

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 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, September 1, 2020

**9:00 AM**     **Call to Order**  
**Approval of Minutes**  
❖ **August 25, 2020**

**Review Agenda**

**Consent Agenda**

#### **Auditor**

- a. Line Item Transfer, Fund No. 0000-101, Dept. 102
- b. Grant Agreement w/State of WA, Office of the Secretary of State to Establish a Student Engagement HUB @ WSU, Tri-Cities
- c. Award of Two Vote Armor Ballot Collection Boxes to Laser Fab

#### **Commissioners**

- d. Appointment of John Becker to the Badger Mt. Irrigation District
- e. Appointment of Darryll Olsen to the Badger Mt. Irrigation District

**Facilities**

- f. Ratifying An Emergency Purchase of Lexan Window Material for the Courtroom Technology Upgrade Project From Superior Glass

**Fairgrounds**

- g. Amending Resolution 2018-1029, Lease Agreement w/Benton-Franklin Fair Association

**Human Services**

- h. Contract w/WA State Dept. of Commerce for Community Development Block Grant

**Juvenile**

- i. Contract Amendment No. 1 w/Comprehensive Healthcare for Multi-Systemic Therapy
- j. Contract w/Jennifer Azure for Attorney Representation in BECCA Dockets
- k. Truancy Contract w/Prosser School District

**Public Works**

- l. Contract w/V K Powell Construction for the Courthouse Upgrades Project

**Public Comment** ~ for public engagement during Commissioners' meetings, please use the public comments phone line @: **Dial: 509 460-4941**

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

**Community** Development Block Grant - CV1 ~ K Sullivan

**Scheduled Business**

Letters to Washington State Attorney General & Washington State Patrol for Criminal Investigation Request ~ J MacPherson

Letter to Cities Regarding Work Crew Program ~ M Rasmussen

**Authorization** on Filling Positions ~ L Wingfield

**Sheriff's** Office Employees Counseling Contract ~ L Wingfield

**Other Business**

**Draft**

**MINUTES**

**BOARD OF BENTON COUNTY COMMISSIONERS**

Regular Board Meeting

Tuesday, August 25, 2020, 2020, 9:00 a.m.

*Meeting provided by Video Live-Broadcast and Telephonically*

**Present:** Chairman James Beaver (via/WebEx)  
Chairman Pro Tem Jerome Delvin  
Commissioner Shon Small (via/WebEx)  
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; Douglas D'Hondt, County Engineer (via/video); Alex Garcia, IT; Kyle Sullivan, Human Services Manager.

**Approval of Minutes**

The Minutes of August 18, 2020 were approved.

**Review Agenda**

The following items were added to the agenda under "Other Business".

- Personal Services Contract with Visit Tri-Cities
- Update - Counseling Services for the Benton County Sheriff's Office Employees
- Request from Cities - Work Crew Reimbursement

**Consent Agenda**

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

**Auditor**

- a. Surplus & Disposition of Personal Property
- b. Amending Resolution 2020-337 Regarding the Purchase of Agilis Sorting Machine From Runbeck Election Services

**Commissioners**

- c. Line Item Transfer, Fund No. 0305-101, Dept. 000
- d. Line Item Transfer, Fund No. 0000-101, Dept. 115 to Dept. 107

**Corrections**

- e. Solicitation of Bids for the Procurement of Inmate Supplies – CB 20-19
- f. Solicitation of Bids for the Procurement of Paper & Glove Supplies-CB 20-20

- g. Solicitation of Bids for the Procurement of Jail Chemicals & Janitorial Supplies-CB 20-21
- h. Solicitation of Bids for the Procurement of Employee Uniforms–CB 20-22

**Facilities**

- i. Line Item Transfer, Fund No. 0000-101, Dept. 110

**Fairgrounds**

- j. Payment to Cyrring Hot Productions for Renewal of the “.com” Domain & Fees for Fairgrounds Website
- k. Line Item Transfer, Fund No. 0124-101, Dept. 000

