physical handicap.

   This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

b. The COUNTY shall take action to ensure that employees are employed and treated during employment without discrimination because of their race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or disabled veteran's status, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment selection for training, including apprenticeships and volunteers.

21) **RECAPTURE PROVISION:** In the event the COUNTY fails to expend funds under this Contract in accordance with applicable federal, state, and local laws and/or the provisions of the contract, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Contract termination. Repayment by the COUNTY of funds under this recapture provision shall occur within thirty (30) days of demand.

In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs thereof, including attorney fees from the Contractor.

22) **RECORDS, MONITORING AND AUDIT ACCESS:**

a. The COUNTY shall perform under the terms of the Contract and the DEPARTMENT may conduct reasonable and necessary monitoring of the COUNTY's performance.

b. To permit such monitoring, the COUNTY shall maintain books, records, documents, and other evidence and accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the DEPARTMENT, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or agreement.

c. The COUNTY will retain all books, records, documents, and other materials relevant to this Contract for six (6) years from the date final payment is made hereunder and make them available for inspection by persons authorized under this provision.

d. The DEPARTMENT or the State Auditor or any of their representatives and federal officials so authorized by law, rule, regulation, or agreement shall have full access to and the right to examine during normal business hours and as often as the DEPARTMENT or the State Auditor may deem necessary, all of the COUNTY's records with respect to all matters covered in this Contract. Such rights last for six (6) years from the date final payment is made hereunder.
e. The COUNTY shall cooperate with and freely participate in any monitoring, audit or evaluation activities conducted by the DEPARTMENT that are pertinent to the intent of this Contract.

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

24) **SUB-CONTRACTING:** The COUNTY shall comply with all applicable procurement laws, rules and requirements. This will include the use of a competitive procurement process in the award of any contracts with its contractors and sub-contractors that are entered into under this Contract. All contracting and sub-contracting agreements entered into pursuant to this contract shall incorporate this contract by reference.

25) **TERMINATION:**

a. If, through any cause, the COUNTY or its contractors or sub-contractors shall fail to fulfill in a timely and proper manner its obligations under this Contract or if the COUNTY or its contractors or sub-contractors shall violate any of its covenants, agreements, or stipulations of this Contract, the DEPARTMENT shall there upon

   have the right to terminate this Contract and withhold the remaining allocation if such default or violation is not corrected within thirty (30) days after submitting written notice to the COUNTY describing such default or violation.
b. Notwithstanding any provisions of this Contract, either party may terminate this Contract without cause by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date. If this Contract is so terminated, the DEPARTMENT shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Upon notice of such termination, the DEPARTMENT reserves the right to suspend all or part of the Contract, withhold further payments, and prohibit the COUNTY from incurring additional obligations of funds.
c. Reimbursement for eligible expenses incurred by the COUNTY prior to the effective date of such termination shall be as the DEPARTMENT reasonably determines."
d. The DEPARTMENT may unilaterally terminate or suspend all or part of this Contract without cause, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Contract.

26) **TRAVEL AND SUBSISTENCE REIMBURSEMENT:** If reimbursement of travel or subsistence expenses are included as part of this Contract, they shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended. The COUNTY is required to provide to the DEPARTMENT copies of receipts for any travel related expenses other than meals and mileage that are authorized under this Contract.

27) **TREATMENT OF ASSETS:** Upon successful completion of the terms of this contract, all assets, including equipment, purchased through this contract will be owned by the COUNTY unless otherwise specified by the funding source. The COUNTY shall be responsible for any and all operation and maintenance expenses and for the safe operation of said equipment including all questions of liability.

28) **WAIVER OF DEFAULT:** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by the Director or Contracts Administrator and attached to the original Contract.

STATEMENT OF WORK
SECO COUNTY CPD CONTRACT - SFY2021

July 1, 2020 – June 30, 2021

CPD1 County Coordinator

1. Coordinate 911 within the county, act as a designated point of contact for the SECO, monitor the 911 system, and report 911 outages to the SECO.
2. Coordinator or pre-approved/designated alternate attend 75% of Advisory Committee (AC) meetings held per contract period.
3. Coordinator or pre-approved/designated alternate attend two (2) Coordinator Forums and one APCO State Conference per contract period.
4. Cooperate with and freely participate in monitoring or evaluation activities by the SECO and State Auditor.
5. Retain all contract records for six (6) years after contract closure.

CPD 4 MSAG/Mapping/GIS Coordinators

1. Maintain MSAG and ALI, according to Washington NG911 GIS Data Standards.
2. Maintain GIS 911 required layers for geospatial routing and uploading to 911 maps.
3. Participate in all GIS dataset tests recommended by the Advisory Committee and approved by the SECO.
4. Participate in all GIS training recommended by the Advisory Committee and designated as mandatory by the SECO.
5. Each county will maintain and deliver to the state (or designated vendor), as requested, GIS datasets that includes the following data layers (Road Centerline, PSAP polygon, Law Enforcement Emergency Service Zone (ESZ), Fire ESZ, EMD ESZ, and Site Structure Address Points (SSAP)) with no duplicate address points, as required in the Washington NG911 GIS Data Standards, with no critical error fallout (gaps and overlaps, range overlaps in the road centerline), and which have been synchronized to the ALI, at a 98% match rate.

CPD4 IT Coordinator

1. Participate in the selection, installation, and/or maintenance of 911 equipment/software (IE: CPE, CAD, Net Clock, network, network security).
2. Submit certification that the county has provided a minimum of 16 hours of training for their IT personnel related to security and maintenance of equipment that touches the ESINet, during the current contract period.

CPD5 Call Receiver Training

1. Submit certification that all telecommunicators/call receivers have received a minimum of 24-hours of continuing education, during the current contract period.

CPD3 Public Education

1. Attend a 911 Public Education forum or a public education class to enhance job skills.
2. Participate in 50% of any scheduled 911 Public Education Subcommittee meetings. Participation can be in-person, by phone, or participation on a work group/project.
3. Establish an outreach baseline for the 911 public education program in county to measure the program's effectiveness.
4. Utilize messaging consistent with content created by the 911 Public Education Subcommittee.

CPD2/CPD5 Training Coordinator

1. Attend a 911 Training Coordinator Forum or a training class to enhance job skills.
2. Participate in 50% of any scheduled 911 Training Subcommittee meetings. Participation can be in-person, by phone, or participation on a work group/project.

SECO CONTRACT REIMBURSEMENT SCHEDULE

More detailed information regarding reimbursements can be found in the following SECO Policies: SECO County Contract, SECO Public Education, SECO Statewide Services Support, and SECO Salary and Benefits Summary.

Due to 911 modernization initiatives, important time-critical information is shared at meetings. Therefore, it is crucial the 911 County Coordinator or designee attend all meetings, if possible.

Understanding that scheduling conflicts occur, if the 911 County Coordinator is unable to attend a meeting/forum/training and would like to send a representative on their behalf to fulfill contractual obligations, a written request via email must be submitted to the SECO County Assistance Program Manager, prior to attending and incurring expenses.

COORDINATOR PROFESSIONAL DEVELOPMENT (CPD) EXPENSES SECTION
CPD benefits all counties and do not require local revenue to be used prior to state reimbursement. The following are reimbursed through both the BSO and CPD contracts.

ELIGIBLE ITEM		STATE REIMBURSEMENT
CPD1	Meeting Attendance	Advisory Committee (AC) Meetings: Travel reimbursement expenses for the 911 County Coordinator or pe-approved designee to attend all AC meetings. 911 County Coordinator or pre-approved designee must attend 75% of all AC meetings held. Attendees other than AC members, 911 County Coordinator or pre-approved designee will not be reimbursed for travel expenses for attending AC meetings. AC Subcommittee Meetings: Travel reimbursement expenses for all Subcommittee members to attend subcommittee meetings. No more than one county representative per subcommittee, except standing subcommittees as designated in the AC By-Laws. Coordinator Forums: Travel reimbursement expenses for a total of two PSAP/911 employees to attend Spring and Summer Coordinator Forums and a total of three PSAP/911 employees to attend the Fall APCO State Conference. One of the attendees must be the 911 County Coordinator or pre-approved designee. Communications Training Officer (CTO) Workshops: Travel reimbursement expenses for one CTO per county to attend a CTO Workshop per contract period. SECO supported: Travel reimbursement expenses for the 911 County Coordinator and/or a PSAP/911 employee to attend training, meetings, or events the SECO determines to have an overall benefit as designated in writing. 911 County Coordinators may request SECO Supported designation by email to the SECO County Assistance Program Manager.
CPD2	911 County Coordinator Training	The 911 County Coordinator or pre-approved designee and a PSAP/911 employee is authorized up to **$6,000** (per contract period) to attend national NG911 related conferences, trainings, and/or training materials to enhance job skills. For counties with a population of 1.5 million or more the authorized amount for the 911 County Coordinator is doubled for an additional person to attend training **$12,000** (per contract period)

CPD3	911 Public Education	Up to **$5,000** (per contract period) is authorized for expenses directly related to public education training and training materials, for informing the public of the capabilities, limitations, and proper use of 911 and public education materials. *(See: SECO Public Education Policy)*
CPD4	911 Technical Salaries/Benefits and Training	Up to **$13,500** (per contract period) is authorized for salaries/ benefits, training, and training material expenses for the following positions: MSAG, Mapping/GIS, and/or Information Technology Coordinator(s). Backfill salary is not eligible under this line item. Expenses must directly link to the support and maintenance of WAC eligible 911 equipment.
CPD5	911 Call Receiver Training	Total training funds calculated at **$500** (per contract period) per full-time call receiver and training coordinator at the primary PSAP(s) with a cap not to exceed 30 call receivers (or $15,000) per county. These funds are to be used for training and training materials that support the roles and functions of the call receiver and the 911 Training Coordinator. Training maybe internal or external. Funds may also be used for a new hire call receiver salary while in training status up to $2,000 per new hire (this is the only time regular salary can be claimed for call receivers under this line item), 911 Training Coordinator regular salary, overtime, and CTO; and call receivers overtime and backfill while in training status. Regionalized Counties, only the Host County is eligible for this line item.
CPD6	NG911 Modernization	Costs related to modernization of the 911 System as authorized and pre-approved by the State E911 Coordinator. Including, but not limited to, pre-approved software necessary for the MSAG/GIS data synchronization, text to 911 security/authentication fobs (capped at 1 per authorized call taking position), and other pre-approved expenses related to text-to-911 implementation. Should there be additional funds available following the fulfillment of BSO, WSP, and CPD contracts, the SECO may authorize additional funds for each of the 39 counties and the WSP to be used solely for the purpose of NG911 MSAG/GIS Modernization.
CPD7	911 Interpretive Services	Costs incurred for use of interpretive services to facilitate 911 call taking.

BUDGET SHEET
SECO COUNTY CPD CONTRACT– SFY2021
July 1, 2020 – June 30, 2021

	SFY2021
Coordinator Professional Development (CPD)	**$ 50,184**
TOTAL CONTRACT NOT TO EXCEED	**$ 50,184**

SIGNATURE AUTHORIZATION FORM

WASHINGTON STATE MILITARY DEPARTMENT

CAMP MURRAY, WASHINGTON 98430-5122

NEW FORM WILL REPLACE PREVIOUS FORMS

NAME OF ORGANIZATION	DATE SUBMITTED
BENTON COUNTY	6/25/2020
PROJECT DESCRIPTION	**CONTRACT NUMBER**
FY21 SECO County Coordinator Professional Development (CPD) Contract	E21 - 008

1. AUTHORIZING AUTHORITY

SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	James Beaver	Benton County Commissioner Board Chairman

2. AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS

SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	Captain Mike Cobb	BCES Manager/RPD Captain
R. Kim Lettrick	Kim Lettrick	SECOMM Manager

3. AUTHORIZED TO SIGN REQUESTS FOR REIMBURSEMENT (A-19)

SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	Captain Mike Cobb	BCES Manager/RPD Captain
R. Kim Lettrick	Kim Lettrick	Communications Manager

Please complete form with any new contract or any time personnel changes.
Submit one original to State E911 Office

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: 07/21/20220 **Subject: Line Item Transfer Current Expense Fund Number 0000101 Department Number 111** **Prepared by: Ela Selga** **Reviewed by:**	**Execute Contract** **Pass Resolution** X **Pass Ordinance** **Pass Motion** **None**	**Consent Agenda** **X** **Public Hearing** **1st Discussion** **2nd Discussion** **Other**

SUMMARY

Request for Line Item Transfer within Current Expense Fund Number 0000101 Department 111.

BACKGROUND INFORMATION

The District Court Probation department is purchasing printer and $1,000. is being moved from Office Supplies (3101) to Computer Replacement (3508).

RECOMMENDATION

Approve the amendment to the personal service contract.

FISCAL IMPACT

none

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 111

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

cc: Auditor; IT

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: District Court Dept Nbr: 111

Fund Name: Current Fund Nbr: 0000101

TRANSFER FROM: **Dept.** TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.410	3101	Supplies	$1,000	512.410	3508	Computer Replacement	$1,000
TOTAL			$1,000	TOTAL			$1,000

Explanation:

Transfer needed to purchase printer for Probation Department

Prepared by: *Eta Selga* Date: 7/7/20

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Ratify Agreement #PSC-2020-COVID-DAMI-00
Presenter:	
Prepared By:	Mari Clark, DHS Contract Manager
Reviewed By:	Kyle Sullivan, DHS Manager

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

This agreement is to fund delivered lunch and dinner to quarantined individuals at the Riverfront Hotel, while they are being quarantined or isolated because of the COVID-19 outbreak. These meals will be delivered by 11:30am each day to the quarantined individuals, as needed.

Fiscal Impact

Amount: $132,000.00

Fund: Funding for these services described in this Agreement is provided by CARES ACT fund. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget for a grant amount of $132,000.00.

Recommendation

- Sign the Ratified Agreement to Contract Agreement #PSC-2020-COVID-DAMI-00, which has already been executed

Suggested Motion

To ratify the signed Agreement #PSC-2020-COVID-DAMI-00 between DAMI TOO, LLC and Benton County Department of Human Services and to authorize the Chair to sign on behalf of the board.

Kyle Sullivan, Manager
Benton County DHS Manager

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF RATIFYING THE FIRST AMENDMENT TO GRANT AGREEMENT #PSC-2020-COVID-DAMI-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND DAMI TOO, LLC.

WHEREAS, the purpose of this Agreement is to fund delivered lunch and dinner to the 20 hotel rooms to the homeless population or those who have been displaced due to being quarantined or isolated because of the COVID-19 outbreak; and

WHEREAS, on March 17, 2020 the Board of Benton County commissioners declared an emergency in response to the COVID-19 outbreak (Resolution 2020-258) and authorized Departments to enter into contracts and incur obligations in order to combat the emergency; and

WHEREAS, in order to meet required deadlines to fund emergency services, the County Administrator executed the above agreement on June 6, 2020 under authority granted in Resolution 2020-258; and

WHEREAS, the Board should ratify the decision of the County Administrator as their own; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby approves and ratifies the #PSC-2020-COVID-DAMI-00 agreement, between DAMI TOO, LLC and Benton County Department of Human Services for a grant amount of maximum total of $132,000.00 as executed by the Benton County Administrator on June 6, 2020; and,

BE IT FURTHER RESOLVED, that Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments to DAMI TOO, LLC, necessary for the disbursement of the homeless housing funds; and

BE IT FURTHER RESOLVED, the term of the attached agreement commences on the July 1, 2020 and ends on October 31, 2020.

Dated this.....day of ....., 2020

_____
Chair

_____
Member

_____
Member
Constituting the Board of County
Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

MBC 4/15/2020

BENTON COUNTY
PERSONAL SERVICES CONTRACT
#PSC-20/20-DAMI-00

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY DEPARTMENT OF HUMAN SERVICES**, a political subdivision with its principal offices at 7102 w. Okanogan Place, Ste.201, Kennewick, WA 99336 (hereinafter "COUNTY"), and **DAMI TOO, LLC** a corporation organized under the laws of the State of Washington with its principal offices at 2000 Logston Blvd,#122, Richland, WA 99354 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of these Terms and Conditions and the following documents:

a. Exhibit A - Scope of Work; and
b. Exhibit B - Fees

2. DURATION OF CONTRACT

The term of this Contract shall begin on July 1, 2020 and shall expire on October 31, 2020 the CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

a. Services provided will be provided on a month to month basis as needed, with the possibility of continuing through October 31, 2020.

3. SERVICES PROVIDED

b. The CONTRACTOR shall prepare and deliver lunch and dinner to the individuals that are quarantined at the contracted hotel for COVID-19 individuals. A detailed description of the services to be performed by the CONTRACTOR is set forth in

Exhibit A, "Scope of Work", which is attached hereto and incorporated herein by reference.

c. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

d. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.

e. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.

f. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name:	Dashia Hopp
Address:	3610 Bing Street West Richland, WA 99353
Phone:	509-430-5828
Email:	bombingrangebrew@gmail.com

b. For COUNTY:

Name:	Kyle Sullivan
Address:	7102 West Okanogan Place, Ste. 201 Kennewick, WA 99336
Phone:	509-737-3902
Email:	kyle.sullivan@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates set forth in Exhibit B, "Fees", which is attached hereto and incorporated herein by

reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed one hundred thirty-two thousand dollars and no cents ($132,000.00), including W.S.S.T.

c. CONTRACTOR will be paid per diem per person, per day. Per diem for lunch and dinner will not exceed fifty dollars and no cents ($50.00) a day. Monthly total will not exceed thirty-three thousand dollars and no cents ($33,000.00).

d. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

e. The CONTRACTOR may, in accordance with Exhibit B, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

f. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.

g. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

h. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents.

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws,

including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

COUNTY with proof of all such insurance.

b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

The commercial general liability policy must contain an

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

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

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

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

d. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos owned by the CONTRACTOR (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

e. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY or its elected and appointed officers, officials, employees, or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated

in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY or its officers, officials, employees, or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 8(a), shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then

CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

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

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability, and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative

referenced in Section 4.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations

and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.

b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee, or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.

d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state, or local law that are

now or may be enacted during the term of this Contract.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative, or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the COUNTY upon request, all records relating to the performance of this Contract for six (6) years after Contract termination or expiration.

15. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, the presence of any sensory, mental, or physical disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request and/or at the expiration of the Contract, using the word processing program and version

specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any claimed action, cause, or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction

in Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves and their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 7 and 17); extended reporting period requirements for professional liability insurance (Section 8(a)); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on the last date signed.

Dated: 7/6/2020

FOR: BENTON COUNTY

Chairman

Per Board Resolution

Member

2020-258

Member

Constituting the Board of County Commissioners of Benton County, Washington.

Attest: _____
Clerk of the Board

Approved as to Form:

Civil Deputy Prosecuting Attorney

Dated: 6.30-2020

FOR: DAMI TOO, LLC

Signature

Title: Owner

Dashia Hopp
Print Name

Approved as to Content:

Human Services Manager

Exhibit A

STATEMENT OF WORK

Services will be provided on a month to month basis, as meals are needed for quarantined individuals, as funding allows. DAMI, LLC will provide the following during the period of July 1, 2020 through October 31, 2020.

1. DAMI will provide a box lunch and dinner with two bottles of water and needed utensils for each order placed by Benton County Department of Human Services.
2. Meals will be delivered by 11:30 am to the hotel the day after order is placed.
3. DAMI will bill the County weekly for the delivered orders.

Benton County Department of Human Services will provide the following during the period of July 1, 2020 through October 31, 2020:

1. County will provide an order count for DAMI by 5pm each evening.

DAMI TOO, LLC **Exhibit B**
PSC-20/20-DAMI-00
Benton County
July 1, 2020 to October 31, 2020

COVID-19 Services	Monthly Maximum Total
Lunch and Dinner @ $50/day for 30 days per person	$33,000.00
Total	$33,000.00

COVID-19 Services	Contract Maximum Total
Lunch and Dinner @ $50/day from 7/1/2020 to 10/31/2020	$132,000.00
**dependent on available funding and need	
Total	$132,000.00

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Ratify Agreement #PSC-2020-COVID-TRAUM-00
Presenter:	
Prepared By:	Mari Clark, DHS Contract Manager
Reviewed By:	Kyle Sullivan, DHS Manager

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

This agreement is to fund twenty additional hotel rooms at the Riverfront Hotel, to the homeless population or those who have been displaced due to being quarantined or isolated because of the COVID-19 outbreak. These rooms will be blocked out until October 31, 2020 but we will be invoicing on a month-to-month basis as we have a need.

Fiscal Impact

Amount: $251,620.80

Fund: Funding for these services described in this Agreement is provided by CARES ACT fund. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget for a grant amount of $251,620.80.

Recommendation

- Sign the Ratified Agreement to Contract Agreement #PSC-2020-COVID-TRAUM-00, which has already been executed

Suggested Motion

To ratify the signed Agreement #PSC-2020-COVID-TRAUM-00 between Traum Ventures, LLC and Benton County Department of Human Services and to authorize the Chair to sign on behalf of the board.

Kyle Sullivan, Manager
Benton County DHS Manager

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF RATIFYING THE FIRST AMENDMENT TO GRANT AGREEMENT #PSC-2020-COVID-TRAUM-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND TRAUM VENTURES, LLC.