**Juvenile**

- l. Contract w/Heather Villani for Attorney Representation in BECCA Cases/Matters
- m. Contract Amendment #1 w/Lutheran Community Services Northwest for Counseling Services
- n. Purchase of Vulcan 3 Pan Steamer From Crown Paper & Janitorial for the Detention Kitchen

**Office of Public Defense**

- o. Amended Superior Court Public Defense Contract w/Bart Tomerlin; Amending Resolution 2020-480

**Public Safety Tax**

- p. Line Item Transfer, Fund No. 0148-101, Dept. 115 to 136
- q. Agreement w/Benton-Franklin Health District for Nurse Family Partnership Program

**Public Works**

- r. Contract w/Welsh Commissioning Group for Commissioning Services @ the New Administration Building

**Workforce Development Council**

- s. Contract w/Career Path Services for Adult Services
- t. Contract w/Career Path Services for Dislocated Worker Services

**Public Comment**

None.

**Public Hearing – Franchise Application – Northwest Pipeline LLC**

Douglas D’Hondt, County Engineer (via/video) presented the application from Northwest Pipeline LLC to renew a Franchise Order and Agreement for a natural gas transmission system. He said the Public Works Department recommended approval subject to the six conditions listed on the report.

As no one called in to the public comment line, public testimony was closed.

**MOTION:** Commissioner Beaver moved to approve the Franchise Order and Agreement with Northwest Pipeline LLC, subject to the six items listed in the report to the Commissioners. Commissioner Small seconded and upon vote, the motion carried.

### **Public Hearing – Franchise Application – Washington State University**

Douglas D'Hondt, County Engineer (via/video) presented the application from Washington State University to establish a Franchise Order and Agreement for an irrigation system. He said the Public Works Department recommended approval subject to the six conditions listed in the report.

As no one called in to the public comment line, public testimony was closed.

**MOTION:** Commissioner Beaver moved to approve the Franchise Order and Agreement with Washington State University subject to the six items listed in the report to the Commissioners. Commissioner Small seconded and upon vote, the motion carried.

### **Human Services - Criminal Justice Treatment Account (CJTA) Panel**

Kyle Sullivan said the Greater Columbia Behavioral Health began receiving additional CJTA dollars for the development or expansion of therapeutic drug courts. He said there was guidance outlined in RCW for a panel to provide recommendations to the Board of Commissioners on how the CJTA dollars should be spent. Mr. Sullivan said he was requesting authority from the Board to form this panel. The panel would then provide funding options and develop a plan to be turned into the Health Care Authority. He stated that currently they received \$16,000 a month and the new dollars would be \$14,000 per month and he did not know if money would be available in 2021.

**MOTION:** Commissioner Beaver moved to approve the Human Services Manager to move forward with the creation of the CJTA panel as presented. Commissioner Small seconded and upon vote, the motion carried.

### **Wheeled All-Terrain Vehicles on County Roads**

Matt Rasmussen said in 2014 the Board considered an ordinance to allow wheeled all-terrain vehicles (WATVs) to be used on county roads but ultimately decided against it based on potential risk and lack of an interconnected network of eligible roads. Earlier this year, the County reduced the speed limits on certain roads in the area around Prosser, prompting renewed interest in allowing WATVs. Additionally, the City of Prosser and City of Kennewick have elected to allow WATVs on their roadways.

In October 2019 Board directed staff to prepare a draft ordinance and bring it back for further consideration. Delays resulted from the ongoing COVID-19 pandemic, but the draft language was now ready for Board consideration. The proposed language is intended to be compatible with the rules of the City of Prosser and City of Kennewick. Mr. Rasmussen said the next step was to have a public hearing to consider the ordinance and he expected it could create significant public interest.

The Board agreed to move forward with a public hearing. Mr. Rasmussen said he would put the public hearing notice further out so people that were interested would have a chance to participate.