WHEREAS, the purpose of this Agreement is to fund 20 hotel rooms to the homeless population or those who have been displaced due to being quarantined or isolated because of the COVID-19 outbreak; and

WHEREAS, on March 17, 2020 the Board of Benton County commissioners declared an emergency in response to the COVID-19 outbreak (Resolution 2020-258) and authorized Departments to enter into contracts and incur obligations in order to combat the emergency; and

WHEREAS, in order to meet required deadlines to fund emergency services, the County Administrator executed the above agreement on June 6, 2020 under authority granted in Resolution 2020-258; and

WHEREAS, the Board should ratify the decision of the County Administrator as their own; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby approves and ratifies the #PSC-2020-COVID-TRAUM-00 agreement, between Traum Ventures, LLC and Benton County Department of Human Services for a grant amount of maximum total of $251,620.80 as executed by the Benton County Administrator on June 6, 2020; and,

BE IT FURTHER RESOLVED, that Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments to Traum Ventures, LLC, necessary for the disbursement of the homeless housing funds; and

BE IT FURTHER RESOLVED, the term of the attached agreement commences on the July 1, 2020 and ends on October 31, 2020.

Dated this.....day of ....., 2020

_____
Chair

_____
Member

_____
Member
Constituting the Board of County
Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

MBC 4/15/2020

BENTON COUNTY
EMERGENCY ASSISTANCE AGREEMENT
#PSC-2020-COVID-TRAUM-00

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY HUMAN SERVICES**, a political subdivision with its principal offices at 7102 W. Okanogan Pl., Ste. 201, Kennewick, WA 99336 (hereinafter "COUNTY"), and Traum Ventures, LLC a corporation organized under the laws of the State of Washington with its principal offices at PO BOX 1120 Beaverton, OR 97075 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of these Terms and Conditions and the following documents:

a. Exhibit A - Statement of Work and
b. Exhibit B - Budget and
c. Exhibit C - Hotel Rules

2. DURATION OF CONTRACT

The term of this Contract shall begin on July 1, 2020 and shall be provided on a month-to-month basis not to exceed October 31, 2020. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide 20 hotel rooms to the homeless population or those who have been displaced due to being quarantined or isolated because of COVID-19 (Grant Recipient). A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Statement of Work", which is attached hereto and incorporated herein by reference.

b. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.

c. The CONTRACTOR shall reserve the right to end an occupant stay if the occupant does not abide by Exhibit C "Hotel Rules".

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name:	Laura Maya
Address:	50 Comstock Ave. Richland, WA 99352
Phone:	509-946-4661
Email:	richlandriverfront@mkmhotels.com

b. For COUNTY:

Name:	Kyle Sullivan
Address:	7102 W Okanogan Pl., Ste. 201 Kennewick, WA 99336
Phone:	509-737-3909
Email:	kyle.sullivan@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid in accordance with the price rates provided in Exhibit B attached hereto and incorporated herein. No Payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this agreement

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Five hundred fifty-three thousand three hundred ninety-two dollars and no cents($553,392.00).

c. The monthly maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed fifty-five thousand one hundred eighty dollars and no cents($55,180.00).

d. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

e. The CONTRACTOR may, in accordance with Exhibit B, submit invoices to the COUNTY not more than once per month. Invoices shall cover the months which rooms were used for quarantine services as determined by the COUNTY.

f. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until the rooms have been provided.

g. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. AMENDMENTS AND CHANGES IN WORK

a. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

a. Each Party shall indemnify, defend and hold harmless the other Party and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract. PROVIDED, that both Parties obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of either Party or its officers, officials, employees, or agents.

b. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or

breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

c. Grant recipients who occupy the reserved quarantine/isolation rooms shall be responsible for any damages beyond ordinary use and wear. Contractor shall have Grant recipients sign a separate agreement notifying them of their responsibilities.

8. TERMINATION

a. Each party reserves the right to unilaterally terminate this Agreement without cause upon not less than 10 days' notice to the other party. The County waives any claim or right to damages or reimbursement on account of termination by the Owner. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.

b. In the event that funding for this service is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

c. When the use of a room by a grant recipient ends, the Contractor will perform each of these post-occupancy services as applicable:

   i. Perform a deep cleaning and sanitation of all used areas in accordance with the Benton-Franklin Health District's COVID-19 sanitization recommendations.

9. ASSIGNMENT

The County will not assign or sublet its rights or responsibilities under this Agreement without the written authorization of the Owner. Subject to the foregoing, and if assigned to a third-party, then the Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.

10. WAIVER

The failure of the Contractor to insist upon strict performance of any of the covenants and agreements contained herein will not be construed to be a waiver or relinquishment of any such right.

11. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

12. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, the presence of any sensory, mental, or physical disability, or any other protected status.

13. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

14. CHOICE OF LAW, JURISDICTION, AND VENUE

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

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

15. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves and their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

16. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

17. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

18. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

19. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions; litigation hold notice (Section 26); Public Records Act (Section 27).

20. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force.

21. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on the last date signed.

Dated: 7/6/2020

FOR: BENTON COUNTY

Chairman

Per Board Resolution

Member

2020 - 258

Member

Constituting the Board of County Commissioners of Benton County, Washington.

Attest: _____
Clerk of the Board

Approved as to Form:

Civil Deputy Prosecuting Attorney

Dated: _____

FOR: TRAUM VENTURES, LLC

DocuSigned by:
2E16000879AA43C...
Signature

General Manager
Title:

Laura Maya
Print Name

Approved to Content:

Human Services Manager

Statement of Work

1. Benton County Department of Human Services has provided funding for those who are homeless and need to quarantine or isolate as well as, those who are displaced from their home due to the COVID-19 outbreak in Benton & Franklin Counties (grant recipients).

2. Traum Ventures, LLC will provide twenty hotel rooms for those grant recipients in Benton & Franklin Counties.
    a. Traum Ventures will initially block twenty rooms for Benton County Department of Human Services (BCDHS).
    b. Referrals for the BCDHS rooms will come directly from BCDHS staff (Mari Clark or Kyle Sullivan).
    c. Quarantined individuals' length of stay will be for up to fourteen days (14) unless otherwise authorized by BCDHS staff.
    d. Displaced individuals' length of stay will be determined by BCDHS staff.

3. Traum Ventures will have occupants assume excessive damage responsibility as any other hotel guest would assume responsibility.

4. Traum Ventures reserves the right to end an occupant stay if the "Hotel Rules".

5. Traum Ventures will provide food service for breakfast. Boxed meal will be delivered to the occupant's door.

6. Linen/towel exchange program will be set up for the temporary residents.

7. Rooms will have a microwave and refrigerator.

8. Traum Ventures, LLC will sanitize each room after grant recipients check out of their stay. The sanitation procedures will follow the Benton-Franklin Health District guidelines for COVID-19.

Traum Ventures, LLC **Exhibit B**
PSC-2020-COVID-TRAUM-00
Benton County
July 1, 2020 to October 31, 2020

COVID-19 Services	Monthly Maximum Total
20 Rooms @ $89/night plus taxes	$62,905.20
Total	$62,905.20

COVID-19 Services	Contract Maximum Total
20 rooms @ $89/night plus taxes	$251,620.80
Total	$251,620.80

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Execute First Amendment to Agreement 20-46108-03 Res 2019 530 with WA State Dept. of Commerce for Housing and Essential Needs (HEN)
Presenter:	
Prepared By:	Mari Clark
Reviewed By:	Kyle Sullivan

Type of Agenda Item:

- ☒ Consent Agenda
- ☐ Public Hearing
- ☐ Scheduled Business

Type of Action Needed:

- ☐ Discussion Only (1st)
- ☐ Discussion Only (2nd)
- ☐ Decision/Direction
- ☐ Pass Motion
- ☒ Pass Resolution
- ☐ Pass Ordinance

Summary / Background Information

Washington State Department of Commerce currently contracts with Benton County Department of Human Services to provide services through the Consolidated Homeless Grant (CHG).

The Consolidated Homeless Grant (CHG) provides Housing and Essential Needs (HEN) resources to assist with essential needs, rent and utility payments for medical care services recipients.

Fiscal Impact

Amount: $148,915.00

Fund: Funding for the services described in this Amendment is provided by Washington State Department of Commerce. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget; for a grant amount of $2,268,361.00.

Recommendation

- Sign the Resolution to accept the proposed Amendment
- Approve the proposed Amendment by signing all the copies where indicated

Suggested Motion

To approve signing First Amendment to Contract Agreement #20-46108-03 with Washington State Department of Commerce Resolution 2019 530 in the amount of $2,268,361.00 and to authorize the Chair to sign on behalf of the Board.

Kyle Sullivan, Manager
Benton County
Department of Human Services

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTING FIRST AMENDMENT TO CONTRACT NUMBER: 20-46108-03 CONSOLIDATED HOMELESS GRANT BETWEEN WASHINGTON STATE DEPARTMENT OF COMMERCE, COMMUNITY SERVICES AND HOUSING DIVISION, HOUSING ASSISTANCE UNIT, AND BENTON COUNTY DEPARTMENT OF HUMAN SERVICES

WHEREAS, Washington State Department of Commerce would like to amend Agreement 20-46108-03 with Benton County Department of Human Services the for the Consolidated Homeless Grant (CHG) by adding additional funds for Housing and Essential Needs (HEN); and

WHEREAS, the Housing and Essential Needs (HEN) provides resources such as essential needs, rent and utility payments for medical care services recipients; and; NOW, THEREFORE,

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign, on behalf of Benton County, the First Amendment to Agreement #20-46108-03, between Washington State Department of Commerce, Community Services and Housing Division, Housing Assistance Unit, and Benton County Department of Human Services for a grant total amount of $2,268,361.00; and

BE IT FURTHER RESOLVED, that the Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments necessary for the disbursement of the Housing and Essential Needs funds; and

BE IT FURTHER RESOLVED, the term of the attached Contract commences on July 1, 2020 and ends on June 30, 2021.

Dated this.....day of....., 2020

_____
Chair

_____
Member

_____
Member
Constituting the Board of County
Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

Originals: Benton Commissioners, Human Services M. Clark

Amendment

Grant Number: 20-46108-03
Amendment Number: A

Washington State Department of Commerce
Community Services and Housing Division
Housing Assistance Unit
Consolidated Homeless Grant (CHG)

1. Grantee Benton County Department of Human Services 7102 E OKANOGAN PL STE 201 KENNEWICK, WA 99336	**2. Grantee Doing Business As (optional)**	
3. Grantee Representative Mari Clark (509) 737-3902 mari.clark@co.benton.wa.us	**4. COMMERCE Representative** Jessica Simon Grant Manager 360-725-2955 Jessica.Simon@commerce.wa.gov	PO Box 42525 1011 Plum St SE Olympia, WA 98504-2525

5. Original Grant Amount (and any previous amendments) $2,119,446	**6. Amendment Amount** $148,915	**7. New Grant Amount** $2,268,361

8. Amendment Funding Source **Federal:** **State:** X **Other:** **N/A:**	**9. Amendment Start Date** July 1, 2020	**10. Amendment End Date** June 30, 2021

11. Federal Funds (as applicable): N/A	**Federal Agency:** N/A	**CFDA Number:** N/A

12. Amendment Purpose:
Adds HEN SFY 2021 additional funds.

COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant As Amended and attachments and have executed this Grant Amendment on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant As Amended are governed by this Grant Amendment and the following other documents incorporated by reference: 2019-2021 Homeless Housing Funding Application, CHG Guidelines (as they may be revised from time to time), and Grant Terms and Conditions including Attachment "A" - Scope of Work, Attachment "B" – Budget. A copy of this Grant Amendment shall be attached to and made a part of the original Grant between COMMERCE and the Grantee. Any reference in the original Grant to the "Grant" shall mean the "Grant As Amended".

FOR GRANTEE	**FOR COMMERCE**
_____ Signature	_____ Diane Klontz, Assistant Director Community Services and Housing Division
_____ Print Name, Title	_____ Date
_____ Date	**APPROVED AS TO FORM ONLY** Sandra Adix Assistant Attorney General 3/20/2014 Date

Amendment

This Grant is **amended** as follows:

Attachment B

Budget

Budget Categories	Original	Amendment A	New Total
CHG Standard			
Admin	$212,500	$0	$212,500
Rent/Fac Support Lease	$526,818	$0	$526,818
Other Rent/Fac Support Lease and Housing Costs	$18,000	$0	$18,000
Operations	$588,738	$0	$588,738
PSH CHF			
PSH CHF Rent/Fac Support Lease	$34,088	$0	$34,088
PSH CHF Other Rent/Fac Support Lease and Housing Costs	$7,000	$0	$7,000
PSH CHF Operations	$35,918	$0	$35,918
HEN SFY 2020 (July 2019-June 2020)			
HEN Admin 2020	$24,273	$0	$24,273
HEN Rent/Fac Support and Housing Costs 2020	$233,402	$0	$233,402
HEN Operations 2020	$90,517	$0	$90,517
HEN SFY 2021 (July 2020-June 2021)			
HEN Admin 2021	$24,273	$10,424	$34,697
HEN Rent/Fac Support and Housing Costs 2021	$233,402	$101,262	$334,664
HEN Operations 2021	$90,517	$37,229	$127,746
Total			
Total	$2,119,446	$148,915	$2,268,361

Grant Number: 20-46108-03

Washington State Department of Commerce
Community Services and Housing Division
Housing Assistance Unit
Consolidated Homeless Grant (CHG)

By their signatures below, the parties agree to the terms and conditions of this Amendment and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Amendment shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized to sign this Amendment.

For Benton County:

Chair Date

Attest:

Clerk of the Board

Approved as to form:	**Approved as to form:**	
Dept. of Human Services	Benton Co Prosecutor's Office	

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 21, 2020
Subject:	Approving an emergency purchase of twenty body temperature kiosks with facial recognition from Pacific Office Automation
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	Linda Ivey

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

On March 17, 2020 the Board of Benton County Commissioners, via resolution 2020-258, declared an emergency due to the COVID-19 Virus situation. Resolution 2020-258 authorizes departments to enter into contracts and incur obligations in order to combat the emergency.

As a response to COVID-19, Risk Management and Information Technology was asked by County Administration to find a solution for county employees to take their temperature without the need of manual temperature reads. Pacific Office Automation was one vendor that could provide temperature kiosks that met all of IT's criteria including facial recognition, facial mask recognition, email notification, centralized administration, and was RFID badge capable. At the time, Information Technology investigated four temperature kiosk solutions and found only one of the kiosks that had all the services required to meet the needs of the County. With the help of the Risk Manager, IT has picked a temperature kiosk solution that will greatly benefit the safety and welfare of all county employees.

Fiscal Impact

Amount: **$51,802.20 including WSST.**

Fund: **Risk Management approved 2019-2020 budget.**

Recommendation

Risk Management and Information Technology recommends that the Board approves the purchase of eighteen body temperature kiosk with facial recognition from Pacific Office Automation.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING AN EMERGENCY PURCHASE OF TWENTY BODY TEMPERATURE KIOSKS WITH FACIAL RECOGNITION FROM PACIFIC OFFICE AUTOMATION

WHEREAS, On March 17, 2020 the Board of Benton County Commissioners, via resolution 2020-258, declared an emergency due to the COVID-19 Virus situation; and

WHEREAS, Resolution 2020-258 authorizes departments to enter into contracts and incur obligations in order to combat the emergency; and

WHEREAS, as a response to COVID-19, Risk Management and Information Technology was asked by County Administration to find a solution for county employees to take their temperature without the need of manual temperature reads; and

WHEREAS, Information Technology investigated four temperature kiosk solutions and found only one of the kiosks that had all the services required to meet the needs of the County; and

WHEREAS, Pacific Office Automation was one vendor that could provide temperature kiosks that met all of IT's criteria including facial recognition, facial mask recognition, email notification, centralized administration, and was RFID badge capable; and

WHEREAS, the Risk Manager, IT Manager and the County Administration recommends that the Board of County Commissioners purchase eighteen temperature kiosks from Pacific Office Automation; NOW, THEREFORE

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby agrees with the Risk Manager, IT Manager and County Administration approving an emergency purchase of twenty body temperature kiosks with facial recognition from Pacific Office Automation in an amount not to exceed $51,802.20 including WSST.

Dated this _____ day of _____ , _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Information Technology
cc: Auditor, Risk Mangement

Prepared by: R. Heard

PACIFIC OFFICE AUTOMATION

— PROBLEM SOLVED® —

CUSTOMER #	PURCHASE ORDER	DATE ORDER	DATE SHIPPED	REPRESENTATIVE	INVOICE #	INVOICE DATE
670909				Rush Hoag	76189	7/14/2020

ORDERED	PKG	SHIPPED	DESCRIPTION	UNIT PRICE	AMOUNT
20			Body Temp scanner with facial recognition	2,385.00	$ 47,700.00
			Please call 509-735-0502 with questions		
			SUBTOTAL		$ 47,700.00
			TAX		4102.2
			TOTAL DUE:		$ 51,802.20

Shipped To: Benton County
PO Box 190
Prosser, WA 99350

Comments

PLEASE PAY FROM THIS INVOICE
OVERDUE ACCOUNTS WILL BE CHARGED A LATE PAYMENT FEE OF 1.5% PER MONTH (ANNUAL RATE 18%)

Please return this stub with your payment

PACIFIC OFFICE AUTOMATION

— PROBLEM SOLVED® —

INVOICE NO.	**76189**
CUSTOMER NO.	**670909**
AMOUNT DUE	**$51,802.20**
AMOUNT ENCLOSED	

Bill To: Benton County
PO Box 190
Prosser, WA 99350

Please make check(s) payable to:
Pacific Office Automation
14747 NW Greenbrier Pkwy
Beaverton, OR 97006
Phone: 503-641-2000

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 7/7/20 BC 7/21/20
Subject:	Personal Services Contract with Rick Schuknecht POF Polygraph Service
Presenter:	
Prepared By:	Rosa Garcia
Reviewed By:	Darryl Banks

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

Benton-Franklin Counties Juvenile Justice Center wishes to contract with Rick Schuknecht POF Polygraph Service to provide polygraph examinations for youth under Court jurisdiction to receive Special Sex Offender Disposition Alternative (SSODA).

The new Contract with Rick Schuknecht POF Polygraph Service will begin on July 1, 2020 and shall expire on December 31, 2022.

Fiscal Impact

Amount: Not to exceed $15,000.00

Fund: These services are paid from state funds under the SSODA treatment program, Juvenile Justice Center, Grant Reimbursement Department 174 buget. No supplement required.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Personal Services Contract between Rick Schuknecht POF Polygraph Service and Benton-Franklin Counties Juvenile Justice Center for services.

Suggested Motion

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be hereby authorized to sign the Personal Services Contract with Rick Schuknecht POF Polygraph Service.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON;

IN THE MATTER OF AWARDING RICK SCHUKNECHT POF POLYGRAPH SERVICE A PERSONAL SERVICES CONTRACT TO PROVIDE POLYGRAPH EXAMINATIONS

WHEREAS, per resolution 2012-677, "...for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost"; and

WHEREAS, the Benton-Franklin Counties Juvenile Justice Center Administrator recommends entering into a new Contract with Rick Schuknecht POF Polygraph Service to provide polygraph examinations to first time adjudicated sex offenders; **NOW, THEREFORE**

BE IT RESOLVED, by the board of Benton County Commissioners, Benton County, Washington and by the board of Franklin County Commissioners, Franklin County, Washington, the boards concur with the Benton-Franklin Counties Juvenile Justice Center Administrator's recommendation and hereby awards the Personal Service Contract to Rick Schuknecht POF Polygraph Service in an amount not to exceed $15,000.00; and

BE IT FURTHER RESOLVED, that the Chairman is authorized to sign the attached Personal Service Contract; and

BE IT FURTHER RESOLVED, the term of the attached Contract shall begin on July 1, 2020 and shall expire on December 31, 2022.

DATED this _____ day of _____ 2020
BENTON COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Member

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

Clerk of the Board

DATED this _____ day of _____ 2020
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-Schuknecht, 1-Juvenile R. Garcia

BENTON and FRANKLIN COUNTIES
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 and **FRANKLIN COUNTY**, a political subdivision with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the **Benton-Franklin Counties Juvenile Justice Center**, a bi-county agency located at 5606 West Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Rick Schuknecht POF Polygraph Service**, a corporation organized under the laws of the State of Washington with its principal offices at 413 North 2nd Street, Yakima, WA 98901 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. DURATION OF CONTRACT

The term of this Contract shall begin on **July 1, 2020** and shall expire **December 31, 2022** The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

2. SERVICES PROVIDED

a. The CONTRACTOR shall provide the following services:

   1. Sexual History/Disclosure Examinations.

   2. Single Issue Investigative Polygraph Examinations.

   3. Periodic/Monitoring (Maintenance) Polygraph Examinations.

b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTIES.

c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.

d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.

e. The CONTRACTOR shall confer with the COUNTIES from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as requested by the COUNTIES.

3. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name:	Rick Schuknecht Rick Schuknecht POF Polygraph Service
Address:	413 N. 2nd Street Yakima, WA 98901
Phone:	(509) 248-1100
Email:	rickschuknecht@yahoo.com

b. For COUNTIES:

Name:	Darryl Banks, Administrator
Address:	5606 W. Canal Pl., Ste. 106 Kennewick, WA 99336
Phone:	(509) 222-2316
Email:	Darryl.Banks@co.benton.wa.us

4. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid as follows:

1. $225.00 for Sexual History/Disclosure Polygraph Examinations.

2. $200.00 for Single Issue Investigative Polygraph Examinations.

3. $175.00 for Periodic/Monitoring (Maintenance) Polygraph Examinations.

4. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed fifteen thousand dollars ($15,000.00).

b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

c. The CONTRACTOR may, submit invoices to the COUNTIES not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTIES during the billing period. The COUNTIES shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTIES.

e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTIES, the COUNTIES may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

f. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

5. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by

the COUNTIES.

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTIES.

6. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTIES and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, caused in whole or in part by any act or omission, negligent or otherwise, of the CONTRACTOR or its subcontractors, which arises in connection with the work performed under this Contract or is caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTIES. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTIES or its officers, officials, employees, or agents.

b. In any and all claims against the COUNTIES and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under**

this Section 6 shall survive termination and expiration of this Contract.