## **Emergency Remote Work Policy**

Matt Rasmussen presented a policy that provided for certain employees, under certain circumstances to work remotely when they can complete all of their regular duty assignments while away from the office. He said during the pandemic there were resolutions approved that allowed working remotely, however, this formal policy was needed to have protocol in place. He said with school quickly approaching, and employees with younger children, they wanted to be able to accommodate those families and allow those county employees to do their 8-hour full duties or a modified version. He said they recognized it would not help everyone as it did have some parameters but wanted to get it approved. Additionally, they wrote this primarily for Commissioners' departments, but included elected officials for those elected departments that wanted to utilize the policy.

Mr. Rasmussen said he researched the issue around the state and the MRSC website and this policy was based primarily on Thurston County's policy and others posted on MRSC.

**MOTION:** Commissioner Small moved to approve the Emergency Remote Work Policy as presented. Commissioner Beaver seconded and upon vote, the motion carried.

## **Other Business**

### **Personal Services Contract with Visit Tri-Cities**

Matt Rasmussen presented a contract with Visit Tri-Cities aimed at continuing the community outreach related to the COVID-19 pandemic and community response. The Contract with Visit Tr-Cities was in an amount not to exceed \$435,500, to be paid for by the CARES Act funding. For now, the agreement was with Benton County and the Health District, but if Franklin County decided to contribute, Benton County's portion would be reduced. They were working with the Health District to ensure all messages going out were consistent and the first television spot was scheduled to go out on Monday.

**MOTION:** Commissioner Small moved to approve the resolution approving a personal services contract with Visit Tri-Cities for the Production and Marketing Associated with a Public Outreach Campaign as presented. Commissioner Beaver seconded and upon vote, the motion carried.

### **Sheriff's Employees Counseling Services - Update**

Mr. MacPherson said they were reviewing their options for providing additional counseling services to Sheriff's employees and would be bringing forward a recommendation next week.

### **Letter from Cities – Work Crew**

Mr. Rasmussen said he was drafting a letter for Board consideration to respond to the cities' requests for reimbursement for the currently suspended work crew program for the months of April, May and June. He said he would bring that forward next week as well.

He added that the deputies that currently served on the work crew have been reassigned but there were still ancillary costs associated with the work crews.

### Recall Effort

Commissioner Delvin discussed his understanding of the laws regarding the recall effort and appeal deadlines. He requested the County put something out on social media or the website outlining the law and timelines for the public to see. Mr. MacPherson said they would work with the PA's office to get that message out.

### COVID-19 Update

Commissioner Delvin said they were currently working with the State and local health officers about the five counties (Grant, Chelan, Yakima, Benton and Franklin) being on the same modified phase 1 plan. He said it was currently tied up in the Governor's office, but they hoped to get an answer today about the increased services in the modified phase 1. This would include indoor dining, photographers, domestic and professional services, and recreational services.

### Hiring – Unfilled Positions

Commissioner Delvin said the County's retail sales tax revenue was currently trending down 11-14% and he wanted the Board to consider not filling positions that have been open and not filled. He suggested they pass a resolution that would require the departments to receive Board approval before filling open positions. The Board agreed.

### **Executive Session - Potential Litigation**

Mr. MacPherson announced the Board would be going into executive session for up to 60 minutes to discuss potential litigation. The Board briefly recessed to reconvene in the Executive Conference Room.

The Board went into executive session at approximately 9:48 a.m. for up 60 minutes to discuss potential litigation. Present were Chairman Pro Tem Delvin, Commissioners Small and Beaver (via/teleconference), Jerrod MacPherson, Matt Rasmussen, Cami McKenzie, and Attorney Mike Kitson (via/teleconference). The Board came out of executive session at 10:14 a.m. and briefly recessed to reconvene back in the Commissioners' Conference Room.

The Chairman announced that no decisions were made in executive session, but direction was given.

**Other Business**

Letter to Attorney General & WA State Patrol

Chairman Pro Tem Delvin proposed the Board send a letter to the State Attorney General and Chief of State Patrol asking for a criminal investigation into the ammunition and guns that were found in the ex-home of Sheriff Hatcher. The Board agreed.