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

7. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** Contractor acknowledges and represents that Contractor currently does not have any employees and, therefore, does not maintain workers compensation insurance. To the extent Contractor hires any employees; however, Contractor shall comply with all State of Washington workers

compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of Contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract.

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

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

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

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Contract and does not exclude liability

pursuant to the indemnification requirement under Section 6. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

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

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

e. **Automobile Liability**: The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos owned by the CONTRACTOR (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

f. **Other Insurance Provisions**:

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTIES or its elected and appointed officers, officials, employees, or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTIES shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTIES as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the

COUNTIES or its officers, officials, employees, or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTIES shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 7(a), shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to CONTRACTOR under this

Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

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

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability, and Workers' Compensation, shall specifically include the COUNTIES and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTIES. Any insurance or self-insurance maintained by the COUNTIES and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR'S insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTIES' Contract Representative referenced in Section 3.

3. All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' Contract Representative referenced in Section 3.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton-Franklin Counties Risk Manager to the following address: 5606 West Canal Place, Suite 106, Kennewick, WA 99336.

8. TERMINATION

a. The COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determines in its sole discretion that such termination is in the best interests of the COUNTIES. The COUNTIES may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTIES shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTIES may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTIES to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTIES, the COUNTIES may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTIES shall pay the CONTRACTOR only for the costs of services accepted by the COUNTIES, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTIES, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTIES in completing the work and all damage sustained by the COUNTIES by reason of the CONTRACTOR'S breach.

9. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTIES.

b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for the

CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

10. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

11. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee, or servant of the COUNTIES. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTIES benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTIES employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTIES.

d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state, or local law that are now or may be enacted during the term of this Contract.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTIES' Contract Representative, or designee.

12. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

13. OTHER PROVISIONS

The Contractor shall comply with the following other provisions for all services provided under this Contract.

a. Background Check/Criminal History

1. Contractor shall authorize Counties to conduct a background check of the Contractor. The background check may include, but is not limited to, a review of records on file with the Washington State Patrol, the FBI National Criminal Information Computer (NCIC) and Interstate Identification Index (III), local law enforcement agencies, the Department of Licensing, courts of law, and other agencies, and also may, depending upon assignment of Contractor, involve fingerprinting.

2. In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the Contractor shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.

3. In addition, the Contractor may also be required to conduct background check/criminal history clearance for employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile.

b. Sexual Misconduct

1. The Contractor shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.

2. The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court

Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal Place, Suite 106, Kennewick WA 99336-1388.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the COUNTIES upon request, all records relating to the performance of this Contract for six (6) years after Contract termination or expiration.

15. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, the presence of any sensory, mental, or physical disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTIES. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTIES agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

b. An electronic copy of all word processing documents shall be submitted to the COUNTIES upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTIES.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTIES and its officers, officials, employees, and agents from

and against any claimed action, cause, or demand brought against the COUNTIES, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTIES of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTIES, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTIES at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTIES' Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTIES' Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTIES or acquired by the COUNTIES in performance of this Contract, except upon the prior written consent of the COUNTIES or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTIES written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton and Franklin Counties, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTIES, to the extent permitted by law, and the CONTRACTOR each bind themselves and their partners, successors, executors,

administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 3 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 3 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 6 and 17); extended reporting period requirements for professional liability insurance (Section

7(a)); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

26. LITIGATION HOLD NOTICE

In the event the COUNTIES learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTIES is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTIES may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTIES that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTIES' release of records covered under the Public Records Act. The COUNTIES agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on **July 1, 2020**.

The parties specifically certify that the provisions contained within Section **7** are mutually negotiated.

Rick Schuknecht POF Polygraph Service	**Benton Franklin Counties Juvenile Justice Center**
Richard A Schuknecht 6/12/20	Darryl Banks 6-19-202
Rick Schuknecht **Date** **Polygraph Examiner**	**Darryl Banks** **Date** **Juvenile Court Administrator**
BENTON COUNTY APPROVAL Approved as to Form: Stephen Hallstrom 06/19/20 Stephen Hallstrom, Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chairman, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____	**FRANKLIN COUNTY APPROVAL** Approved as to Form: _____ Jennifer Johnson, Civil Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chairman, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Amend Public Defense Contract with Eric Scott to Transfer him to District Court
Presenter:	Eric Hsu
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

Benton County is legally mandated to provide provisional public defense services to defendants appearing on the District Court in-custody first appearance docket (In-Custodies) and to defendants who are appearing on the probation show-cause docket (Probation). The caseloads for both In-Custodies and Probation are anticipated to increase significantly beyond current staffing capabilities because of factors related to the COVID-19 pandemic (namely the caseload bottleneck and anticipated spike in filings near the end of the year, as well as a significantly slower docket because of social distancing and other necessary protective measures). Therefore, it is recommended that the combined staffing for these two assignments be increased by a total of a 50% contract (between the two of them).

Attorney Eric Scott, who currently holds a public defense contract in Benton County Superior Court has expressed interest in taking on this 50% contract and therefore transferring to this assignment from Superior Court.

Since this increase in staffing is needed in part because of factors related to the COVID-19 pandemic, it is eligible for partial reimbursement using CARES grant funding.

Fiscal Impact

Amount: $18,750 for the remainder of 2020

Fund: PST (and partial reimbursement from CARES grant)

Recommendation

Approve resolution that acknowledges termination of professional services agreement with attorney Ryan Swinburnson for public defense services in Benton County Superior Court.

Suggested Motion

Be it resolved that the public defense agreement with attorney Ryan Swinburnson be terminated, as requested by attorney Swinburnson, with a final effective date of August 15, 2020.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE SUPERIOR COURT PUBLIC DEFENSE AGREEMENT WITH ATTORNEY ERIC SCOTT TO CHANGE HIS ASSIGNED DOCKET TO THE BENTON COUNTY DISTRICT COURT IN-CUSTODY & PROBATION TEAMS

WHEREAS, Benton County ("County") is obligated by law to provide public defense services in Benton County District Court on the in-custody first appearance docket ("In-Custodies") and probation docket ("Probation"); and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost.…."; and

WHEREAS, because of general increases in caseloads, the need to comply with Washington State Supreme Court caseload standards, OPD has been planning to increase the staffing for the Probation assignment; and

WHEREAS, the COVID-19 pandemic has also created additional attorney staffing needs with In-Custodies because of a combination of technological changes (i.e. video appearances) that have slowed down dockets, and the anticipated significant spike in caseload that will undoubtedly arise when jail booking restrictions and prosecutor filing restrictions are lifted; and

WHEREAS, therefore it is necessary and appropriate to add an extra "50%" contract to serve both the needs of the In-Custodies and Probation assignments in order to ensure that Benton County continues to meet legal requirements and reduce liability risk of its public defense function; and

WHEREAS, attorney Eric Scott is interested in, and well suited to, take on the combined additional support of the In-Custodies and Probation assignments; **NOW, THEREFORE**

BE IT RESOLVED that the proposed amendment to the existing Superior Court public defense contract with attorney Eric Scott, previously executed by and through Resolution 2019-945 and previously amended by and through Resolution 2020-048, be further amended so as to change attorney Scott's assignment to District Court In-Custody and Probation instead of Superior Court; and

cc: Originals – OPD, ERIC SCOTT, E. Hsu
Copy – Auditor, Superior Court, S. Godinez

BE IT FURTHER RESOLVED that the amended public defense agreement with attorney Eric Scott, designated BCDC2022EJS001L, for public defense agreement in Benton County District Court, commencing July 1, 2020 and expiring December 31, 2022, monthly compensation of $3,125.00, RALJ appeal compensation of $1500.00 per case, and allowable increases, case compensation premiums and other reimbursements, be executed as presented.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, ERIC SCOTT, E. Hsu
Copy – Auditor, Superior Court, S. Godinez

AMENDED
PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC2022EJS001L

CONTRACT SUMMARY			
Contract Type	**A. Partial – In-Custody Docket & Probation Docket extra coverage only** **B. By the case – RALJ Appeals in District Court**		
Contract Number	**BCDC2022EJS001L**	**Contract Holder**	**Eric Scott**
WSBA #	**48913**	**Effective Dates**	**July 1, 2020 – December 31, 2022**
Caseload Cap	**n/a**	**Compensation**	**A. $3,125/mo** **B. $1,500 per case**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly**

THE AGREEMENT, previously entered into by and between **Eric Scott,** attorney at law, Washington State Bar Association **# 48913** ("Attorney") and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court, executed by and through Resolution 2019-945 and previously amended by and through Resolution 2020-048,

IS HEREBY FURTHER AMENDED BY REPLACING IT IN ITS ENTIRETY WITH THE FOLLOWING:

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the Benton County District Court.

C. Specifically, Attorney will be assigned to provide legal services in two particular roles: a) the "In-Custody Team" which provides provisional public defense services to adult defendants at their first appearance after warrantless arrests; and b) public defense services for defendants accused of violations of the terms of their probation.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **July 1, 2020** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **7101 Hood Pl, Ste B202, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 578-1555** and **(509) 591-9355** respectively; and Attorney's current office/work e-mail address is **escott@tri-citylegal.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton County Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Benton County

District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington 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 whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters (or will be part of an intensive and closely supervised mentorship program sponsored by the County's Office of Public Defense); otherwise meets applicable requirements of the Washington Standards for Indigent Defense ("SID") applicable to misdemeanor and gross misdemeanor cases; has not been subject to a termination proceeding involving a previous personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

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

shall subject this Agreement, at the election of County, to immediate termination.

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

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

Specific training regarding legal financial obligation ("LFO") issues. At least once every 24 months (or more frequently as required in writing by the County due to changes in applicable law) Attorney shall attend training approved and presented/sponsored by County on the subject matter of LFO issues in public defense cases. Attendance may be live or by video replay and Attorney shall provide proof of attendance to County by any means reasonably required by County. If Attorney is a new contract public defender, then County will provide Attorney with basic LFO training material in the first week following the date when Attorney starts with County's public defender training program or first becomes eligible for case appointments, whichever is earlier, and Attorney shall provide proof of viewing of LFO training material to County as a specific condition of this contract within the week by any means reasonably required by County.

In addition to specific training regarding LFO issues, from time to time, County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is

completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train Attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorney's contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards

and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 17.b. below.

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

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys, and also employs in-house staff attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the PDM to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process. Attorney shall accept all case assignments made by the District Court or PDM even if the case does not originate from the docket to which attorney is assigned.

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall provide professional public defense services in support of two of County's public defense functions: a) the "In-Custody Team" which provides provisional public defense services to adult defendants at their first appearance after warrantless arrests; and b) public defense services for defendants accused of violations of the terms of their probation. c) Attorney shall also accept appointments to represent public defense clients on appeals of their District Court convictions or other matters, by way of "RALJ Appeals." The detailed duties as to each role are as follows:

a) "In-Custody Team provisional public defense services include:

- Review court files, charging documents, and other materials necessary to gain familiarity with cases set for in-custody first appearance dockets in Benton County District Court (which occur daily). *This will require use of electronic databases including JABS in order to facilitate review without needing to physically use Benton County District Court facilities.*

- Meeting with incarcerated defendants about their cases set for first appearance and addressing, at a minimum, their plea rights (if applicable), bail considerations, immigration consequences, mental health and medical concerns (if applicable).

- Coordinating with prosecutors regarding plea offers if available including communicating them to defendants

- Assisting defendants with plea paperwork if they choose to accept a plea offer. *However, services DO NOT include appearing on the record as counsel of record for such defendants since Attorney will not possibly have the opportunity investigate the case to the satisfaction of applicable case law including State v. ANJ. Instead, defendants will need to appear pro se if they choose to accept a plea offer at in-custody first appearance.*

- Appearing at the in-custody first appearance and serving as provisional counsel.

- Assisting as needed with the logistics of the docket flow, *but not appearing as counsel of record for any defendants*.

b) Public defense services for defendants accused of violations of the terms of their probation include:

- Reviewing court records and probation files to be familiar with contents of probation violation filings.

- Consulting with defendants as needed to develop a defense to probation violation accusations.

- Conducting any necessary independent investigation

- Appearing on the probation docket as needed to assist the contracted public defense attorney who has primary responsibility for that docket

c) For RALJ Appeals, Attorney shall provide full representation for all aspects of appeals to Superior Court from District Court convictions or decisions from the time the appeal is perfected and Attorney is appointed, until the final disposition of the matter by the Superior Court. Once a final decision is rendered by Superior Court, Attorney shall communicate the decision to OPD, and Attorney's involvement shall thereafter be concluded.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case

whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empanelled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be as stated in Section 17 Termination.

7. **NUMBER OF APPOINTMENTS.**

This agreement, aside from any RALJ Appeal appointments, if any, is intended to be a 50% of a full-time agreement and contemplates Attorney appearing at and/or assisting with the In-Custody Docket two days a week and appearing at and/or assisting with the probation violation docket one day a week.

8. **CASE EQUIVALENTS.**

a) Appearance at in-custody first appearance dockets as provisional public defense counsel does not count as any "case equivalents" and should be accounted for in Attorney's total available time to devote to public defense cases;

b) Appearance at probation violation "show cause" dockets where no action is being taken to revoke a defendant's probation, similarly does not count as any "case equivalent" and should be accounted for in Attorney's total available time to devote to public defense cases;

c) Representation of defendants on a proceeding to revoke probation, a Stipulated Order of Continuance ("SOC"), or Deferred Prosecution, shall count as case equivalents (or portions thereof) pursuant to Supreme Court caseload standards or local case weighting standards in force at the time;

Specific reporting of LFO cases In addition to the other reporting required by this section, if Attorney is appointed by the Benton County District Court to represent clients on LFO matters, then Attorney shall report: 1) the number of LFO failure to pay cases appointed; and 2) the number of LFO failure to appear cases appointed. It is recognized that some cases may involve allegations of

both failure to pay and failure to appear and that they therefore should be reported under both categories of cases.

d) RALJ Appeals shall be counted pursuant to guidance from the Washington State Supreme Court standard for public defense (as updated with guidance for appellate cases).

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County District Court (or its designee) nevertheless 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 Benton County District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District 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 Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of $3,125.00 per month. *In the event that the compensation paid to other contract public defenders assigned to take pre-trial cases in Benton County District Court is increased for 2021-2022, Attorney shall receive an identical increase, pro-rated for his proportionately smaller contract, with an effective date the same as that provided in said other contracts.*

b. **Payment of compensation shall be contingent on Attorney complying with case reporting provisions stated herein, including in Articles 8(e) and 3(f). Failure by attorney to comply with case reporting provisions shall be cause to delay payment of compensation until such failure is remedied.**

c. In addition to the stated monthly compensation, Attorney shall receive a flat fee of $1,500 per RALJ appeal.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2020, the above referenced 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-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2020, the above-stated 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 on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for RALJ appeals (12.c) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures 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 ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that

such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) 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 case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. 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 District Court Administrator 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.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and

agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

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

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

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

recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

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

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

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

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

d. **Other Insurance Provisions**:

1. The Attorney's liability insurance provisions shall be primary with respect to any insurance or selfinsurance programs covering the Counties, its elected and appointed officers, officials, employees and agents. Attorney's liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the Counties shall be excess and not contributory to Attorney's insurance policies.

2. The Attorney's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.

4. The Attorney's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The Attorney shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the Attorney maintains higher limits than the minimums required in this contract, the Counties require and shall be entitled to coverage for the higher limits maintained by the Attorney.**

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this

Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

8. Attorney hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Attorney to enter into a pre-loss agreement to waive subrogation without an endorsement, then Attorney agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Attorney enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to Attorney under this Agreement are expressly conditioned upon Attorney's strict compliance with all insurance requirements. Payment to Attorney may be suspended in the event of non-compliance. Upon receipt of evidence of Attorney's compliance, such payments not otherwise subject to withholding or set-off will be released to Attorney.

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

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

1. All insurance to be maintained by the Attorney, other than Professional Liability and Workmen's Compensation, shall specifically include the Counties, its elected and appointed officers, officials, employees and agents as "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the Counties. Any insurance or self-insurance maintained by the Counties, its elected and appointed officials, employees and agents shall be excess of the Attorney's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Benton County Office of Public Defense within ten (10) days of execution of this Agreement.

3. All written notices under this Section **[8]** and notice of cancellation or change of required insurance coverages shall be mailed to the Benton

County Office of Public Defense.

4. The Attorney or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Office of Public Defense: Attn: Office Manager, Benton County Office of Public Defense, 7122 W Okanogan Pl, Bldg A, Kennewick, WA 99336.

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

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the PDM within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The PDM shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County District Court and/or the District Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this

Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. **TERMINATION.**

Cause for Termination and Notice

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election ("Early Termination"). Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney's continuing obligation to accept case appointments shall be governed by the provisions of Section 17.f herein.. A ninety (90) day notice of termination given by either party under this paragraph 17.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 30 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, consistent with the provisions of paragraph 12.e. 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 for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, 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 termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice.

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

19. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 19.a-d below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

(i) The proposed sub-contractor meets all the criteria set out in Section 3 of this Agreement; and

(ii) County agrees to the selection of the sub-contractor in its sole and exclusive discretion; and

(iii) Sub-contractor signs an acknowledgement and agreement to abide by all the terms and conditions of this Agreement (in such form as may be required by County); and

(iv) Attorney agrees to continue to be professionally responsible for any sub-contracted work.

Even in the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

20. **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 deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County District Court.

21. **OTHER APPOINTMENTS.**

Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

23. **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.

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

27. **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.

28. **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.

29. **DISPUTE RESOLUTION.**

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

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

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

30. **NOTICES.**

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

Eric Hsu, Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.Benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to

Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

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

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

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that Attorney's performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring

efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date 7-13-2022

_____
Eric Scott, WSBA #48913
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

Attorney acknowledges that County will be engaging in Performance Standards Monitoring as more fully described in Section 34 of this Agreement and that said Monitoring will comprise of the following:

a. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:

_____

I understand and acknowledge that Benton County will utilize the Performance Standards Monitoring as set out in this Exhibit to my public defense contract to evaluate my effectiveness as a public defender and that contract decisions, such as renewals, extensions, caseload increases, or assignment to other public defense duties will be made with reference to the results of such Performance Standards Monitoring.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Award Superior Court public defense contract to attorney Bart Tomerlin
Presenter:	Eric Hsu
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

Attorney Eric Scott, who presently is under (a partial) contract to provide public defense services in Benton County Superior Court, will be reassigned to District Court duties pursuant to a separately submitted resolution. Therefore, it will be necessary to replace attorney Scott with another public defense contract attorney.

Attorney Bart Tomerlin is well qualified, and interested, in accepting a contract for public defense services in Benton County Superior Court, replacing attorney Scott.

Fiscal Impact

Amount: None. This is a replacement contract

Fund: n/a

Recommendation

Approve resolution awarding a "partial" Superior Court public defense contract to attorney Bart Tomerlin, to replace attorney Eric Scott, who will be transferred to District Court public defense instead.

Suggested Motion

Be it resolved that the public defense agreement with attorney Bart Tomerlin, designated BCSC2022BKT001, for public defense agreement in Benton County Superior Court, commencing July 1, 2020 and expiring December 31, 2022, with monthly compensation of $5,666.67 (not to exceed $680 per case) plus allowable increases, case compensation premiums, and other reimbursements, be executed as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A SUPERIOR COURT PUBLIC DEFENSE AGREEMENT TO ATTORNEY BART TOMERLIN

WHEREAS, Benton County ("County") is obligated by law to provide public defense services in Benton County Superior Court; and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost…."; and

WHEREAS, attorney Eric Scott, who presently holds a Benton County Superior Court public defense contract, is being reassigned to provide public defense services in Benton County District Court instead; and

WHEREAS, therefore it is necessary to replace attorney Eric Scott's position in Benton County Superior Court; and

WHEREAS, attorney Bart Tomerlin is well qualified and interested in providing public defense services in Benton County Superior Court in place of attorney Eric Scott; **NOW, THEREFORE**

BE IT RESOLVED that the public defense agreement with attorney Bart Tomerlin, designated BCSC2022BKT001, for public defense agreement in Benton County Superior Court, commencing July 1, 2020 and expiring December 31, 2022, with monthly compensation of $5,666.67 not to exceed $680 per case plus allowable increases, case compensation premiums, and other reimbursements, be executed as presented.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, BART TOMERLIN
Copy – Auditor, Superior Court, S. Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT

BCSC2022BKT001

CONTRACT SUMMARY			
Contract Type	Monthly-compensated reduced capacity		
Contract Number	BCSC2022BKT001	**Contract Holder**	Bart K. Tomerlin
WSBA #	30311	**Effective Dates**	July 1, 2020 – December 31, 2022
Caseload Cap	**100 cases per year**	**Compensation**	**$680 per case** ***Subject to increase – see Section 12***
Assigned Court	**Superior Court**	**Compensation Structure**	☒ **By the case** ☐ **Monthly** ☐ **Hourly**

THIS AGREEMENT is entered into by and between **Bart K. Tomerlin,** attorney at law, Washington State Bar Association #30311 ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in Benton County Superior Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **July 1, 2020,** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 719 Jadwin Ave, Richland, WA 99352; Attorney's current local office telephone and fax numbers are (509) 420-4887 and (509) 943-2129, respectively; and Attorney's current office/work e-mail address is bart.tomerlin@gmail.com.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton-Franklin Counties Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton-Franklin Counties Superior Court Administrator ("Superior Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington 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 whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (including for Class A felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

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

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

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

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional

optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

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

Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.
- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or

any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the

County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **100 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment

Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. 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 Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, 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, 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.

c. Except as may be otherwise specifically and 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. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

11. **SCOPE OF REPRESENTATION; FILE RETENTION; CONVICTION OF CRIMINAL OFFENSE.** Attorney agrees to and shall represent all persons whom Attorney is

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

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

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$680 per case**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $5,666.67.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$680
Unusually complex or laborious cases	Up to $1,360 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

In the event that the compensation paid to other attorneys contracted to provide the same public defense services in Benton County Superior Court increases, which is anticipated to be the case effective January 1, 2021, dthen Attorney shall be entitled to a

commensurate increase with the effective dates of any such increase to be identical to that of said other contracts.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute

Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $75 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not

exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton 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 PDM appoint one of the other Benton County Criminal 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 indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under 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 members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In

the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 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 $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall 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; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall 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; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

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

19. **TERMINATION.**

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall

continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, 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 termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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

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

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of

such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

(i) The proposed sub-contractor meets all the criteria set out in Section 3 of this Agreement; and

(ii) County agrees to the selection of the sub-contractor in its sole and exclusive discretion; and

(iii) Sub-contractor signs an acknowledgement and agreement to abide by all the terms and conditions of this Agreement (in such form as may be required by County);

In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

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

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that,

it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

25. **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.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration 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.