**Payroll**

Check Date: 08/17/2020

Payroll Draw Checks

Total all funds: \$119,206.97

Warrant #: 242732

Direct Deposit #: 155403-155570

Payroll Deductions/Transfers

Total all funds: \$36,246.28

Taxes #: 101200812

**Accounts Payable**

Check Date: 08/10/2020

P-Cards #: 0820

Total all funds: \$258,662.73

Check Date: 08/14/2020

EFT #: 1389

Transfers #: 08142001-08142011

Total all funds: \$503,751.08

Warrants #: 208851-209055

Total all funds: \$1,281,031.39

Check Date: 08/21/2020

EFT #: 1390-1392

Transfers #: 08212001-08212005

Total all funds: \$23,675.38

Warrants #: 209103-209200

Total all funds: \$1,062,293.11

**Resolutions**

- 2020-567: Surplus & Disposition of Personal Property
- 2020-568: Amending Resolution 2020-337 Regarding the Purchase of Agilis Sorting Machine From Runbeck Election Services
- 2020-569: Line Item Transfer, Fund No. 0305-101, Dept. 000
- 2020-570: Line Item Transfer, Fund No. 0000-101, Dept. 115 to Dept. 107
- 2020-571: Solicitation of Bids for the Procurement of Inmate Supplies – CB 20-19
- 2020-572: Solicitation of Bids for the Procurement of Paper & Glove Supplies-CB 20-20
- 2020-573: Solicitation of Bids for the Procurement of Jail Chemicals & Janitorial Supplies CB 20-21
- 2020-574: Solicitation of Bids for the Procurement of Employee Uniforms–CB 20-22
- 2020-575: Line Item Transfer, Fund No. 0000-101, Dept. 110
- 2020-576: Payment to Cyrring Hot Productions for Renewal of the “.com” Domain & Fees for Fairgrounds Website
- 2020-577: Line Item Transfer, Fund No. 0124-101, Dept. 000
- 2020-578: Contract w/Heather Villani for Attorney Representation in BECCA Cases/Matters
- 2020-579: Contract Amendment #1 w/Lutheran Community Services Northwest for Counseling Services
- 2020-580: Purchase of Vulcan 3 Pan Steamer From Crown Paper & Janitorial for the Detention Kitchen
- 2020-581: Amended Superior Court Public Defense Contract w/Bart Tomerlin
- 2020-582: Line Item Transfer, Fund No. 0148-101, Dept. 115 to 136
- 2020-583: Agreement w/Benton-Franklin Health District for Nurse Family Partnership Program
- 2020-584: Contract w/Welsh Commissioning Group for Commissioning Services @ the New Administration Building
- 2020-585: WDC Contract w/Career Path Services for Adult Services
- 2020-586: WDC Contract w/Career Path Services for Dislocated Worker Services
- 2020-587: Approving a Policy on Remote Working During County Wide Emergencies
- 2020-588: Approving a Personal Services Contract with Visit Tri-Cities for Production and Marketing Associated with a Public Outreach Campaign

There being no further business before the Board, the meeting adjourned at approximately 10:20 a.m.

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Clerk of the Board

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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 DEPARTMENT NUMBER 102

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

CHILTON

**BENTON COUNTY LINE ITEM TRANSFER**

Dept Name: Auditor

Dept Nbr: 102

Fund Name: Current Expense

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
514.410	3101	Supplies	\$60,038	594.140	6401	Capital Outlay	\$60,038
TOTAL			\$60,038	TOTAL			\$60,038

Explanation:

Agillis Stackers for Elections paid for out of HAVA Grant Res. 2020-337

Prepared by: Lorene Roe

Date: 8/13/20

Approved

Denied

Date: \_\_\_\_\_

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	September 1, 2020		
<b>Subject:</b>	Grant Agreement for Student Engagement HUBS		
<b>Presenter:</b>	Brenda Chilton		
<b>Prepared By:</b>	Brenda Chilton		
<b>Reviewed By:</b>	Reid Hay		
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A            (If no, include reasoning for no approval)		
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> (Multiple boxes can be checked, if necessary)		
<input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Public Hearing <input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Decision / Direction <input type="checkbox"/> Sign Letter / Document	<input type="checkbox"/> Pass Motion <input type="checkbox"/> Pass Resolution <input type="checkbox"/> Pass Ordinance <input checked="" type="checkbox"/> Execute Contract	