30. **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.

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money

damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

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

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

32. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his below-stated office address; mailed to the County's PDM at his

below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at the below-stated official email address for notices:

Eric Hsu, Public Defense Manager
Benton Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.benton.wa.us

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

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

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

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

33. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including

Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date 6/23/2020

Bart K. Tomerlin

Bart K. Tomerlin, WSBA #30311
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

Attorney acknowledges that County will be engaging in Performance Standards Monitoring as more fully described in Section 34 of this Agreement and that said Monitoring will comprise of the following:

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

b. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:

Bart K. Tomelleri 6/23/2020

I understand and acknowledge that Benton County will utilize the Performance Standards Monitoring as set out in this Exhibit to my public defense contract to evaluate my effectiveness as a public defender and that contract decisions, such as renewals, extensions, caseload increases, or assignment to other public defense duties will be made with reference to the results of such Performance Standards Monitoring.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Award contract to attorney Danielle Purcell for BCSC
Presenter:	Eric Hsu
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

Benton County is legally mandated to provide public defense services in Benton County Superior Court and contracts with, among others, attorney Ryan Swinburnson for such services.

Attorney Swinburnson recently provided 60 days written notice of his intent to terminate his public defense agreement with Benton County for public defense services in Benton County Superior Court. Therefore, it is necessary to award a substitute Superior Court public defense contract in his place.

Attorney Danielle Purcell is qualified and interested in accepting a public defense agreement for Benton County Superior Court

The proposed resolution and agreement are for attorney Purcell's services in such a capacity.

Fiscal Impact

Amount: None beyond already budgeted

Fund: Current Expense

Recommendation

Approve resolution awarding agreement with attorney Danielle Purcell for public defense services in Benton County Superior Court.

Suggested Motion

Be it resolved that the public defense agreement with attorney Ryan Swinburnson be terminated, as requested by attorney Swinburnson, with a final effective date of August 15, 2020.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A SUPERIOR COURT PUBLIC DEFENSE AGREEMENT TO ATTORNEY DANIELLE PURCELL

WHEREAS, Benton County ("County") is obligated by law to provide public defense services in Benton County Superior Court; and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost…."; and

WHEREAS, attorney Ryan Swinburnson, who presently holds a Benton County Superior Court public defense agreement, has provided 60-days notice of termination of his contract with a final effective date of termination of August 15, 2020; and

WHEREAS, therefore it is necessary to replace attorney Ryan Swinburnson's position in Benton County Superior Court; and

WHEREAS, attorney Danielle Purcell is well qualified and interested in providing public defense services in Benton County Superior Court in place of attorney Ryan Swinburnson; **NOW, THEREFORE**

BE IT RESOLVED that the public defense agreement with attorney Danielle Purcell, designated BCSC2022DLP001, for public defense services in Benton County Superior Court, commencing August 1, 2020 and expiring December 31, 2022, with monthly compensation of $7,933.33 not to exceed $680 per case, plus allowable increases, case compensation premiums, and other reimbursements, be executed as presented.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, DANIELLE PURCELL
Copy – Auditor, Superior Court, S. Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT

BCSC2022DLP001

CONTRACT SUMMARY			
Contract Type	Superior Court Full		
Contract Number	BCSC2022DLP001	**Contract Holder**	Danielle Purcell
WSBA #	45245	**Effective Dates**	August 1, 2020 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$680 per case (2020)** ***Eligible for increase in 2021/22 pursuant to increase for other contracts.***
Assigned Court	**Benton Superior**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly**

THIS AGREEMENT is entered into by and between **Danielle Purcell,** attorney at law, Washington State Bar Association #45245 ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in Benton County Superior Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **August 1, 2020,** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this

Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 1030 N. Center Parkway, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 438-6785 and *no fax number*, respectively; and Attorney's current office/work e-mail address is dpurcelllaw@gmail.com.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton County Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton-Franklin Counties Superior Court Administrator ("Superior Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington 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 whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from

the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

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

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

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

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empanelled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance

date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS**. During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **140 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING**.

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. 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 Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, 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, 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.

c. Except as may be otherwise specifically and 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. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

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

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

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County

may elect, at its sole discretion, to terminate this Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$680 per case**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $7,933.33.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$680
Unusually complex or laborious cases	Up to $1,360 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

In the event that the compensation paid to other attorneys contracted to provide the same public defense services in Benton County Superior Court increases, which is anticipated to be the case effective January 1, 2021, then Attorney shall be entitled to a commensurate increase with the effective dates of any such increase to be identical to that of said other contracts.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and

describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example,

the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $75 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide

authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton 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 PDM appoint one of the other Benton County Criminal 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 indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under 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 members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims,

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

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 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 $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall 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; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than

$1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall 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; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The

foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

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

19. **TERMINATION.**

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, 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 termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the

Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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

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

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

(i) The proposed sub-contractor meets all the criteria set out in Section 3 of this Agreement; and

(ii) County agrees to the selection of the sub-contractor in its sole and exclusive discretion; and

(iii) Sub-contractor signs an acknowledgement and agreement to abide by all the terms and conditions of this Agreement (in such form as may be required by County); and

(iv)

In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

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

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this

Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

25. **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.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration 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.

30. **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.

31. **DISPUTE RESOLUTION.**

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

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

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

32. **NOTICES.**

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

Eric Hsu, Public Defense Manager
Benton Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.benton.wa.us

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

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

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

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

33. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date 6/23/2020

_____
Danielle Purcell, WSBA #45245
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

Attorney acknowledges that County will be engaging in Performance Standards Monitoring as more fully described in Section 34 of this Agreement and that said Monitoring will comprise of the following:

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

b. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:

6/23/2020

I understand and acknowledge that Benton County will utilize the Performance Standards Monitoring as set out in this Exhibit to my public defense contract to evaluate my effectiveness as a public defender and that contract decisions, such as renewals, extensions, caseload increases, or assignment to other public defense duties will be made with reference to the results of such Performance Standards Monitoring.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Terminate public defense agreement with attorney Ryan Swinburnson
Presenter:	Eric Hsu
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

Benton County presently contracts with, among others, attorney Ryan Swinburnson to provide legally mandated public defense services in Benton County Superior Court. The professional services agreement with attorney Swinburnson provides that it can be terminated by either party, with or without cause, on 60 days written notice.

Attorney Swinburnson has provided such written notice and it would therefore be appropriate to acknowledge the notice and consider his agreement to be terminated as requested.

Fiscal Impact

Amount: None. Action requested is termination of agreement with attorney for public defense services.

Fund:

Recommendation

Approve resolution that acknowledges termination of professional services agreement with attorney Ryan Swinburnson for public defense services in Benton County Superior Court.

Suggested Motion

Be it resolved that the public defense agreement with attorney Ryan Swinburnson be terminated, as requested by attorney Swinburnson, with a final effective date of August 15, 2020.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ACKNOWLEDGING THE NOTICE BY ATTORNEY RYAN SWINBURNSON OF INTENT TO TERMINATE HIS PROFESSIONAL SERVICES AGREEMENT TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT

WHEREAS, Benton County ("County") is obligated by law to provide public defense services in Benton County Superior Court; and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost…."; and

WHEREAS, County contracted with, among others, attorney Ryan Swinburnson to provide such public defense services in Benton County Superior Court; and

WHEREAS, professional services agreement with attorney Swinburnson provided, in Section 19, that either party to the agreement may terminate it with or without cause upon 60 days advance written notice; and

WHEREAS, attorney Swinburnson has now provided such notice of termination via email dated June 16, 2020; and

WHEREAS, it is therefore appropriate to acknowledge the notice of termination and regard attorney Swinburnson's agreement as being terminated with an effective date of August 15, 2020, with post-termination responsibilities as detailed in said agreement; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Ryan Swinburnson for public defense services in Benton County Superior Court, executed by and through Resolution 2018-988 be terminated as requested by attorney Swinburnson pursuant to his written notice (attached as Exhibit A).

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, RYAN SWINBURNSON
Copy – Auditor, Superior Court, S. Godinez

E. Hsu

Denise Gerry

From: Eric Hsu
Sent: Monday, July 6, 2020 11:49 AM
To: Denise Gerry
Subject: FW: [EXTERNAL] Contract Notice

-----Original Message-----
From: Ryan Swinburnson <ryan@swinlaw.com>
Sent: Tuesday, June 16, 2020 3:58 PM
To: Eric Hsu <Eric.Hsu@co.benton.wa.us>
Subject: [EXTERNAL] Contract Notice

CAUTION: This email originated from outside of Benton County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Eric,

I'm sure this comes out of left field, however, please accept this email as my 60 day notice on both my felony and homicide contracts. My parents live in Blaine (separately) and my mom has medical issues that are going to need my assistance, and I think it is best that I transition my practice over to Whatcom County.

Obviously, the felony contract terms are pretty clear. On the homicide cases (2), it is more murky given the state of things regarding COVID. I think it is very unlikely that these cases are brought to Jury any time soon. Additionally, I will be advising all of my clients to wait to have trial until after the mask requirement is lifted. I believe it is impossible to have a fair trial when the jurors, attorneys, and witnesses have covered faces. I believe the Covid lag would allow another attorney to get up to speed on each case. I would be happy to assist in making it a smooth transition. I have not bailed for any of time on those two cases for the last three months as I knew this was a possibility and I didn't feel receiving compensation would be appropriate if someone else was ultimately taking the case.

This has not been an easy decision for me since it means uprooting my kids and moving from the place I have been practicing for exactly 20 years. But, I think it is important and the right decision. I am working on a log of all my existing cases, and, of course, I will get as many resolved as possible. I also understand that I will still be receiving appointments for the next 60 days and have 60 days after that to handleall matters. I will continue to work diligently on all cases.

Incidentally, I have not told anyone about this, so if you could give me a couple of days to make it know I would appreciate it. Thank you

Ryan Swinburnson

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	21 July 2020
Subject:	Paving of Canyon Road at RMSF – Contract with TCSA
Presenter:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary

The contract under consideration would enter the County into an agreement with its concessionaire, the Tri-Cities Shooting Association ("TCSA"), so that the County may contribute financially toward a major infrastructure improvement at the Rattlesnake Mountain Shooting Facility ("RMSF").

Background

The preamble on the first two pages of the contract provide substantial background as to what the project is, and why the County would be contributing toward it. In summary, the main points:

- The "Canyon Road" at RMSF leads from the entrance at the highway up to the "High Power Range".
- Due to location, use, weather, and other impacts, the graveled Canyon Road degrades easily.
- It has been the desire of the TCSA to pave nearly one mile of the Canyon Road for many years.
- TCSA was successful in obtaining a state grant to cover half the price of the paving, estimated to be about $150,000. Paving would consist of grading and a double shot of chip seal.
- While the County is not obligated to assist with improvements at the property, TCSA has been an excellent concessionaire for the County since 1991, and as such the County has on occasion through the years chosen to financially participate in certain projects. Examples over the past decade include the new well at Rose-Iris, the restrooms at Rose-Iris, and the main entrance Flag Garden. Benton County owns roughly two-thirds of the RMSF property and leases the remainder from the State of Washington.
- The Benton County Park Board wanted to assist TCSA with TCSA's share (50%, or about $75,000) of the cost of the improvement. The Board decided on the amount of $35,000, to be paid from the Park Development Fund, and this was placed as an item into the Capital Improvement Plan. TCSA would be responsible for the remainder of its share, estimated at about $40,000.
- TCSA is subject to state procurement requirements under the terms of this grant and has bid the project accordingly.
- The attached contract, approved to form by the Prosecutor, solidifies the County's $35,000 commitment to the improvement and gives TCSA a mechanism by which to invoice the Parks Department.

Fiscal Impact

$35,000.00, to be paid from the Park Development Fund. The amount is budgeted and available.

Recommendation

Staff recommends entering into this contract with TCSA.

Attachments

- Resolution
- Benton County / TCSA professional services contract

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVAL OF A PROFESSIONAL SERVICES CONTRACT BETWEEN BENTON COUNTY AND THE TRI-CITIES SHOOTING ASSOCIATION FOR ASSISTANCE WITH FUNDING THE "CANYON ROAD" IMPROVEMENT AT THE RATTLESNAKE MOUNTAIN SHOOTING FACILITY

WHEREAS, the Rattlesnake Mountain Shooting Facility ("RMSF") is one of 10 parks operated by Benton County and is regarded as one of the premier recreational shooting facilities in the Pacific Northwest; and,

WHEREAS, the Tri-Cities Shooting Association ("TCSA") has safely and responsibly managed the RMSF as Benton County's concessionaire since creation of the RMSF in 1991; and,

WHEREAS, the TCSA is responsible for all capital improvements at the RMSF, but on occasion Benton County chooses to assist with certain improvements; and,

WHEREAS, the TCSA successfully procured a substantial State of Washington grant (Recreation and Conservation Office) that will pay for one-half of the cost of a major capital improvement – the paving of about one mile of the "Canyon Road" -- and Benton County wishes to assist TCSA with payment for the other half of the expense of the improvement; **NOW, THEREFORE**,

BE IT RESOLVED that the Board of Benton County Commissioners approves the professional services contract between Benton County and the Tri-Cities Shooting Association for financial assistance with improvement to the "Canyon Road" at the County's Rattlesnake Mountain Shooting Facility, and authorizes the Chairman to sign said contract. The County shall pay a maximum of $35,000.00 to TCSA toward the cost of the project, and the sum shall be paid from the Park Development Fund. The contract shall expire on December 31, 2020.

Dated this 21st day of July, 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

orig: Parks
cc: Tri-Cities Shooting Association

Prepared by: A.J. Fyall

BENTON COUNTY
ARCHITECTURAL/ENGINEERING
PROFESSIONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision of the State of Washington with its principal offices at 620 Market Street, Prosser, Washington 99350 (hereinafter "COUNTY"), and **TRI-CITIES SHOOTING ASSOCIATION**, a non-profit corporation organized under the laws of the State of Washington with its principal mailing address of Post Office Box 785, Richland, Washington 99352 (hereinafter "CONTRACTOR").

WHEREAS, CONTRACTOR operates the Rattlesnake Mountain Shooting Facility (hereinafter "Facility") on behalf of COUNTY under the terms of an Amended/Restated Lease/Concessionaire Agreement executed November 1, 2010 with a term date of December 31, 2040; and has operated the Facility for the COUNTY under similar arrangement since October 30, 1991; and,

WHEREAS, COUNTY owns the land patent to much of the Facility property but is under no obligation to develop or otherwise improve the property for CONTRACTOR; and,

WHEREAS, CONTRACTOR has made significant improvements to the Facility over the course of nearly thirty years, occasionally but not usually with COUNTY financial participation; and,

WHEREAS, CONTRACTOR has a long and successful history in obtaining grant funding for many of the more substantial improvements, usually in the form of grants from the State of Washington through the Recreation and Conservation Office (hereinafter "RCO"); and,

WHEREAS, CONTRACTOR operates multiple ranges within the Facility catering to the interests and needs of various recreational shooting disciplines, including the "High-Power Range" for target shooting with high-powered rifles; and,

WHEREAS, the High-Power Range is located on a terrace above most Facility improvements and access locations, and is accessed via the unpaved "Canyon Road" that is subject to frequent wear and weather damage; and,

WHEREAS, it was determined by the COUNTY and the CONTRACTOR that hard-surfacing of the "Canyon Road" would be an important improvement that would add value to the Facility; and,

WHEREAS, paving of the "Canyon Road" was made a priority by the Benton County Park Board, placed into the COUNTY'S "Capital Improvement Plan", and adopted into the CONTRACTOR'S "Master Plan"; and,

WHEREAS, the CONTRACTOR successfully obtained an RCO grant to fund one-half of the "Canyon Road" paving improvement; and,

WHEREAS, in an effort to support "Canyon Road" improvement and the CONTRACTOR'S continued overall investments and success at the Facility, the Benton County Park Board voted to make a cash contribution toward CONTRACTOR'S share of the balance of the cost of the improvement in an amount of $35,000.00; and,

WHEREAS, CONTRACTOR, in receiving State of Washington funds through RCO, followed State bidding and contracting requirements to procure a qualified contractor to complete the "Canyon Road" paving work; **NOW THEREFORE**,

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of these Terms and Conditions.

2. DURATION OF CONTRACT

The term of this Contract shall begin when executed by both parties and shall expire on December 31, 2020. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The COUNTY requires and the CONTRACTOR agrees to perform the following services:

a. Paving of the "Canyon Road" at the Rattlesnake Mountain Shooting Facility, including:

i. Mobilization and preparation, including grading and placement of appropriate ballast and base-layer gravel as needed along approximately 4,544 linear feet of the "Canyon Road", extending from the point of the Project's beginning on the lower terrace of the property, up and through the Canyon, and to the point of the Project's ending on the upper terrace.

ii. Paving of approximately 4,544 linear feet of the "Canyon Road" with two "double shots" of standard chip seal (oil and gravel mixture).

(1) 735 linear feet of chip seal at 20-foot width on the lower end of the project.

(2) 3809 linear feet of chip seal at 16-foot width on the upper end of the project.

iii. The CONTRACTOR shall perform the work consistent with the industry standards in the A&E Profession. Specifically, in instances where project contracts call for the architect to exercise independent discretion in making a decision or resolving a dispute, CONTRACTOR shall do so in an independent fashion.

iv. The CONTRACTOR shall complete each task assigned in a timely manner according to the schedule agreed to by the parties.

b. Information and Reports: The CONTRACTOR'S representative shall meet with the COUNTY'S representative as requested by either party. The CONTRACTOR shall prepare and present status reports and/or other information as requested in writing by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name:	Mark Verwest (President)
Address:	Post Office Box Richland, Washington 99352
Phone:	509-735-1662
Email:	mverwest1662@charter.net

b. For COUNTY:

Name:	Adam J. Fyall
Address:	7122 West Okanogan Place Kennewick, Washington 99336
Phone:	509-736-3053
Email:	adam.fyall@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Thirty-Five Thousand Dollars ($35,000.00).

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Thirty-Five Thousand Dollars ($35,000.00).

c. It is understood that the Project in total shall cost the CONTRACTOR in excess of $35,000.00 and that the COUNTY'S contribution toward the Project is only a fractional portion of the total Project cost, and that the CONTRACTOR will need to fund the balance of the Project cost through other sources.

d. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

e. The CONTRACTOR shall submit a single invoice to the COUNTY after the conclusion of all work on the project and after the COUNTY has determined that the work meets the COUNTY'S satisfaction. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

f. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.

g. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY

may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

6. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents. In the event of the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the

CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

8. INSURANCE

The CONTRACTOR'S Subcontractor shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

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

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

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

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

d. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos owned by the CONTRACTOR (Symbol 1), or if the CONTRACTOR has

no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

e. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY or its elected and appointed officers, officials, employees, or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY or its officers, officials, employees, or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 8(a), shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

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

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability, and Workers'

Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 West Okanogan Place, Kennewick, Washington 99336.

9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. With the exception that all construction work performed under this Contract will be performed by CONTRACTOR'S Subcontractor - Central Washington Asphalt, USDOT License Number 1410784, and with its principal offices at 13184 Wheeler Road Northeast, Moses Lake, Washington 98837, CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm not described herein without the prior express written consent of the COUNTY.

b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee, or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.

d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state, or local law that are now or may be enacted during the term of this Contract.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative, or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the COUNTY upon request, all records relating to the performance of this Contract

for six (6) years after Contract termination or expiration.

15. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any claimed action, cause, or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and

by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves and their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 7 and 17); extended reporting period requirements for professional liability insurance (Section 8(a)); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section intentionally left blank -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on the last date signed.

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington.

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 7/5/2020

FOR: TRI-CITIES SHOOTING ASSOCIATION

_____
Signature

PRESIDENT
Title:

MARK J. VETTWEST
Print Name

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PUBLIC SAFETY SALES TAX FUND NUMBER 0148101, DEPARTMENT NUMBER 115.

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental Dept Nbr: 115

Fund Name: Public Safety Sales Tax Fund Nbr: 0148101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.303	4102	Contract Services	$1,500,000
TOTAL			$1,500,000

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.120	6401	Capital Outlay	$1,500,000
TOTAL			$1,500,000

Explanation:

To appropriate funding for the Benton County Emergency Services (BCES) communication upgrade (radio tower)

Prepared by: Linda Ivey Date: 06-Jul-2020

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN SOLID WASTE COLLECTION FUND NUMBER 0155101, DEPARTMENT NUMBER 000

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

Prepared by:
B. Parham

cc: Auditor

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: No Department Dept Nbr: 000

Fund Name: Solid Waste Collection Fund Nbr: 0155101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
553.710	3201	Vehicle Fuel	$500
TOTAL			$500

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
553.710	9102	Legal Services - Prosecuting Attorney	$500
TOTAL			$500

Explanation: A line item transfer is required to fund Legal Services costs.

Prepared by: Blanca Parham Date: 09-Jul-2020

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Authorizing WAPSC RSO Grant Agreement 2020/2021
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Ryan Lukson / Steve Caughey, Commander

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

The Benton County Sheriff's Office has participated in the Registered Sex Offender Address and Residency Verification Program for several years.

Address verification funds are designed to support all aspects of Registered Sex Offender Address Verification and funds are required to be used for face-to-face verification of a sex offender's address at the place of residency.

Fiscal Impact

Amount: Revenue Funds $148,185.00

Fund: Actual Expenditures will be paid from WASPC Basub under department 121 in Current Expense. This grant was included in the 2019/2020 budget process. No budget adjustment is necessary.

Recommendation

Approve attached resolution and interagency agreement authorizing the Sheriff to sign the agreement allowing Benton County's participation in the FY 2020/2021 Registered Sex Offender Address and Residency Verification Program.

Suggested Motion

Approve as part of consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY SHERIFF TO SIGN THE INTERAGENCY AGREEMENT BETWEEN WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS AND BENTON COUNTY WHICH WILL ALLOW THE BENTON COUNTY SHERIFF'S OFFICE TO PARTICPATE IN THE FY 2020/2021 REGISTERED SEX OFFENDER ADDRESS AND RESIDENCY VERIFICATION PROGRAM

WHEREAS, the Benton County Sheriff's Office has participated in the Registered Sex Offender Address and Residency Verification Program for several years; and

WHEREAS, address verification funds are designed to support all aspects of Registered Sex Offender Address Verification and funds are required to be used for face-to-face verification of a sex offender's address at the place of residency; and

WHEREAS, the Benton County Sheriff's Office was informed that they have been awarded $148,185.00 for the FY 2020/2021 Registered Sex Offender Address and Residency Verification Program; and

WHEREAS, additionally, funding from this program will be used to send at least one staff person to at least one WASPC OffenderWatch User Group meeting and SONAR Committee Meeting; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby approves the attached interagency agreement between the Washington Association of Sheriffs & Police Chiefs and Benton County for an amount not to exceed $148,185.00 for the FY 2020/2021 Registered Sex Offender Address and Residency Verification Program; and

BE IT FURTHER RESOLVED, that the term of the attached interagency agreement will follow the state fiscal year, starting July 1, 2020 and ending June 30, 2021; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Benton County Sheriff's signature on the attached agreement.

Dated this _____day of _____, 2020.

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Sheriff's Office
CC: Auditor; PA's Office; WASPC

Prepared by: K. Gillies

Washington Association of
SHERIFFS &
POLICE CHIEFS

3060 Willamette Drive NE
Lacey, WA 98516
360-486-2380 (Phone)
360-486-2381 (Fax)
www.waspc.org

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President-Elect
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Chief Gary Jenkins
City of Pullman

Sheriff Mitzi Johanknecht
King County

Sheriff Tom Jones
Grant County

Chief Darrell Lowe
City of Redmond

Sheriff James Raymond
Franklin County

Director David Trujillo
Washington State
Gambling Commission

Steven D. Strachan
Executive Director

July 1, 2020

Sheriff Jerry Hatcher
Benton County Sheriff's Office
7122 Okanogan Place, Bldg. A
Kennewick, WA 99336

Dear Sheriff Jerry Hatcher:

Subject: Registered Sex Offender Address Verification Grant Program.

The Washington State Legislature allocated $9.9 million dollars over the 2019-2021 biennium for the Registered Sex Offender Address Verification Grant Program. This year, local agencies will receive $4.81 million dollars to conduct face-to-face address verifications for registered sex and kidnapping offenders as directed by RCW 9A.44.130. In 2010, this grant program was established with the intent that all sex offenders and kidnapping offenders would be verified at their registered address by the Sheriff's Office. This face-to-face address verification is important to maintain accuracy of the Sex Offender Registry and to enforce the sex offender registration laws of Washington State. It is important that this money continue to be used for its intended purpose.

I am pleased to inform you that the **Benton County Sheriff's Office** will receive **$148,185.00** for the Registered Sex Offender Address Verification Program. The grant cycle will follow the state fiscal year, starting July 1, 2020 and ending June 30, 2021. Quarterly grant reports are due on October 10, 2020, January 10, 2021, April 10, 2021, and July 10, 2021. Quarterly grant reports are to be completed electronically and will be emailed to RSO Coordinators. Reports must be received by WASPC prior to quarterly grant payments being issued to your agency.

Address verification funds are designed to support all aspects of Registered Sex Offender Address Verification. Most importantly, funds are required to be used for face-to-face verification of a sex offender's address at the place of residency.

- For Level I Offenders—Face-to-Face Address Verification will occur once every twelve months.
- For Level II Offenders—Face-to-Face Address Verification will occur once every six months.
- For Level III Offenders—Face-to-Face Address Verification will occur once every three months.
- For the purposes of this grant, unclassified offenders and kidnapping offenders are considered level I offenders, unless the local jurisdiction sets a higher classification in the interest of public safety.

Funding from this program will be used to send at least one staff person to at least one WASPC OffenderWatch User Group and SONAR Committee Meeting. Meeting dates are July 14, 2020, October 13, 2020, January 12, 2021 and April 13, 2021.

Address verification data must be entered into the statewide sex offender database, OffenderWatch. WASPC will conduct audits of the OffenderWatch records to confirm verification entries and completeness of records.

Registration, community notification and verification of offenders must follow the applicable state statutes (RCWs 4.24.550, 9A.44.130, 9A.44.135, 36.28A.230, etc.). Any delegation to cities should have signed Memorandums of Understanding (MOUs) clearly defining agreed upon responsibilities.

Please note the following terms will be adhered to for the 2020-2021 Registered Sex Offender Address Verification Program:

- Any agency not meeting at least 90% of required verifications will not receive that quarter's grant payment.
- Any agency not using OffenderWatch to track verifications will not receive that quarter's grant payment.
- Agencies that do not participate in at least one OffenderWatch User Group and SONAR Committee meeting in person will be penalized 10% of the final quarter's grant payment.
- Quarterly grant reports must be received by WASPC prior to quarterly grant payments being issued to your agency.

Please review the attached interagency agreement and return to the WASPC Office ASAP. If you have any questions please contact Terrina Peterson at (360) 486-2386 or tpeterson@waspc.org.

Sincerely,

Steven D. Strachan
Executive Director

WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS
INTERAGENCY AGREEMENT—SPECIFIC TERMS AND CONDITIONS

Registered Sex Offender Address Verification Program

This AGREEMENT is entered into by and between the **WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS** (hereinafter referred to as WASPC) and the **BENTON COUNTY SHERIFF'S OFFICE** (hereinafter referred to as the RECIPIENT).

Award Recipient Name and Address:
Benton County Sheriff's Office
7122 Okanogan Place, Bldg. A
Kennewick, WA 99336

Agency Contact: Jerry Hatcher
Title: Sheriff

Project Title
Registered Sex Offender Address Verification

Funding Cycle
July 1, 2020-June 30, 2021

Agreement No:
RSO 2020-21 Benton

Funding Authority:
WA Association of Sheriffs and Police Chiefs

Grant Award:
$148,185.00

Service Area:
Benton County

FUNDING SOURCE
Funding for this AGREEMENT is provided to WASPC through the Criminal Justice Training Commission from the State of Washington. Funding awarded the RECIPIENT shall not exceed the amount shown on the award letter.

SCOPE OF SERVICES
The RECIPIENT shall use the funds awarded to meet the following requirements:

- Face-to-face verifications of all registered offenders based on the schedule outlined in the award letter and RCWs 36.28A.230 and 9A.44.135. Any agency not meeting at least 90% of required verifications will not receive that quarter's grant payment.
- Quarterly report will be submitted electronically by October 10, 2020, January 10, 2021, April 10, 2021, and July 10, 2021. Funds will be disbursed in equal allotments each quarter. Quarterly grant reports must be received by WASPC prior to quarterly grant payments being issued to your agency.
- In-person attendance at least one OffenderWatch User Group and SONAR Committee Meeting. Meeting dates are July 14, 2020, October 13, 2020, January 12, 2021 and April 13, 2021. Agencies that do not participate in at least one OffenderWatch User Group and SONAR Committee meeting in person will be penalized 10% of the final quarter's grant payment.
- Up to date and accurate record entries into OffenderWatch. Any agency not using OffenderWatch to track verifications will not receive that quarter's grant payment.

IN WITNESS WHEREOF, WASPC and RECIPIENT acknowledge and accept the terms of this AGREEMENT and attachments hereto, and in witness whereof have executed this AGREEMENT as of the date and year written below. The rights and obligations of both parties to this AGREEMENT are governed by the information on this Award Sheet and Letter and other documents incorporated herein.

For WASPC		**For RECIPIENT**	
Name:	Steven D. Strachan	Name:	Jerry Hatcher
Title:	Executive Director	Title:	Sheriff
Agency:	WA Assn. of Sheriffs & Police Chiefs	Agency:	Benton County Sheriff's Office
Date:	July 1, 2020	Date:	
Signature:		Signature:	

X _____
Approved as to form

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	OA 2020-001 Ordinance Amendment to Zoning Regulations
Presenter:	Greg Wendt, Planning Manager
Prepared By:	Greg Wendt
Reviewed By:	Greg Wendt

Type of Agenda Item:	**Type of Action Needed:**	
☐ Consent Agenda	☐ Discussion Only (1st)	☒ Pass Motion
☒ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☒ Pass Ordinance

Summary / Background Information

Benton County is proposing a text amendment to the County Zoning Regulations. The amendment involves the following:

1. Rural Land 5 Zoning District. Add veterinary facility as a conditional use.
   A Veterinary Facility is defined in Chapter 11.03 (187) as "a business establishment or facility which renders surgical and medical treatment to animals, and which includes inside or outside accommodations for animals".

   Add the following 'Uses Requiring a Conditional Use Permit' in the RL-5 Zoning District

   Chapter 11.11.060

   (x) Veterinary Facility.

On July 9, 2020, the Benton County Planning conducted an open record public hearing to discuss the proposed ordinance amendment. At the conclusion of the public hearing, the Planning Commission recommended approval, subject to ten (10) findings of fact.

Fiscal Impact

Amount: Unknown

Fund: Unknown

Recommendation

It is the recommendation of the Benton County Planning Department and the Planning Commission that Planning Casefile Application OA 2019-001, with the suggested 10 findings of fact be adopted.

Suggested Motion

At the conclusion of the Open Record Hearing, the Board of County Commissioners will need to make a motion adopting the Planning Commission's Recommendation, Findings and Conclusions as their own, approve the Resolution and adopt the Ordinance amending BCC 11.11.060 (Ordinance Amendment File No. OA 2020-001).

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING AN ORDINANCE RELATING TO ZONING AND RURAL LANDS FIVE ACRES DISTRICT (RL-5); AMENDING THE SECTION RELATING TO USES REQUIRING A CONDITIONAL USE PERMIT; AMENDING ORDINANCE 611, SECTION 44 AND BCC 11.11.060 ADDING A VETERINARY FACILITY AS A USE REQUIRING A CONDITIONAL USE PERMIT.

WHEREAS, the Benton County Planning Commission after conducting an open record hearing and review on June 9, 2020, has forwarded the proposed amendment(s) to the Board of County Commissioners with a positive recommendation; and,

WHEREAS, the Board did review the Planning Commission record, and staff recommendations, the testimony and the proposed ordinance; and,

WHEREAS, the Planning Commission recommendation of approval is set forth in the Planning Commission's Recommendation, Findings of Fact and Conclusions that are found in File # OA 2020-001 in the Planning Department; and,

WHEREAS, Notice of Open Record Hearing before the Board of County Commissioners was published in the Prosser Record Bulletin on July 8, 2020; and,

WHEREAS, the Board of County Commissioners did conduct an open record hearing on Tuesday, July 21, 2020, at 9.00 a.m. in the Commissioners' Meeting Room, Justice Center, Kennewick, Washington to consider the above proposed change in Ordinance 611, BCC 11.11.060; and,

WHEREAS, after consideration of the above-mentioned request and review of the Planning Commission record, staff analysis and memos, and all written and oral comments submitted at the public hearing, the Board of County Commissioners are satisfied that it appears to be in the best interest of the public to adopt Planning Application OA 2020-001, amendment to BCC Title 11, Ordinance 611, BCC 11.11.060; and,

NOW THEREFORE BE IT RESOLVED that Ordinance No._____ an ordinance amending the section relating to definitions; amending the sections relating to Zoning and Rural Lands Five Acres District (Rl-5); amending the section relating to uses requiring a Conditional Use Permit; amending Ordinance 611, Section 44 and BCC 11.11.060 adding a veterinary facility as a use requiring a conditional use permit is hereby adopted and will take effect and be in full force immediately upon its passage and adoption.

Dated this 21st day of July 2020.

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of County
Commissioners of Benton County
Washington.

Attest.....
Clerk of the Board

GW/djh

ORDINANCE NO._____

AN ORDINANCE relating to zoning and Rural Lands Five Acre District (RL-5); amending the section relating to uses requiring a conditional use permit; amending Ordinance 611, Section 44 and BCC 11.11.060.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 611, Section 44 and BCC 11.11.060 are hereby amended to read as follows:

USES REQUIRING A CONDITIONAL USE PERMIT. The following uses may be permitted on a single parcel of record within the Rural Lands Five Acre District (RL-5) if a conditional use permit is issued by the Hearings Examiner after notice and public hearing as provided by BCC 11.50.040.

(a) A school.

(b) A community clubhouse, grange hall, senior center and/or other non-profit organizational hall.

(c) A storage yard owned and operated by a utility.

(d) A sand or gravel pit, stone quarry and similar use for the development of natural resources extracted on-site.

(e) Bed and Breakfast Facility, subject to the provisions in BCC 11.42.030.

(f) Kennel, commercial.

(g) Home occupation involving the display and/or sale of products on the premises; provided, a home occupation permit is also required under Chapter 11.49 BCC.

(h) On-site hazardous waste treatment and/or hazardous waste storage facilities as an accessory use to an allowed or conditionally permitted use; provided, that such facilities must comply with the state siting criteria adopted in RCW 70.105.210, as currently in effect or as hereafter amended.

(i) Child Day Care Facility, Type B, subject to the provisions of BCC 11.42.060.

(j) Wineries/Breweries/Distilleries not otherwise allowed under BCC 11.11.030.

(k) Cemetery, columbarium, and/or mausoleum.

(l) Sewage treatment facility for industrial and/or domestic waste.

(m) Rodeo facilities.

(n) Reception facility with a capacity not to exceed two hundred (200) attendees.

(o) A Park.

(p) A golf course.

(q) Recreational Vehicle Park.

(r) A public transit center.

(s) Airport/Heliport.

(t) Church, if not otherwise allowed under BCC 11.11.030.

(u) Commercial stables and/or riding academies.

(v) Veterinary facility.

((~~(u)~~)) (w) Business activities, other than those set forth above, that are compatible with the principal uses and purpose of the underlying zone and the surrounding land uses may be conducted from within an approved accessory building detached from all dwelling units if the following criteria as well as any other conditions required by the Hearings Examiner are satisfied:

(1) The business activity must take place on a parcel of land that is 2.0 acres or greater in size.

(2) There must be a residence on site, and at least one (1) of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located and must reside in said residence.

(3) No more than four (4) non-resident persons, whether they work on site or not, may be employed by or be partners in the business.

(4) The business activity, including all storage space, shall not occupy more than two thousand (2,000) square feet of total floor area within the detached accessory building.

(5) Only one (1) approved detached accessory building on a parcel may be used for business activities. If more than one (1) business will be conducted within an approved detached accessory building, then a separate application must be submitted for each business activity, provided that the total area used by all business activities shall not exceed that permitted by BCC 11.11.060 ((~~(u)~~)) (w)(4).

(6) No more than two (2) non-illuminating signs, with a maximum area of four (4) square feet each, shall be permitted in connection with the business activity. The posting of such signs is limited to the parcel on which the approved detached accessory building is located. On-street (inside the road right-of-way) sign posting and sign posting which interferes with the line-of-site for road intersections are prohibited.

(7) Not more than three (3) vehicles marked to identify the business may be on the parcel at any one time. No other on-site outside storage of vehicles, equipment and/or supplies is allowed in connection with the business activity. This prohibition applies to, but is not limited to: lumber,

plasterboard, pipe, paint, inoperable vehicles, and heavy equipment that are related to the business.

(8) The property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton-Franklin Health District, and all other local, state and federal regulations pertinent to the business activity pursued. The requirements of or permission granted by the Hearings Examiner shall not be construed as an exemption from such regulations.

(9) Adequate off-street parking, as determined by the Hearings Examiner, must be provided.

(10) Any waste created as a result of the business activity must be disposed of off-site in compliance with all local, state and/or federal regulations.

(11) The presence of customers/clients and non-resident employees at the location of the business activity shall be limited to the days and hours of operation as determined by the Hearings Examiner.

(12) The business activity does not require a marijuana processor or retailer license from the Washington State Liquor Control Board.

((~~(v) Commercial stables and/or riding academies.~~))

SECTION 2. Severability. If any provision of this Ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 3. Effective Date. This Ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this _____ day of _____.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Approved as to Form:

_____
Deputy Prosecuting Attorney

Constituting the Board of
County Commissioners of
Benton County, Washington

Attest: _____
Clerk of the Board

RECOMMENDATION OF THE
BENTON COUNTY PLANNING COMMISSION

RE: In the Matter of County Planning: relating to an Ordinance Amendment to Benton County Zoning Regulations- Veterinary Clinics- Uses Requiring a Conditional Use Permit

RECOMMENDATION, FINDINGS OF FACT AND CONCLUSIONS
Planning File #OA-2020-001

RECOMMENDATION

An ordinance amendment to BCC 11.11.60 adding a Veterinary Clinic as a use requiring a Conditional Use Permit; relating to zoning and Rural Lands Five Acre District-RL5; amending Ordinance 611, Section 44 and BCC 11.11.60 be APPROVED subject to the ten (10) findings of fact.

RESOLUTION

WHEREAS, the legal notification for the open record public hearing was given pursuant to RCW 36.70.590 on May 27, 2020;

WHEREAS, an open record public hearing was held on June 9, 2020 at 6:00 p.m., in the Planning Annex, 1002 Dudley Avenue, Prosser, WA 99350;

WHEREAS, the Planning Commission was available to receive public testimony, exhibits, and answer questions in the public portion of the hearing with the public being able to attend and comment through telephonic access to the meeting. The meeting was also broadcast through video access to allow the public to view the meeting; and,

WHEREAS, the following members attended the meeting, including, Lloyd Coughlin, Brian Skeels, Marjorie Kaspar, Tammy McKeirnan, Leo Perales, and Martin Sheeran; and,

WHEREAS, all those who testified and those public hearing exhibits that were received into evidence are identified in the minutes for the hearing on June 9, 2020; and,

WHEREAS, the Planning Commission at the open record public hearing considered the evidence submitted and voted to recommend approval with the findings of fact as outlined in the staff memo dated May 12, 2020; and,

WHEREAS, the Planning Commission is entering its written findings of fact, conclusions and recommendations concerning this matter, and is forwarding the same to the Board of County Commissioners and,

FINDINGS OF FACT

1. Benton County is proposing a text amendment to the County Zoning Regulations, Ordinance 611 with a focus on the following:
   a. Chapter 11.11 Rural Land 5 Zoning District - add (x) Veterinary Facility to Section 11.11.060 Uses Requiring a Conditional Use Permit.

2. Planning Casefile Application OA 2020-001 is found to be in conformance with the intent of Benton County Code 11.53.020 for zoning text amendments.

3. Planning Casefile Application OA 2020-001 is found to be in conformance with the intent of the Benton County Comprehensive Plan.

4. Planning Casefile Application OA 2020-001 was submitted by email to the State of Washington's Department of Commerce on January 30, 2020 for an expedited review in compliance with WAC 365-196-630 (6).

5. The legal notification for Planning Casefile Application OA 2012-001 was given on May 27, 2020 pursuant to RCW 36.70.590.

6. Planning Case file Application OA 2020-001 appeared in an open record public hearing before the County Planning Commission on June 9, 2020 in the Planning Annex Hearing Room, 1002 Dudley Avenue, Prosser, WA 99350.

7. At the June 9, 2020, open record hearing, the Planning Commission was available to receive public testimony, exhibits, and answer questions in the public portion of the hearing. The public hearing was held with the public being able to attend and comment through telephonic access to the meeting. The meeting was also broadcast through video access to allow the public to view the meeting.

8. The Planning Commission, at the conclusion of the open record hearing, voted to recommend approval and to forward a positive recommendation to the Board of County Commissioners for the proposed ordinance amendment application, OA 2020-001.

N**OW, THEREFORE BE IT RESOLVED BY THE BENTON COUNTY PLANNING COMMISSION**, through its chairman as authorized by motion of the Board, that these findings of fact for the aforementioned Ordinance Amendment Application OA-2020-001 to amend BCC 11.11.60 adding a Veterinary Clinic as a use requiring a Conditional Use Permit; relating to zoning and Rural Lands Five Acre District-RL5; amending Ordinance 611, Section 44 and BCC 11.11.60 be approved for transmittal to the Board of County Commissioners, with a recommendation to adopt the amendments.

Mark Sheeran 6/9/2020

Martin Sheeran, Chairman DATE
BENTON COUNTY PLANNING COMMISSION

Planning Department
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Phone (509) 786-5612
Fax (509) 786-5629
planning.department@co.benton.wa.us
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NOTICE OF PUBLIC HEARING

NOTICE OF HEARINGS BEFORE THE BENTON COUNTY BOARD OF COMMISSIONERS in the matter of county planning:

OA 2020-001 - An Ordinance Amendment relating to zoning and Rural Lands Five Acre District (RL-5); amending the section relating to uses requiring a conditional use permit; amending Ordinance 611, Section 44 and BCC 11.11.060 by adding a veterinary facility as a use requiring a conditional use permit.