**Summary / Background Information**

Grant funding is available to Benton County for the establishment of the required Student Engagement HUB at WSU Tri-Cities (pursuant to ESB 6313 passed by the legislature in 2020). An intergovernmental agreement is necessary between Benton County and the Office of the Secretary of State.

**Fiscal Impact**

Benton County has the opportunity to apply for grant funding for each applicable election. It is estimated that a total of approximately \$31,000 will be available to Benton County through June 30, 2024.

**Recommendation**

Chairman sign the grant agreement.

**Suggested Motion**

Move that the Chairman of the Board be authorized to sign the Intergovernmental Grant Agreement between the State of Washington, Office of the Secretary of State, and Benton County, providing for the opportunity for Benton County to apply for funds to establish a Student Engagement Hub (HUB) at WSU Tri-Cities in applicable elections during the term of the date of the full execution of the agreement through June 30, 2024.

Further, that the Auditor be authorized to sign any subsequent applications, addendums, or modifications to the Intergovernmental Grant Agreement, necessary to apply for the grant funding.

**RESOLUTION**

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON**

**IN THE MATTER OF AN INTERGOVERNMENTAL GRANT AGREEMENT BETWEEN THE STATE OF WASHINGTON, OFFICE OF THE SECRETARY OF STATE, AND BENTON COUNTY TO ESTABLISH A STUDENT ENGAGEMENT HUB AT WSU, TRI-CITIES.**

**WHEREAS**, the legislature passed ESB 6313 in 2020 providing funding for the implementation of a provision of Section 10 of the bill to establish a Student Engagement Hub (HUB) at WSU Tri-Cities; and

**WHEREAS**, Benton County can apply for funds for any applicable election year for which a HUB is established; **NOW, THEREFORE**,

**BE IT RESOLVED**, the Chairman of the Board is authorized to sign the Intergovernmental Grant Agreement between the State of Washington, Office of the Secretary of State, and Benton County, providing for the opportunity for Benton County to apply for funds to establish a Student Engagement Hub (HUB) at WSU Tri-Cities in applicable elections during the term from the date of the full execution of the agreement through June 30, 2024; and

**BE IT FURTHER RESOLVED**, that the Auditor is authorized to sign any subsequent applications, addendums, or modifications to the Intergovernmental Grant Agreement, necessary to apply for the grant funding.

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

**GRANT AGREEMENT BETWEEN  
THE OFFICE OF THE SECRETARY OF STATE  
AND  
BENTON COUNTY AUDITOR'S OFFICE**

This Grant Agreement ("Agreement") is entered into by the Washington State Office of the Secretary of State ("OSOS") and the Benton County Auditor's Office ("Grantee").

**1. PURPOSE**

Pursuant to Section 23 of Engrossed Senate Bill 6313, Chapter 208, Laws of 2020 ("ESB 6313"), to provide funding to Grantee for the implementation of a provision in Section 10 of ESB 6313 to establish "Student Engagement Hubs" (each a "HUB" and collectively, "HUBs") at universities and institutions specified in Section 10.

This Agreement provides Grantee the opportunity to apply for such funding prior to each general election, and sets forth the terms and conditions applicable to such applications and funding arrangements in accordance with Section 10 of ESB 6313.

The amount of funding provided to Grantee is subject to availability of funds provided by the Legislature and the terms and conditions of this Agreement. Funds will be prorated based on the number of days the HUB is operational, whether or not equipment is being procured, and the number of students at the university or institution.

**2. PERIOD OF PERFORMANCE**

The period of performance under this Agreement will be from the date of execution through June 30, 2024, unless terminated sooner or extended as provided herein.