OA 2020-002 - AN ORDINANCE relating to the permit review process; amending the section relating to submission and acceptance of applications; and amending Ordinance 573, Section 1 and BCC 17.10.090 by deleting the reference to BCC 9.08.020(17) and adding a reference to BCC 9.02.040(26).

SPV 2020-001 - A Short Plat Vacation application by Jesse Billingsley to vacate the 10-foot irrigation and the 10-foot utility easements located along the south lot line of Lot 1 of Short Plat 3178 in Section 10, Township 8 North, Range 28 East, W.M. on Parcel # 1-1088-101-3178-001

NOTICE IS HEREBY GIVEN that the Board of County Commissioners will hold public hearings on July 21, 2020 at 9:00 a.m. in the Commissioners Meeting Room.

NOTICE IS FURTHER GIVEN THAT all testimony for or against the proposed amendments and short plat vacation will be taken at this time. All concerned persons may appear and present any support or objections to the proposed amendment. Due to Governor's "Stay Home, Stay Healthy" order the County Offices are closed to in person visits from the public at this time. In an effort to continue to provide public access to the Board of County Commissioners meetings, Benton County will be providing telephonic and video access for the public to view and provide testimony at the Planning Commission meetings. **Please click on the following link for more information on how to join the meeting.** https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181

FURTHER INFORMATION regarding these files and copies of the proposed amendments are available at no cost from the office of the Benton County Planning Department, Post Office Box 910, Prosser, WA 99350. Telephone: Prosser - (509) 786-5612; Tri-Cities - (509) 736-3086 or on our website at http://tinyurl.com/BCpublicnotice.

BASED ON THE TESTIMONY presented at the public hearing, the Board of County

Commissioners may approve, disapprove or they may make changes to the proposed ordinances. Any information submitted to the Benton County Planning Department is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

DATED this 1st day of July 2020.

JAMES BEAVER, Chairman
BENTON COUNTY COMMISSIONERS

Greg Wendt, Planning Manager
Benton County Planning Department

PUBLISH: July 8, 2020

Planning Department
P.O. Box 910
1002 Dudley Avenue
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STAFF REPORT TO THE BENTON COUNTY PLANNING COMMISSION

FILE NO:	**OA 2020-001** (Ordinance Amendment to Zoning Regulations)
MEMO DATE:	May 12, 2020
HEARING DATE:	June 9, 2020
APPLICANT:	Benton County Planning Department
OWNER:	N/A
LOCATION:	Unincorporated Benton County
PROPERTY SIZE:	N/A
AREA TO BE USED:	N/A
LAND USE:	N/A
COMP. PLAN:	N/A
ZONING:	N/A
SUGGESTED STAFF RECOMMENDATION:	Positive recommendation subject to eight findings of fact.

APPLICATION DESCRIPTION

Benton County is proposing a text amendment to the County Zoning Regulations. The amendment involves the following:

1. **Rural Land 5 Zoning District.** Add **veterinary facility** as a conditional use.

   A Veterinary Facility is defined in Chapter 11.03 (187) as "a business establishment or facility which renders surgical and medical treatment to animals and which includes inside or outside accommodations for animals".

   Add the following 'Uses Requiring a Conditional Use Permit': in the RL-5 Zoning District

   Chapter 11.11.060

   (x) Veterinary Facility.

PUBLIC NOTICE

1. A Notice of Public Hearing was published in the Prosser Record and put on the County's website on May 27, 2020.

APPLICABLE STANDARDS/ORDINANCES

1. Comprehensive Plan: 2018 Benton County Comprehensive Plan.

2. Zoning Code: Benton County Code, Title 11, Zoning.

AGENCY COMMENTS

None.

RECOMMENDATION

Benton County Planning Staff will assist the Planning Commission with the determination of findings of fact for File OA 2020-000.

The Benton County Planning Department recommends that the Planning Commission forward a **recommendation of approval** to the Benton County Board of Commissioners for application OA 2020-000 with the following suggested findings of fact and motion.

SUGGESTED FINDINGS OF FACT:

1. Benton County is proposing a text amendment to the County Zoning Regulations, Ordinance 611 with a focus on the following:

    a. Chapter 11.11 Rural Land 5 Zoning District - add (x) Veterinary Facility to Section 11.11.060 Uses Requiring a Conditional Use Permit.

2. Planning Casefile Application OA 2020-000 is found to be in conformance with the intent of Benton County Code 11.53.020 for zoning text amendments.

3. Planning Casefile Application OA 2020-000 is found to be in conformance with the intent of the Benton County Comprehensive Plan.

4. Planning Casefile Application OA 2012-000 was submitted by email to the State of Washington's Department of Commerce on January 30, 2020 for an expedited review in compliance with WAC 365-196-630 (6).

5. The legal notification for Planning Casefile Application OA 2012-000 was given on May 27, 2020 pursuant to RCW 36.70.590.

6. Planning Case file Application OA 2020-000 appeared in an open record public hearing before the County Planning Commission on June 9, 2020 in the Planning

Annex Hearing Room, 1002 Dudley Avenue, Prosser, WA 99350.

7. At the June 9, 2020, open record hearing, the Planning Commission was available to receive public testimony, exhibits, and answer questions in the public portion of the hearing. The public hearing was held with the public being able to attend and comment through telephonic access to the meeting. The meeting was also broadcast through video access to allow the public to view the meeting.

8. The Planning Commission, at the conclusion of the open record hearing, voted to recommend approval and to forward a positive recommendation to the Board of County Commissioners for the proposed ordinance amendment application, OA 2020-000.

SUGGESTED MOTION-

I move that the Chairman, in conjunction with the Secretary of the Planning Commission, prepare and adopt written findings and conclusions reflecting the Commission's recommendation for approval of the proposed zoning amendment, Casefile OA 2020-000, that articulate and are consistent with the findings, conclusions and recommendations made by the Planning Commission tonight.

ORDINANCE NO._____

AN ORDINANCE relating to zoning and Rural Lands Five Acre District (RL-5); amending the section relating to uses requiring a conditional use permit; amending Ordinance 611, Section 44 and BCC 11.11.060.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 611, Section 44 and BCC 11.11.060 are hereby amended to read as follows:

USES REQUIRING A CONDITIONAL USE PERMIT. The following uses may be permitted on a single parcel of record within the Rural Lands Five Acre District (RL-5) if a conditional use permit is issued by the Hearings Examiner after notice and public hearing as provided by BCC 11.50.040.

(a) A school.

(b) A community clubhouse, grange hall, senior center and/or other non-profit organizational hall.

(c) A storage yard owned and operated by a utility.

(d) A sand or gravel pit, stone quarry and similar use for the development of natural resources extracted on-site.

(e) Bed and Breakfast Facility, subject to the provisions in BCC 11.42.030.

(f) Kennel, commercial.

(g) Home occupation involving the display and/or sale of products on the premises; provided, a home occupation permit is also required under Chapter 11.49 BCC.

(h) On-site hazardous waste treatment and/or hazardous waste storage facilities as an accessory use to an allowed or conditionally permitted use; provided, that such facilities must comply with the state siting criteria adopted in RCW 70.105.210, as currently in effect or as hereafter amended.

(i) Child Day Care Facility, Type B, subject to the provisions of BCC 11.42.060.

(j) Wineries/Breweries/Distilleries not otherwise allowed under BCC 11.11.030.

(k) Cemetery, columbarium, and/or mausoleum.

(l) Sewage treatment facility for industrial and/or domestic waste.

(m) Rodeo facilities.

(n) Reception facility with a capacity not to exceed two hundred (200) attendees.

(o) A Park.

(p) A golf course.

(q) Recreational Vehicle Park.

(r) A public transit center.

(s) Airport/Heliport.

(t) Church, if not otherwise allowed under BCC 11.11.030.

(u) Commercial stables and/or riding academies.

(v) Veterinary facility.

((~~(u)~~)) (w) Business activities, other than those set forth above, that are compatible with the principal uses and purpose of the underlying zone and the surrounding land uses may be conducted from within an approved accessory building detached from all dwelling units if the following criteria as well as any other conditions required by the Hearings Examiner are satisfied:

(1) The business activity must take place on a parcel of land that is 2.0 acres or greater in size.

(2) There must be a residence on site, and at least one (1) of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located and must reside in said residence.

(3) No more than four (4) non-resident persons, whether they work on site or not, may be employed by or be partners in the business.

(4) The business activity, including all storage space, shall not occupy more than two thousand (2,000) square feet of total floor area within the detached accessory building.

(5) Only one (1) approved detached accessory building on a parcel may be used for business activities. If more than one (1) business will be conducted within an approved detached accessory building, then a separate application must be submitted for each business activity, provided that the total area used by all business activities shall not exceed that permitted by BCC 11.11.060 ((~~(u)~~)) (w)(4).

(6) No more than two (2) non-illuminating signs, with a maximum area of four (4) square feet each, shall be permitted in connection with the business activity. The posting of such signs is limited to the parcel on which the approved detached accessory building is located. On-street (inside the road right-of-way) sign posting and sign posting which interferes with the line-of-site for road intersections are prohibited.

(7) Not more than three (3) vehicles marked to identify the business may be on the parcel at any one time. No other on-site outside storage of vehicles, equipment and/or supplies is allowed in connection with the business activity. This prohibition applies to, but is not limited to: lumber,

plasterboard, pipe, paint, inoperable vehicles, and heavy equipment that are related to the business.

(8) The property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton-Franklin Health District, and all other local, state and federal regulations pertinent to the business activity pursued. The requirements of or permission granted by the Hearings Examiner shall not be construed as an exemption from such regulations.

(9) Adequate off-street parking, as determined by the Hearings Examiner, must be provided.

(10) Any waste created as a result of the business activity must be disposed of off-site in compliance with all local, state and/or federal regulations.

(11) The presence of customers/clients and non-resident employees at the location of the business activity shall be limited to the days and hours of operation as determined by the Hearings Examiner.

(12) The business activity does not require a marijuana processor or retailer license from the Washington State Liquor Control Board.

((~~(v) Commercial stables and/or riding academies.~~))

SECTION 2. Severability. If any provision of this Ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 3. Effective Date. This Ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this _____ day of _____.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Approved as to Form:

_____
Deputy Prosecuting Attorney

Constituting the Board of
County Commissioners of
Benton County, Washington

Attest: _____
Clerk of the Board

Planning Department
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Phone (509) 786-5612
Fax (509) 786-5629
planning.department@co.benton.wa.us
co.benton.wa.us

NOTICE OF OPEN RECORD HEARINGS

NOTICE IS GIVEN that the following applications will be considered by the Benton County Planning Commission at public hearings on Tuesday, June 9th, 2020, at **6 p.m.**

SUB 2020-001/EA 2020-001, the preliminary plat of Grace Estates, a subdivision of 9.37 acres into 7 lots averaging 1.25 acres by Ron Wenger. The site is located on Parcel #'s 1-0284-301-2461-003 and 004 which is also known as lots 3 and 4 of Short Plat 2461 in Section 2, Township 8 North, Range 24, East, W.M. lying East of Moore Road, Prosser WA.

SUB 2020-002/EA 2020-004, the preliminary plat of Orchard View, a subdivision of 9.1 acres into 29 lots with an average lot size of 10,433 square feet by Hayden Homes The site is located on Parcel # 1-0780-300-0081-000 and is located in the southwest corner of the intersection of E. 19th Avenue and S. Gum Street in Kennewick WA and is described as that portion of the East 175 feet of the East 160 feet of the East Half of the Southeast Quarter of the Northeast Quarter of the Southwest Quarter in Section 7, Township 8 North, Range 30 East, W.M.,

SUB 2020-003/EA 2020-008, the preliminary plat of Shaw Vineyard Estates, a subdivision of 39 acres into 7 lots averaging 5.07 acres by Tyler Franzheim/Shaw Vineyards. The site is located on parcel #'s 1-1407-200-0002-001 and 1-1407-300-0001-000 which are located west of the terminus of Carel Lane and south of Horn Rapids Road in Section 14, Township 10 North, Range 27, East, W.M.

OA 2020-001 - AN ORDINANCE relating to zoning and Rural Lands Five Acre District (RL-5); amending the section relating to uses requiring a conditional use permit; amending Ordinance 611, Section 44 and BCC 11.11.060 by adding a veterinary facility as a use requiring a conditional use permit.

NOTICE IS FURTHER GIVEN that said subdivision applications have been reviewed under the requirements of the State Environmental Policy Act and Determinations of Mitigated Non-Significance (MDNS) were issued on April 9, 2020 for SUB 2020-001 and SUB 2020-003 and February 27th for SUB 2020-002 and accordingly Environmental Impact Statements were not required. Any comments regarding these determinations and the environmental impacts of the proposals can be made at the Planning Commission Hearing as using the method noted below or in writing to the Benton County Planning Department by 5 p.m. on Monday June 8, 2020.

Due to Governor's "Stay Home, Stay Healthy" order the County Offices are closed to in person visits from the public at this time. In an effort to continue to provide public access to the Planning Commission meetings, Benton County will be providing telephonic and video access for the public to view and provide testimony at the Planning Commission

meetings. **If you choose to join the meeting telephonically, we ask that you please limit background noise or mute your line to prevent any unnecessary interruption to the meeting.**

If you wish to provide comments on any of the actions before the Planning Commission, we ask that you please fill out our online form (found at https://tinyurl.com/testifyform) and submit your request to our office. **You must submit a request form to participate for each hearing that you wish to attend.** If you prefer to make the request by phone, please call our office at 786-5612 and we can add you to the list for providing testimony. At the meeting the names of those wishing to testify will be called out and at that time you will be able to present your comments/concerns regarding the specific agenda item.

In order to join the meetings telephonically you will need to dial in and enter the Meeting ID and Passcode. These links will be available on June 9th, shortly before 6 p.m. To view the Video please use the link below.

Dial 509 222 2310
Meeting ID: 5687
Passcode: 5687

Video broadcast link: planningcommission.co.benton.wa.us

At this hearing, the Planning Commission may recommend approval, conditional approval, or disapproval of the applications to the Benton County Board of Commissioners. All parties concerned may present any support or objections for the application per the phone in instructions above. Information concerning the applications can be obtained at the Benton County Planning Department, by calling 736-3086 (Tri-Cities) or 786-5612 (Prosser).

Dated at Prosser, Washington on this 20th day of May 2020.

Martin Sheeran, Chairman
BENTON COUNTY PLANNING COMMISSION

Greg Wendt, Planning Manager
Planning Department

PUBLISH ON: May 27, 2020

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Ordinance Amendment to BCC 17.10 Permit Review Process File No. OA 2020-002
Presenter:	Greg Wendt, Planning Manager
Prepared By:	Greg Wendt
Reviewed By:	Greg Wendt

Type of Agenda Item:	**Type of Action Needed:**	
☐ Consent Agenda	☐ Discussion Only (1st)	☒ Pass Motion
☒ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☒ Pass Ordinance

Summary / Background Information

Benton County is proposing a text amendment to BCC 17.10 Permit Review Process. The amendment involves correcting a code citation in Section 17.10.090 Submission and Acceptance of Application. BCC Chapter 17.10 provides the process for project permit applications under the Benton County Code. The amendment involves correcting a code citation in Section 17.10.090 (2) Submission and Acceptance of Application. The citation for 'ownership interest' has changed from BCC 9.08.020 (17) to BCC 9.02.040 (26).

Specifically, the change in 17.10.090(2) amends the following:

(2) A completed project permit application signed by the applicant(s) and all persons with an ownership interest (as that term is defined by ~~BCC 9.08.020(17)~~ BCC 9.02.040 (26) in the parcel(s) on which the land use action is proposed; provided, (i) holders of mineral rights separate and apart from the ownership of the surface estate shall also be required to sign petitions for change of classification, and (ii) if the ownership of mineral rights for a parcel is separate and apart from ownership of the surface estate, then only holders of mineral rights shall be required to sign applications for permits for mineral extraction.

The term 'ownership interest' is currently defined in BCC 9.02.040 (26). Correcting the citation will ensure consistency between regulations and compliance with other sections of the Benton County Code.

Fiscal Impact

Amount: **None**

Fund:

Recommendation

The Planning Department is recommending approval of Planning Casefile Application OA 2020-002, with the suggested attached proposed ordinance.

Suggested Motion

That the Board signs the resolution and adopts the ordinance amendment to BCC Chapter 17.10**,** an ordinance relating to permit processing; amending Ordinance 573, Section 1 and BCC 17.10.090.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING AN ORDINANCE RELATING TO THE PERMIT REVIEW PROCESS; AMENDING THE SECTION RELATING TO SUBMISSION AND ACCEPTANCE OF APPLICATIONS; AND AMENDING ORDINANCE 573, SECTION 1 AND BCC 17.10.090.

WHEREAS, BCC Chapter 17.10 provides the process for project permit applications under the Benton County Code; and,

WHEREAS, the record establishes a need to update BCC 17.10 Permit Review Process and correct an outdated citation for the term 'ownership interest'; and,

WHEREAS, Planning Casefile Application OA 2020-002, is a text amendment to BCC 17.10 Project Permit Applications. The amendment involves correcting a code citation in Section 17.10.090 Submission and Acceptance of Application; and,

WHEREAS, 17.10.090 (2) is being corrected to properly identify that the term 'ownership interest' as currently defined in BCC 9.02.040 (26). Correcting the citation will ensure consistency between regulations and compliance with other sections of the Benton County Code; and,

WHEREAS, the legal notification for Planning Casefile Application OA 2020-002 was given July 8, 2020 pursuant to RCW 36.70.590; and,

WHEREAS, the Board of County Commissioners did conduct an open record hearing on July 21, 2020 at 9:00 a.m. in the Commissioners' Meeting Room, Justice Center, Kennewick, Washington 99336 to consider Planning Application OA 2020-002 an update to the BCC 17.10 Permit Review Process; and,

WHEREAS, the Board of County Commissioners considered the staff recommendation, all evidence and testimony submitted at the public hearing and after discussion voted to recommend approval of OA 2020-002; and,

WHEREAS, the Board of County Commissioners are satisfied that it appears to be in the best interest of the public to adopt Planning Application OA 2020-002, update to the BCC 17.10 Permit Review Process; and,

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that Ordinance No._____ relating to the permit review process; amending the section relating to submission and acceptance of applications; and amending Ordinance 573, Section 1 and BCC 17.10.090 is hereby adopted and will take effect and be in full force immediately upon its passage and adoption.

Dated this 21st day of July 2020

_____
Chairman of the Board

_____
Chair Pro Tem

_____
Member
Constituting the Board of County
Commissioners of Benton County
Washington.

Attest.....
Clerk of the Board

GW/djh

ORDINANCE NO._____

AN ORDINANCE relating to the permit review process; amending the section relating to submission and acceptance of applications; and amending Ordinance 573, Section 1 and BCC 17.10.090.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 573, Section 1 and BCC 17.10.090 are hereby amended to read as follows:

SUBMISSION AND ACCEPTANCE OF APPLICATION. (a) Within twenty-eight (28) days after receiving a project permit application, the County shall review the application and mail or personally deliver a written determination to the applicant stating that the application is complete or that the application is incomplete and identifying what is necessary to make the application complete.

(b) A project permit application shall be declared complete only when it contains all the following materials:

(1) Payment of all applicable fees;

(2) A completed project permit application signed by the applicant(s) and all persons with an ownership interest (as that term is defined by ((~~BCC 9.08.020(17)~~)) BCC 9.02.040(26)) in the parcel(s) on which the land use action is proposed; provided, (i) holders of mineral rights separate and apart from the ownership of the surface estate shall also be required to sign petitions for change of classification, and (ii) if the ownership of mineral rights for a parcel is separate and apart from ownership of the surface estate, then only holders of mineral rights shall be required to sign applications for permits for mineral extraction.

(3) A completed and signed environmental checklist for projects subject to review under RCW 43.21C;

(4) The information specified for the desired permit, license or approval as required by the applicable provisions of the Benton County Code; and,

(5) Any supplemental information or special studies as required by the Planning Director.

(c) To the extent known by the County, other agencies with jurisdiction over a project permit application shall be identified in the County's written determination required in BCC 17.10.090(a).

(d) If a project permit application is determined to be incomplete, the applicant shall submit the additional necessary information requested. Within fourteen (14) days of receipt of the additional information from the applicant, the County shall issue a written determination of completeness or identify what remaining information is required. If the applicant either refuses in writing to submit additional information or does not submit the required information within the ninety (90) days, the application shall lapse.

SECTION 2. Severability. If any provision of this Ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 3. Effective Date. This Ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this _____ day of _____.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Approved as to Form:

Ryan K Brown
_____
Deputy Prosecuting Attorney

Constituting the Board of
County Commissioners of
Benton County, Washington

Attest: _____
Clerk of the Board

Planning Department
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Phone (509) 786-5612
Fax (509) 786-5629
planning.department@co.benton.wa.us
co.benton.wa.us

NOTICE OF PUBLIC HEARING

NOTICE OF HEARINGS BEFORE THE BENTON COUNTY BOARD OF COMMISSIONERS in the matter of county planning:

OA 2020-001 - An Ordinance Amendment relating to zoning and Rural Lands Five Acre District (RL-5); amending the section relating to uses requiring a conditional use permit; amending Ordinance 611, Section 44 and BCC 11.11.060 by adding a veterinary facility as a use requiring a conditional use permit.

OA 2020-002 - AN ORDINANCE relating to the permit review process; amending the section relating to submission and acceptance of applications; and amending Ordinance 573, Section 1 and BCC 17.10.090 by deleting the reference to BCC 9.08.020(17) and adding a reference to BCC 9.02.040(26).

SPV 2020-001 - A Short Plat Vacation application by Jesse Billingsley to vacate the 10-foot irrigation and the 10-foot utility easements located along the south lot line of Lot 1 of Short Plat 3178 in Section 10, Township 8 North, Range 28 East, W.M. on Parcel # 1-1088-101-3178-001

NOTICE IS HEREBY GIVEN that the Board of County Commissioners will hold public hearings on July 21, 2020 at 9:00 a.m. in the Commissioners Meeting Room.

NOTICE IS FURTHER GIVEN THAT all testimony for or against the proposed amendments and short plat vacation will be taken at this time. All concerned persons may appear and present any support or objections to the proposed amendment. Due to Governor's "Stay Home, Stay Healthy" order the County Offices are closed to in person visits from the public at this time. In an effort to continue to provide public access to the Board of County Commissioners meetings, Benton County will be providing telephonic and video access for the public to view and provide testimony at the Planning Commission meetings. **Please click on the following link for more information on how to join the meeting.** https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181

FURTHER INFORMATION regarding these files and copies of the proposed amendments are available at no cost from the office of the Benton County Planning Department, Post Office Box 910, Prosser, WA 99350. Telephone: Prosser - (509) 786-5612; Tri-Cities - (509) 736-3086 or on our website at http://tinyurl.com/BCpublicnotice.

BASED ON THE TESTIMONY presented at the public hearing, the Board of County

Commissioners may approve, disapprove or they may make changes to the proposed ordinances. Any information submitted to the Benton County Planning Department is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

DATED this 1st day of July 2020.

JAMES BEAVER, Chairman
BENTON COUNTY COMMISSIONERS

Greg Wendt, Planning Manager
Benton County Planning Department

PUBLISH: July 8, 2020

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020 **Memo Date:** July 9, 2020
Subject:	Short Plat Vacation - SPV 2020-001 Jesse Billingsley
Presenter:	Greg Wendt, Planning Manager and Michelle Cooke, Principal Planner
Prepared By:	Donna Hutchinson
Reviewed By:	Greg Wendt

Type of Agenda Item:	**Type of Action Needed:**	
☐ Consent Agenda	☐ Discussion Only (1st)	☒ Pass Motion
☒ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☒ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

On February 9, 2009, Short Plat 3178 was recorded under Auditor's Fee Number 2009-002960, which created 2 lots off 129 PR SE in Kennewick. The short plat also created a 10-foot irrigation easement and a 10-foot utility easement on the south 20 feet of Lot 1. After short plat 3178 was recorded; a Boundary Line Adjustment was made between Lot 1 of Short Plat 3178 and Lot 2 of Short Plat 3109 which reconfigured the direction of the lots and caused the above listed easements to be located in the middle of the subject parcel.

The applicant, Jesse Billingsley, is requesting the vacation of the unused 10-foot irrigation and 10-foot utility easements so that he may site an accessory shop building on the northern portion of his property. All concerned agencies were notified of the proposed vacation and no concerns were received regarding this proposal.

The public hearing notice for application SPV 2020-001 was published on July 8, 2020 and a public hearing is scheduled for July 21, 2020.

Fiscal Impact - None

Amount: **None**

Fund: **None**

Recommendation

It is the recommendation of the Planning Department that the Board of County Commissioners conduct a public hearing, and based on the testimony received, either approve or deny the request. The Planning Department, based on the information received thus far, is recommending approval of the proposed vacation of the 10-foot irrigation and 10-foot utility easements located on the south 20 feet of Lot 1 of Short Plat 3178.

Suggested Motion

The Benton County Planning Department recommends the following motion: The Benton County Board of Commissioners approves the vacation of the 10-foot irrigation easement and 10-foot utility easement located on the south 20 feet of Lot 1 of Short Plat 3178, records of Benton County.

Return to
Benton County Commissioners
P.O. Box 190
Prosser WA 99350

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF COUNTY PLANNING REGARDING THE PROPOSED VACATION OF THE 10 FOOT IRRIGATION EASEMENT AND THE 10 FOOT UTILITY EASEMENT ON THE SOUTH LOT LINE OF LOT 1 OF SHORT PLAT 3178 IN SECTION 10, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M. APPLICANTS: JESSE/MELANIE BILLINGSLEY, PARCEL NUMBER 1-1088-401-3178-001, FILE NUMBER SPV 2020-001

WHEREAS, the Board of County Commissioners did conduct a public hearing on Tuesday, July 21, 2020, at 9:00 a.m. in the Commissioners Meeting Room, Justice Center, Kennewick, Washington; and,

WHEREAS, the signature of the property owners of said application includes all properties affected by these easements; and,

WHEREAS, upon due notice as provided in RCW 58.17.080 and 58.17.090, the hearing before the Board of County Commissioners was held on such petition as indicated above; and,

WHEREAS, the Board of County Commissioners agrees with the summary report from the Benton County Planning Department, retained in File No. SPV 2020-001; and,

WHEREAS, the 10-foot irrigation and 10-foot utility easements located on the south 20 feet of Lot 1 were recorded on the face of Short Plat 3178, and,

WHEREAS, it further appears that the vacation of the above-mentioned easements would not unduly jeopardize the health, safety, welfare and public good; NOW THEREFORE,

BE IT RESOLVED, that the vacation of the 10-foot irrigation easement and 10-foot utility easement located on the south 20 feet of Lot 1 of Short Plat 3178 in Section 10, Township 8 North, Range 28 East, W.M. is hereby approved.

Dated this 21st day of July 2020.

_____
Chairman of the Board

_____
Member

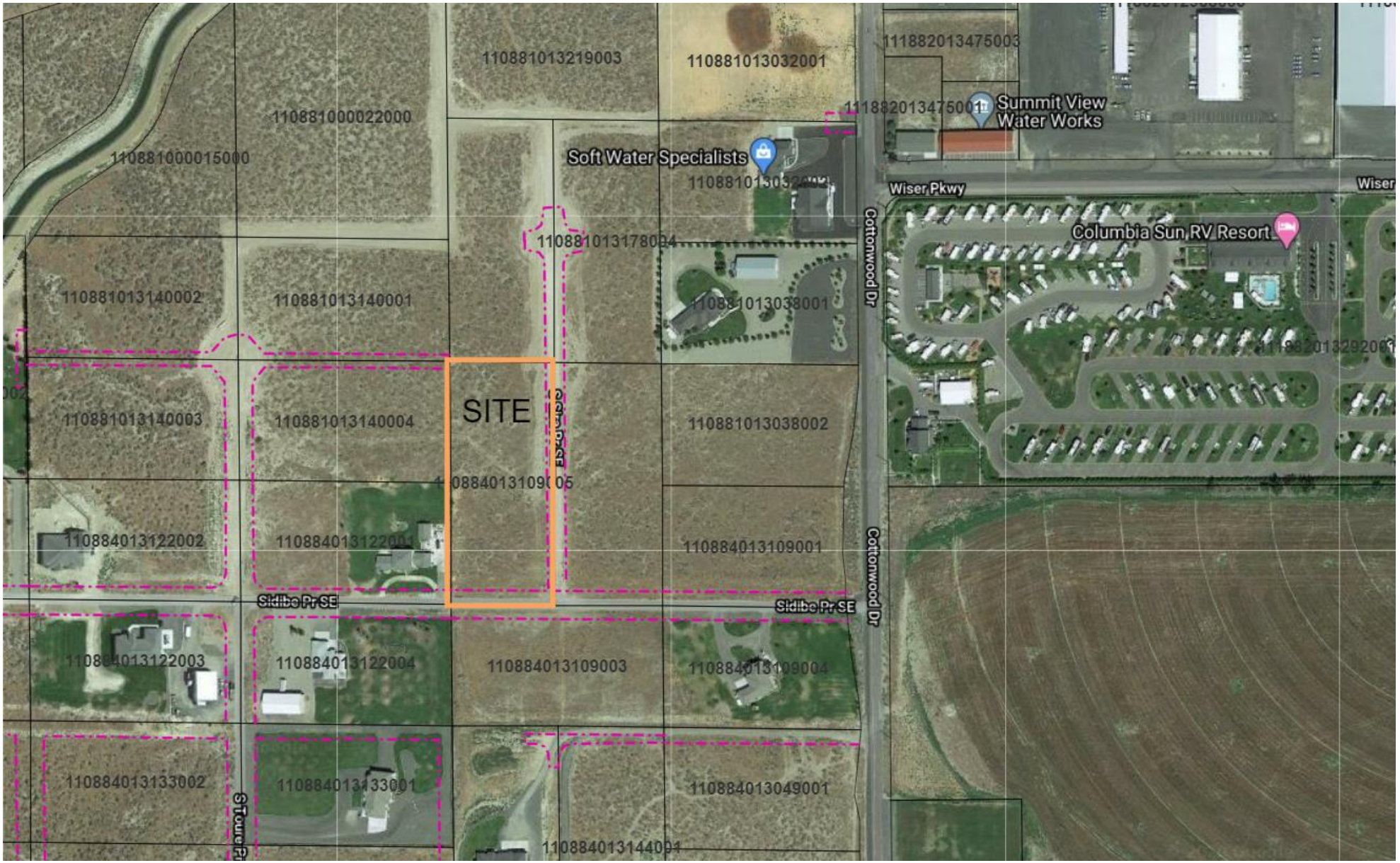
_____
Member

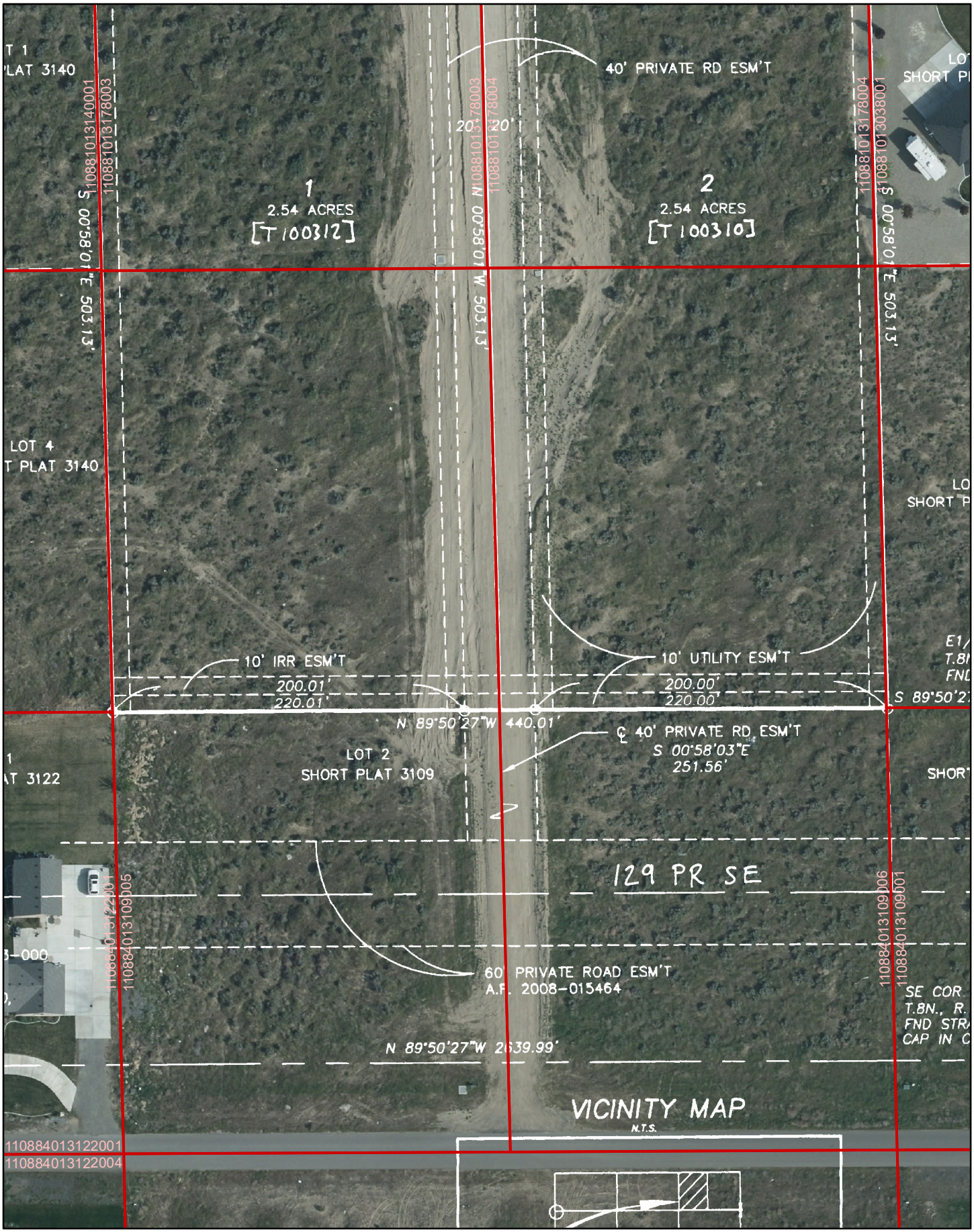
Constituting the Board of County Commissioners of Benton County Washington.

Attest.....
Clerk of the Board

MLC

SPV 2020-001 VICINITY MAP
July 8, 2020

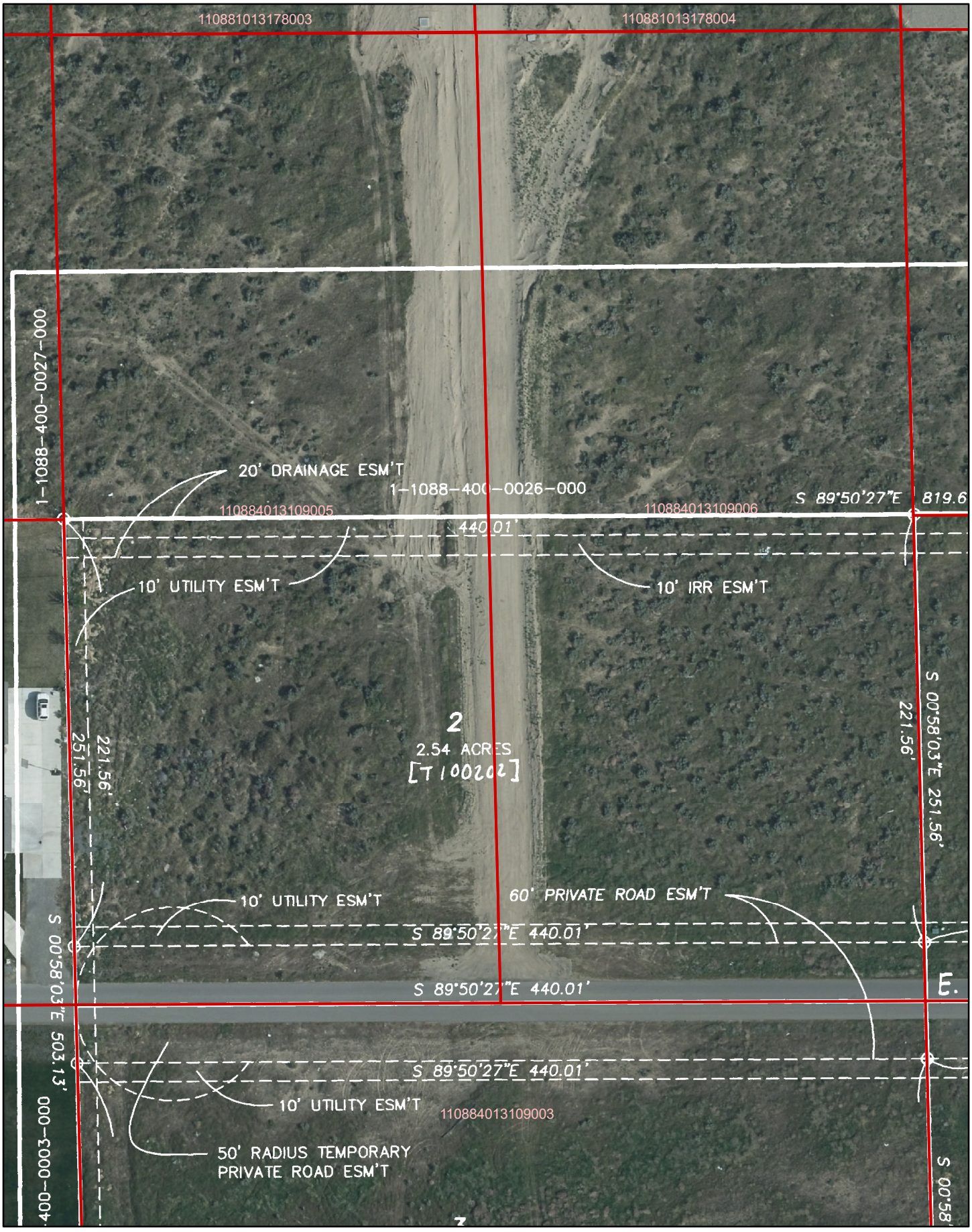




SP3178 over parcel 110884013109005

GIS Department

Benton County does not warrant, guarantee, or accept liability for accuracy, precision or completeness of any information shown hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the user. Benton County makes no warranty, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof to the contrary is void and ultra vires. The information shown herein is a product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.



SP3109 over parcel 110884013109005

COUNTY OF BENTON WASHINGTON
GIS Department

N

Benton County does not warrant, guarantee, or accept liability for accuracy, precision or completeness of any information shown hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the user. Benton County makes no warranty, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof to the contrary is void and ultra vires. The information shown herein is a product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.

COUNTY OF BENTON WASHINGTON
GIS Department

SP3109 (Yellow) and SP 3178 (Lavender)
over parcel 110884013109005

N

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Planning Department
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Phone (509) 786-5612
Fax (509) 786-5629
planning.department@co.benton.wa.us
co.benton.wa.us

RECEIVED
JUN 17 2020
Benton Co. Planning Dept.

SHORT PLAT VACATION APPLICATION

Application No. SPV 2020-001

APPLICANT INFORMATION

Please check the box indicating primary contact person for this application

☑ **Applicant/Agent**: Jesse + Melanie Billingsley

Mailing Address: 12704 S Sira Pr SE City: Kennewick

State: WA ZIP: 99338 Phone: (509) 492-8291 Work: _____

Email Address: jessebillingsley@gmail.com

Signature: [signature] Date: 6-16-20

☐ **Property Owner(s)** *(if different)*: _____

Mailing Address: _____ City: _____

State: _____ ZIP: _____ Phone: _____ Work: _____

Email Address: _____

Signature: _____ Date: _____

Signatures of Persons with Additional Ownership Interest:

Print Name	Signature	Date
Arssata Sidibe	[signature]	6-16-20

If the property is owned by a corporation, trust, partnership or LLC please complete the entity signature block below showing that the person signing has the authority to sign on behalf of the company.

ENTITY SIGNATURE BLOCK

Applicant/Legal Owner: _____

Officer name: _____

Title: _____

Signature: _____ Date: _____

THE ABOVE SIGNED OFFICER OF _____ *(name of entity)*

WARRANTS AND REPRESENTS THAT ALL NECESSARY LEGAL AND CORPORATE ACTIONS HAVE BEEN DULY UNDERTAKEN TO PERMIT _____ *(name of applicant)* TO SUBMIT THIS APPLICATION AND THAT THE ABOVE SIGNED OFFICER HAS BEEN DULY AUTHORIZED AND INSTRUCTED TO EXECUTE THIS APPLICATION.

Any information submitted to the Benton County Planning Department is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

Billingsley 492-8291

PARCEL INFORMATION

1. **Subject property address:** 12204 S. Sira Pr SE

   City: Kennewick **State:** WA **ZIP:** 99338

2. **Parcel number:** 1-1088-401-3109-005 **3. Acreage:** 2.54

4. **Present use of property:** Residential

5. **Access:** ☐ County Road ☐ State Road/Highway ☑ Private Road

6. **Utilities:** *Power:* ☑ Benton PUD ☐ Benton REA

   Sewer: ☑ Septic Tank ☐ City Sewer: *(Provider)* _____

   Water: ☑ Individual Wells ☐ One well serving 2-4 lots ☐ One well serving 5+ lots

   ☐ Private System *(Provider & Address)* _____

   ☐ City System *(Provider)* _____

   Gas: ☑ No ☐ Yes: *(Provider)* _____

   Cable: ☐ No ☑ Yes: *(Provider)* Spectrum

   Phone: ☐ No ☑ Yes: *(Provider)* Frontier

   Irrigation: ☐ No ☑ Private ☐ District: *(Provider)* Sidibe

REQUEST DESCRIPTION

7. **Describe the proposed portion of the plat to be vacated:** South end of Lot 1 on short Plat 3178

8. **List other parcels that may be affected by this request:** _____

9. **Give a detailed explanation for the vacation request:** I would like to vacate 1 10' irrigation easement and 1 10' utility easement South end of short Plat 3178 Lot 1.

(FOR STAFF USE ONLY)

Application Complete: Y N

Critical Areas: N Y: _____ *Zoning:* _____

Reviewed by: _____ *Date:* _____

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Phone (509) 786-5612
Fax (509) 786-5629
planning.department@co.benton.wa.us
co.benton.wa.us

SHORT PLAT VACATION APPLICATION

Application No _____

APPLICANT INFORMATION

Please check the box indicating primary contact person for this application

☑ **Applicant/Agent**: Jesse + Melanie Billingsley

Mailing Address: 12204 S Sun Rc SE City: Kennewick

State: WA ZIP: 99338 Phone (509) 492-8291 Work: _____

Email Address: jesscbillingsley@gmail.com

Signature: _____ Date: _____

☐ **Property Owner(s)** *(if different)*: _____

Mailing Address: _____ City: _____

State: _____ ZIP: _____ Phone: _____ Work: _____

Email Address: _____

Signature: _____ Date: _____

Signatures of Persons with Additional Ownership Interest:

Print Name	Signature	Date
Shanna Everson - BPUD	Shanna Everson	5/27/20

If the property is owned by a corporation, trust, partnership or LLC please complete the entity signature block below showing that the person signing has the authority to sign on behalf of the company.