**3. DUTIES**

**A. GRANTEE.**

If Grantee desires to be considered for funding for the purposes authorized by this Agreement and Section 10 of ESB 6313, then for each or any applicable general election year for which Grantee is seeking funding during the term of this Agreement, Grantee shall make application to OSOS prior to the deadline specified by OSOS for receipt of Grantee's application for that general election year, utilizing the form provided by OSOS to Grantee for that general election year.

In making application to OSOS, Grantee may apply for any of the following:

- Obtaining hardware, software, or other IT equipment needed to operate a HUB;
- Obtaining any non-IT equipment needed to operate a HUB;
- Paying for operational costs associated with the HUB, including but not limited to rent, staffing costs, materials, and information technology needs related to security and connectivity;
- Paying for Grantee's staffing costs to accommodate operation of the HUB;
- Paying for daily operation, planning, and training to coordinate the HUB; and
- Paying for any other OSOS-approved costs agreed upon between Grantee and the university or institution that are needed for operation of the HUB.

## **B. OSOS.**

OSOS will supply Grantee with the grant application for each HUB at least 60 days before the deadline for the application to be received. OSOS will review the grant application submitted by Grantee for each general election.

The application review will be conducted exclusively by the Elections Director and will include detailed analysis to assure the application meets all elections laws set forth in RCW 29A and applicable administrative code provisions, in addition to all applicable Federal laws and requirements.

If Grantee's application is approved, OSOS will issue Grantee a single lump-sum amount for that general election year, as set forth in the OSOS grant award. Grantee will receive the funds by warrant or account transfer, within 30 days, after the application is approved.

If the application is rejected by OSOS, OSOS will promptly notify Grantee of the reason(s) for rejection and allow Grantee the opportunity to submit one (1) revised grant application to address the deficiencies.

## **4. CONTRACT MANAGEMENT**

The following individuals are responsible for the management of this Agreement:

OSOS: Christopher Donald  
Office of the Secretary of State  
PO Box 40229  
Olympia, Washington 98504  
christopher.donald@sos.wa.gov  
(360) 902-4175

GRANTEE: Brenda Chilton  
Benton County Auditor's Office  
620 Market Street  
Prosser, WA 99350  
brenda.chilton@co.benton.wa.us  
(509) 736-3085

## **5. WAIVER**

Waiver of any default may only be in writing and shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the parties to this Agreement.

## **6. SEVERABILITY**

If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions which can be given effect without the invalid provision, if such remainder provisions conform to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**7. RESPONSIBILITIES OF THE PARTIES**

Each party shall be responsible for the acts and omissions of its own employees, officers, and agents in conjunction with the work performed under this Agreement. Neither party shall be considered an agent of the other, and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, corporation, or other third party not named in this Agreement.

**8. ENTIRE AGREEMENT**

This Agreement including any referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed a part hereof.

**9. ORDER OF PRECEDENCE**

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency will be resolved by giving precedence in the following order:

- A. Applicable state and federal statutes, and local laws, rules and regulations;
- B. Duties identified in section 3 of this Agreement; and
- C. All other provisions of this Agreement.

**10. DISPUTES**

If a dispute arises under this Agreement, it will be adjudicated by a dispute board. Each party to this Agreement will appoint a member to the dispute board. The members appointed will jointly appoint an additional (third) member to the dispute board. The dispute board will then evaluate the facts, Agreement terms, and applicable statutes and rules, to make a determination on the dispute. This dispute process will precede any judicial action.

**11. GOVERNING LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**12. TERMINATION**

Either party may terminate this Agreement upon 30 calendar days' written notice to the other party. The terminating party will be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. If funding from the State or other sources is withdrawn or limited in any way after execution of this Agreement, OSOS may immediately terminate or renegotiate this Agreement.

**13. APPROVAL; AMENDMENTS**

This Agreement shall be subject to the written approval of OSOS' authorized representative and shall not be binding until so approved. This Agreement may be altered, amended, or waived only by written amendment executed by both parties.