ENTITY SIGNATURE BLOCK

Applicant/Legal Owner: _____

Officer name: _____

Title: _____

Signature: _____ Date: _____

THE ABOVE SIGNED OFFICER OF _____ *(name of entity)*

WARRANTS AND REPRESENTS THAT ALL NECESSARY LEGAL AND CORPORATE ACTIONS HAVE BEEN DULY UNDERTAKEN TO PERMIT _____ *(name of applicant)* TO SUBMIT THIS APPLICATION AND THAT THE ABOVE SIGNED OFFICER HAS BEEN DULY AUTHORIZED AND INSTRUCTED TO EXECUTE THIS APPLICATION.

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planning.department@co.benton.wa.us
co.benton.wa.us

SHORT PLAT VACATION APPLICATION

Application No. _____

APPLICANT INFORMATION

Please check the box indicating primary contact person for this application

☑ **Applicant/Agent**: Jesse & Melanie Billingsley

Mailing Address: 12704 S Sira Rc SE City: Kennewick

State: WA ZIP: 99338 Phone (509) 492-8291 Work: _____

Email Address: jessebillingsley@gmail.com

Signature: _____ Date: _____

☐ **Property Owner(s)** *(if different)*: _____

Mailing Address: _____ City: _____

State: _____ ZIP: _____ Phone: _____ Work: _____

Email Address: _____

Signature: _____ Date: _____

Signatures of Persons with Additional Ownership Interest:

Print Name	Signature	Date
Daniel Tissell - Kennewick Irrigation District		6/16/2020

If the property is owned by a corporation, trust, partnership or LLC please complete the entity signature block below showing that the person signing has the authority to sign on behalf of the company.

ENTITY SIGNATURE BLOCK

Applicant/Legal Owner: _____

Officer name: _____

Title: _____

Signature: _____ Date: _____

THE ABOVE SIGNED OFFICER OF _____ *(name of entity)*

WARRANTS AND REPRESENTS THAT ALL NECESSARY LEGAL AND CORPORATE ACTIONS HAVE BEEN DULY UNDERTAKEN TO PERMIT _____ *(name of applicant)* TO SUBMIT THIS APPLICATION AND THAT THE ABOVE SIGNED OFFICER HAS BEEN DULY AUTHORIZED AND INSTRUCTED TO EXECUTE THIS APPLICATION.

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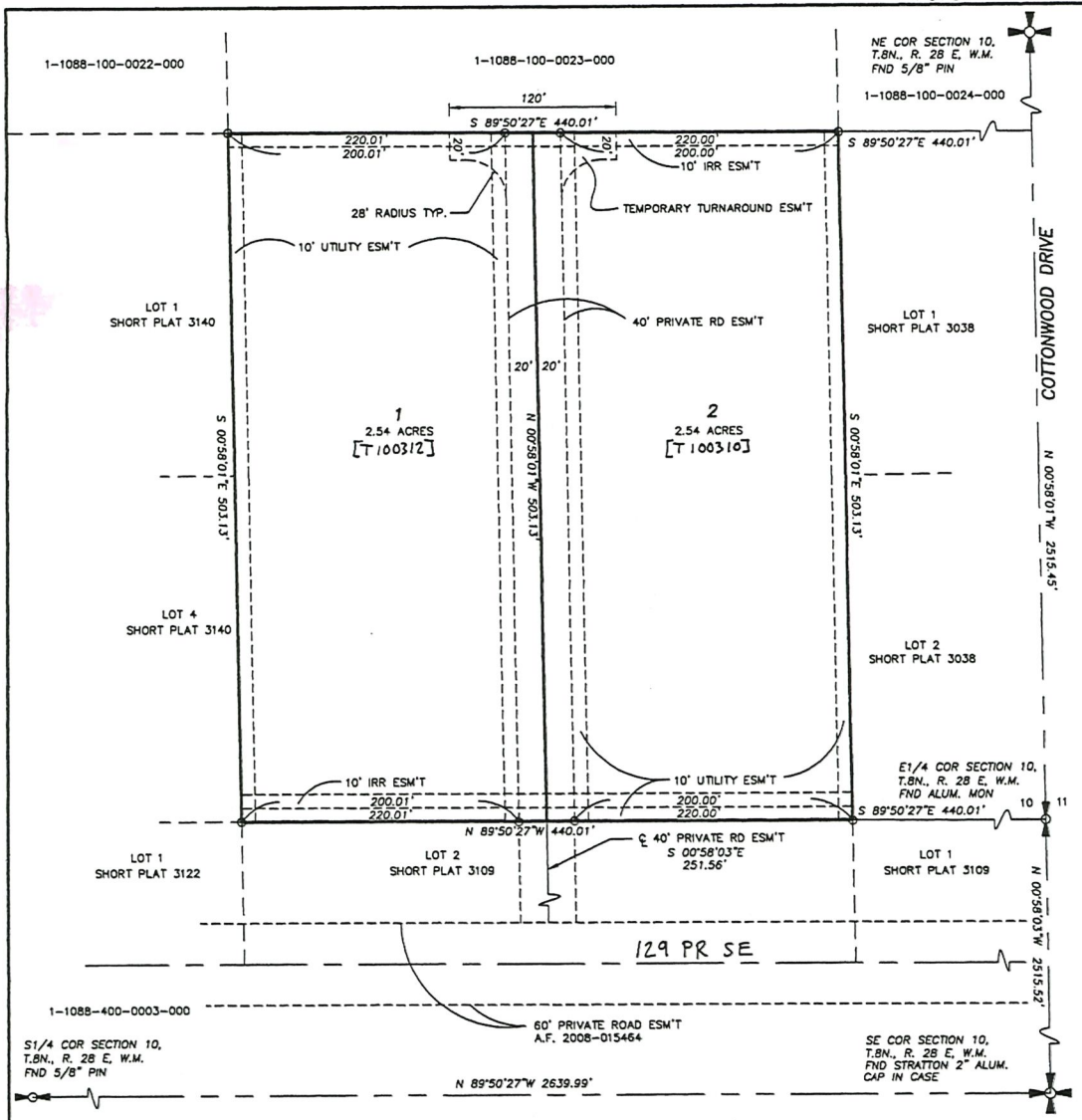
SHP 07-80

10-8-28

1/2

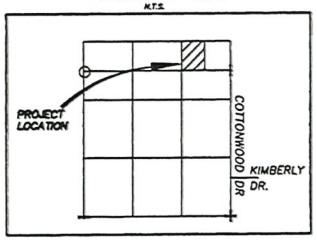
SHORT PLAT NO. 3178

PORTION NE1/4 SECTION 10, T. 8 N., R. 28 E., W.M.
BENTON COUNTY, WASHINGTON



VICINITY MAP

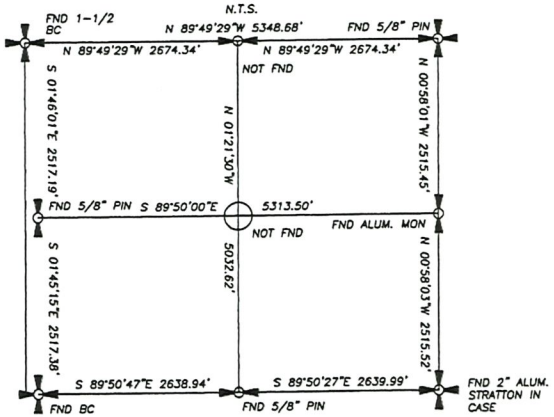
N.T.S.

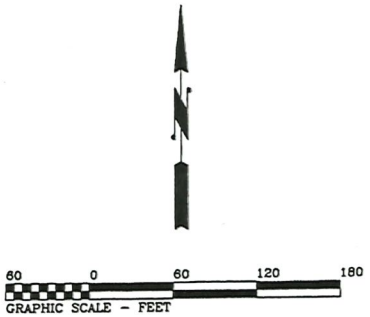


DESCRIPTION

PARCEL ID: 1-1088-100-0026-000

THE NORTHWEST QUARTER OF THE ~~WEST~~ EAST 879.85 FEET OF THE NORTH 1006.06 FEET OF THE SOUTH 3018.18 FEET OF THE EAST HALF, SECTION 10, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M.





SURVEYOR'S CERTIFICATE

I, DAVID G. CHRISTENSON, A REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT THE SHORT PLAT AS SHOWN HEREON IS BASED UPON AN ACTUAL FIELD SURVEY OF THE LAND DESCRIBED AND THAT ALL ANGLES, DISTANCES AND COURSES ARE CORRECTLY SHOWN AND THAT THE LOT CORNERS HAVE BEEN STAKED ON THE GROUND AS SHOWN HEREON.

10/22/08
DATE

WORLEY SURVEYING SERVICE, INC., P.S.
P.O. BOX 6132
121 S. ELY STREET
KENNEWICK, WASHINGTON 99336
509-582-6716

AUDITOR'S CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF AISSATA SIDIBE AT 01
MINUTES PAST 9:00 M., THIS 9th DAY OF February
2009, AND RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3178,
RECORDS OF BENTON COUNTY, WASHINGTON.

Bobbie Gasner by Amanda Alamillo
BENTON COUNTY AUDITOR
Dep Aud.

2009-002960
FEE NUMBER

06-033SIDIBESP7

2009-002960 Pg: 01 Fee: $109.00
02/09/2009 08:01A Page 1 of 2
Rob Hill Benton County Auditor's Office

Planning Department
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Phone (509) 786-5612
Fax (509) 786-5629
planning.department@co.benton.wa.us
co.benton.wa.us

NOTICE OF PUBLIC HEARING

NOTICE OF HEARINGS BEFORE THE BENTON COUNTY BOARD OF COMMISSIONERS in the matter of county planning:

OA 2020-001 - An Ordinance Amendment relating to zoning and Rural Lands Five Acre District (RL-5); amending the section relating to uses requiring a conditional use permit; amending Ordinance 611, Section 44 and BCC 11.11.060 by adding a veterinary facility as a use requiring a conditional use permit.

OA 2020-002 - AN ORDINANCE relating to the permit review process; amending the section relating to submission and acceptance of applications; and amending Ordinance 573, Section 1 and BCC 17.10.090 by deleting the reference to BCC 9.08.020(17) and adding a reference to BCC 9.02.040(26).

SPV 2020-001 - A Short Plat Vacation application by Jesse Billingsley to vacate the 10-foot irrigation and the 10-foot utility easements located along the south lot line of Lot 1 of Short Plat 3178 in Section 10, Township 8 North, Range 28 East, W.M. on Parcel # 1-1088-101-3178-001

NOTICE IS HEREBY GIVEN that the Board of County Commissioners will hold public hearings on July 21, 2020 at 9:00 a.m. in the Commissioners Meeting Room.

NOTICE IS FURTHER GIVEN THAT all testimony for or against the proposed amendments and short plat vacation will be taken at this time. All concerned persons may appear and present any support or objections to the proposed amendment. Due to Governor's "Stay Home, Stay Healthy" order the County Offices are closed to in person visits from the public at this time. In an effort to continue to provide public access to the Board of County Commissioners meetings, Benton County will be providing telephonic and video access for the public to view and provide testimony at the Planning Commission meetings. **Please click on the following link for more information on how to join the meeting.** https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181

FURTHER INFORMATION regarding these files and copies of the proposed amendments are available at no cost from the office of the Benton County Planning Department, Post Office Box 910, Prosser, WA 99350. Telephone: Prosser - (509) 786-5612; Tri-Cities - (509) 736-3086 or on our website at http://tinyurl.com/BCpublicnotice.

BASED ON THE TESTIMONY presented at the public hearing, the Board of County

Commissioners may approve, disapprove or they may make changes to the proposed ordinances. Any information submitted to the Benton County Planning Department is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

DATED this 1st day of July 2020.

JAMES BEAVER, Chairman
BENTON COUNTY COMMISSIONERS

Greg Wendt, Planning Manager
Benton County Planning Department

PUBLISH: July 8, 2020

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Consulting Agreement with Gordon Thomas Honeywell Governmental Affairs
Presenter:	Shyanne Palmus, Communications Coordinator
Prepared By:	Shyanne Palmus, Communications Coordinator
Reviewed By:	Adam Fyall, Sustainable Development Manager

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County has contracted with Gordon Thomas Honeywell Governmental Affairs to provide the County with governmental affairs and lobbying services since 2017.

Benton County staff believes it is in the best interest of the County to maintain its contract with Gordon Thomas Honeywell Governmental Affairs to provide continuing governmental affairs and lobbying consultant services in 2021, as detailed in the included Scope of Work.

This contract begins January 1, 2021 and terminates on December 31, 2021, unless amended by the parties.

Fiscal Impact

This consulting agreement is for a total amount not to exceed $39,580, to be billed to the County monthly in the amount of $3,090, with a total annual amount not to exceed $2,500 for expenses including, but not limited to, communication and travel.

Recommendation

Staff recommends the approval of this contract and resolution to continue receiving governmental affairs services from Gordon Thomas Honeywell Governmental Affairs.

Suggested Motion

"I move to approve the Consulting Agreement between Benton County and Gordon Thomas Honeywell Governmental Affairs for 2021 governmental affairs services, as presented."

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF SIGNING A CONSULTING AGREEMENT BETWEEN BENTON COUNTY, WASHINGTON AND GORDON THOMAS HONEYWELL GOVERNMENTAL AFFAIRS FOR LOBBYING CONSULTANT SERVICES

WHEREAS, Benton County has previously contracted with Gordon Thomas Honeywell Governmental Affairs, per Resolutions 2017-046, 2017-857, 2018-868, and 2019-819, for governmental affairs services that support the general governmental services of the County, periodic legislative reports, and advising on legislative issues; and

WHEREAS, Benton County wishes to continue receiving said consultant services, including any reports and/or advising on legislative issues, for the duration of 2021; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners hereby approves the attached Consulting Agreement with Gordon Thomas Honeywell Governmental Affairs for governmental affairs services for the duration of 2021 and hereby authorizes the Board to sign the Consulting Agreement; and

BE IT FURTHER RESOLVED, Gordon Thomas Honeywell Governmental Affairs will bill the County in the monthly amount of $3,090, and may also bill the County for expenses including, but not limited to, communication and travel, up to an aggregate maximum of $2,500 for the term of the contract, for a total contract amount not to exceed $39,580; and

BE IT FURTHER RESOLVED, this agreement shall start January 1, 2021 and terminate on December 31, 2021.

Dated this 21st day of July, 2020.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Attest: …….
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Cc: Auditor; PA-Contract Compliance; Gordon Thomas Honeywell S. Palmus

BENTON COUNTY
CONSULTING AGREEMENT

This Agreement is entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "County"), and Gordon Thomas Honeywell Governmental Affairs, a Washington Limited Liability Company, with its principal offices at 1201 Pacific Avenue, Suite 2100, Tacoma, WA 98401 (hereinafter "Consultant"), upon the following terms and conditions:

A. **Scope of Work.** Consultant will advise and assist the Benton County in accordance with Consultant's Scope of Work, described in Attachment "A" hereto and incorporated herein, and Consultant will do and produce such other things as are set forth in the Scope of Work (the "Services"). Consultant's Services will be in compliance with applicable laws, regulations, rules, orders, licenses and permits, now or hereinafter in effect, and Consultant shall furnish such documents as may be required to effect or evidence such compliance.

B. **Compensation; Expenses.** Benton County will pay Consultant for satisfactorily rendered Services in accordance with the specific terms set forth in Attachment "A."

C. **Invoices; Payment.** Consultant will furnish Benton County invoices at regular intervals, as set forth in Attachment "A."

D. **Term.** Consultant shall promptly begin the Services hereunder on the date set forth in Attachment "A" and shall terminate same on the date set forth in Attachment "A," unless earlier terminated by mutual agreement. Benton County or consultant may terminate consultant services for convenience at any time prior to the termination date set forth in Attachment A, provided that either party provides 30-days' notice.

E. **Ownership of Work Product.** The product of all work performed under this agreement, including reports, and other related materials shall be the property of Benton County or its nominees, and Benton County or its nominees shall have the sole right to use, sell, license, publish or otherwise disseminate or transfer rights in such work product.

G. **Independent Contractor.** Consultant is an independent contractor, and nothing contained herein shall be deemed to make Consultant an employee of Benton County, or to empower consultant to bind or obligate Benton County in any way. Consultant is solely responsible for paying all of Consultant's own tax obligations, as well as those due for any employee/subcontractor permitted to work for Consultant hereunder.

H. **Release of Claims; Indemnity.** Consultant hereby releases, and shall defend, indemnify and hold harmless Benton County from and against all claims, liabilities, damages and costs arising directly or indirectly out of, or related to, Consultant's fault, negligence, strict liability or product liability of Consultant, and/or that of any permitted employee or subcontract or Consultant, pertaining to the Services hereunder.

I. **Assignment.** Consultant's rights and obligations hereunder shall not be assigned or transferred without Benton County's prior written consent; subject thereto, this Agreement shall be binding upon and inure to the benefit of the parties' heirs, and successors.

J. **Governing Law; Severability.** This Agreement shall be governed by the laws of the State of Washington, U.S.A. (excluding conflict of laws provisions). If any term or provision of this Agreement is determined to be legally invalid or unenforceable by a court with lawful jurisdiction hereover (excluding arbitrators), such term or provision shall not affect the validity or enforceability of any remaining terms or provisions of this Agreement, and the court shall, so far as possible, construe the invalid portion to implement the original intent thereof.

K. **Arbitration.** Should any dispute arise concerning the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith attempt to resolve the dispute. In the event such dispute cannot be resolved by agreement of the parties, such dispute shall be resolved by binding arbitration pursuant to RCW 7.04A, as amended, and the Mandatory Rules of Arbitration (MAR); venue shall be placed in Benton County, Washington, the laws of the State of Washington shall apply.

L. **Entire Agreement; Etc.** This Agreement, and its incorporated attachments hereto, state the entire agreement between the parties regarding the subject matter hereof and supersede any prior agreements or understandings pertaining thereto. Any modification to this Agreement must be made in writing and signed by authorized representatives of both parties. Any provision hereof which may be reasonably deemed to survive the expiration or termination of this Agreement shall so survive and remain in continuing effect. No delay or failure in exercising any right hereunder shall be deemed to constitute a waiver of any right granted hereunder or at law by either party.

Dated: _____

BENTON COUNTY
BOARD OF COMMISSIONERS

_____
Jim Beaver, Chairman

_____
Jerome Delvin, Chairman Pro-Tem

_____
Shon Small, Member

Constituting the Board of County Commissioners of Benton County, Washington.

Attest: _____
Clerk of the Board

Approved as to Form

_____
Ryan Brown
Chief Civil Deputy Prosecuting Attorney

Dated: 7/8/20

GORDON THOMAS HONEYWELL
GOVERNMENTAL AFFAIRS

_____
Signature

Josh Weiss
Printed Name

Vice President
Title

ATTACHMENT "A" TO
BENTON COUNTY CONSULTING AGREEMENT

A. **Scope of Work:** Consultant shall provide the County with the following governmental affairs services:

- Lobby for State legislation that supports the general government of the County
- Provide the County with periodic legislative reports during the legislative session that includes hearing schedules and a summary of bills important to the County. Identify legislation that would impact Benton County specifically.
- Provide the County with regularly updated bill tracking lists.
- Lobby for and against State legislative issues impacting Benton County's general government interests.
- Work with stakeholder groups, including the Washington State Association of Counties, in expressing support or opposition for legislative proposals.
- Consultant will register as the County's lobbyist with the Public Disclosure Commission, prepare all filings required of the County, and advise the County as to its duties in complying with all filing requirements.

B. **Compensation/Expenses:** Benton County shall pay Consultant a monthly fee of $3,090 for the services listed above. Consultant may also bill the County for expenses including, but not limited to, communication expenses and travel, up to an aggregate maximum of $2,500 for the term of the contract, for a total contract amount not to exceed $39,580.

C. **Invoices/Payments:** (a) Consultant shall furnish Benton County with invoices for services performed on a monthly basis, and (b) Benton County shall pay each of Consultant's invoices within thirty (30) days after County's receipt and verification of invoices.

C. **Term of Agreement:** Consultant's services shall commence on January 1, 2021 and shall terminate on December 31, 2021.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 21, 2020
Subject:	Setting Salaries for Elected Officials for years 2023 & 2024
Presenter:	Matt Rasmussen
Prepared By:	Matt Rasmussen
Reviewed By:	Jerrod MacPherson

Type of Agenda Item:	**Type of Action Needed:**	
☐ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☐ Pass Resolution
☒ Scheduled Business	☒ Decision/Direction	☐ Pass Ordinance

Summary / Background Information

Approximately every other year the Board of County Commissioners sets the salaries of elected officials. The salaries set generally are for 3 and 4 years in advance of the current year. This is to avoid changes to the salary of any elected official during their current term.

Since 2016 salaries for elected officials have increased each year ranging from a 1.5% increase to a 2.25% increase. The salaries of the County Commissioners, Clerk, Coroner, Treasurer, Assessor and Auditor are set at the same level. The salary of the County Sheriff is set at a higher level because of that position used to have oversight of the jail in addition to their regular functions.

Salaries under consideration are for years 2023 and 2024. Salaries for 2021 and 2022 were set with Resolution 2018-477. These salaries take affect at the beginning of the next term of office for each elected official.

Fiscal Impact

Amount: **Approximately $12,000 annually**

Fund: **Various**

Recommendation

The Board should consider what the economic outlook is for years 2023 and 2024 and consider what increase, if any, should be added to elected official salaries. The Board should also consider impacts to the County Sheriff salary, if any, due to the removal of jail oversight from that office in 2019.

Suggested Motion

N/A – After direction staff will bring a Resolution for approval at a future meeting