THIS AGREEMENT is executed by the persons signing below who warrant that they have the authority to execute this Agreement.



# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	9/1/2020
<b>Subject:</b>	Bid Acceptance Ballot Collection Boxes
<b>Presenter:</b>	
<b>Prepared By:</b>	Lorene Roe
<b>Reviewed By:</b>	Brenda Chilton
<b>PA Review, Approval to Form:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A (If no, include reasoning for no approval)
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> (Multiple boxes can be checked, if necessary)
<input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Decision / Direction <input checked="" type="checkbox"/> Pass Resolution
<input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Sign Letter / Document <input type="checkbox"/> Pass Ordinance
	<input type="checkbox"/> Execute Contract

## Summary / Background Information

The Benton County Auditor's office wishes to accept the bid of Laser Fab for the purchase of two (2) vote armor ballot collection boxes to replace smaller ballot collection boxes. This purchase would be paid for with monies from the Help America Vote Act HAVA 3 grant.

## Fiscal Impact

\$0

## Recommendation

The Board of Benton County Commissioners hereby authorizes the purchase of two ballot collection boxes from Laser Fab in the amount of \$5,795 each, plus applicable WSST, freight, delivery, and surcharges, the total of which shall not exceed the \$24,999 threshold as set forth in the County's Procurement, Leasing, and Contracting Policy.

## Suggested Motion

Move to allow the purchase of two (2) ballot collection boxes to be paid for using the HAVA 3 grant monies.

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING THE SUCCESSFUL BIDDER, LASER FAB, AND AUTHORIZING THE PURCHASE OF (2) TWO VOTE ARMOR BALLOT COLLECTION BOXES TO REPLACE SMALLER BALLOT COLLECTION BOXES IN BENTON COUNTY.

WHEREAS, the Benton County Auditor received a Help America Vote Act (HAVA 3) grant for said purchase.

WHEREAS, the location of the new ballot boxes is Badger Mountain Park (Keene Rd.) and the new Benton County Public Services building, or such other location as the Auditor deems necessary.

WHEREAS, quotes were solicited from the following vendors:

1. Fort Knox \$ 2,988 each
2. Kingsley \$ 3,249 each
3. Laser Fab \$ 5,795 each

WHEREAS, Laser Fab was found to be the vendor who would best fill the requirements due to the necessary security features of the boxes.

BE IT RESOLVED, the Board of Benton Commissioners hereby authorizes the purchase of two ballot collection boxes from Laser Fab in the amount of \$5,795 each, plus applicable WSST, freight, delivery, and surcharges, the total of which shall not exceed the \$24,999 threshold as set forth in the County's Procurement, Leasing, and Contracting Policy.

BE IT FURTHER RESOLVED, the Benton County Auditor is hereby authorized to sign any subsequent documents necessary to complete purchase, delivery, and installation of the listed equipment.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Attest:

\_\_\_\_\_  
Clerk of the Board

Cc: L. Roe, B. Chilton

# FORT KNOX MAILBOX

HOME

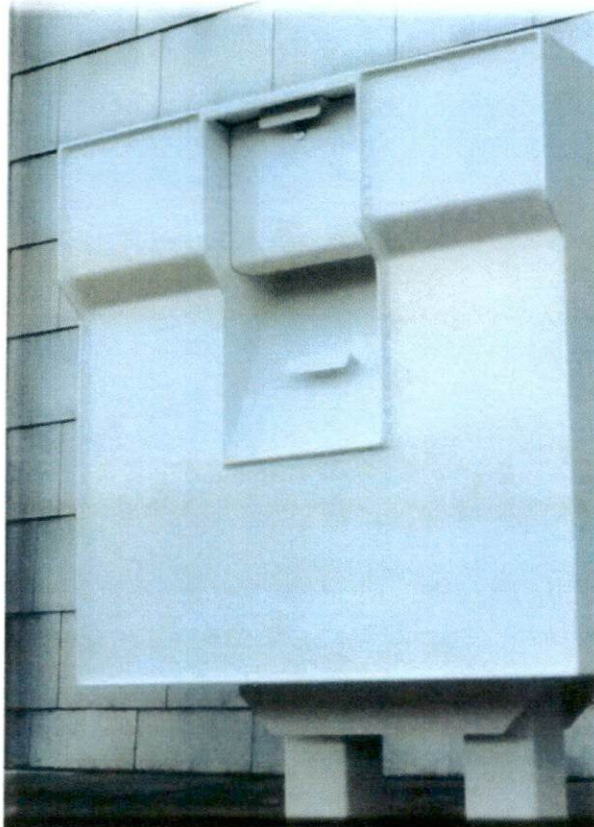
MAILBOXES

MULTIPLE MAILBOXES

OTHER PRODUCTS

ABOUT

CONTACT US



## LARGE BALLOT BOX

36" x 30" x 36" at 550 LBS. (Ballot Box Only)

Our Fort Knox Large Ballot Box will protect your ballots. They are made from 1/4" steel (4" gauge). One option is to add front AND rear entry for ballot drop off for walk- and drive-up situations. They can be locked in the open and closed positions for on and off voting seasons. Also included is a tag system for a serial or seal setup for more security. We suggest a 40" heavy duty steel post for in-ground mounting. For the larger 36" wide Ballot Box, twin 40" posts are recommended. We can also do surface mounting. There are three standard sizes and can make custom sizes.

### 36" WIDE BALLOT BOX

With 21,300 cubic inch inches of storage

\*ESTIMATED TO HOLD 2,750-3,500 BALLOTS\*

Pricing is for single quantities. Call or email for multiple orders!

# \$2,998.00



Add Rear Door for Ballot Removal

Select an option...

Front and Rear Ballot Drop Off

Select an option...

Add custom side skin sets for both sides

Select an option...

Protective Vinyl Cover

Select an option...

Add a steel rack

Select an option... 

Enter special requests below

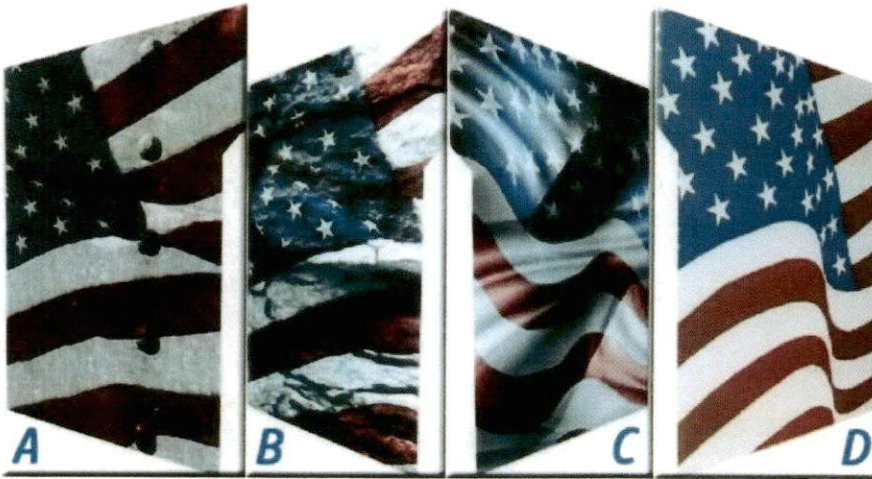
- 1 +  
 + Add to cart + preview accessories

Description      Additional information

## SPECIAL FEATURES ON OUR FORT KNOX BALLOT BOXES:

- 1/4" thick (4" gauge) steel all-welded shell (no rivets)
- 3/16" thick and reinforced welded steel doors
- 2" continuous welded steel hinges on all doors with 3/8" thick hinge pin
- Recessed doors to defend against prying with large tools
- Locking Ballot Drop Off door in the open AND closed positions
- 7 Pin Tubular "pick-proof" locks
  - 2 for upper ballot drop off door and 1 for retrieval door (Large = 2 locks)
  - All locks are keyed alike per each Ballot Box and county
  - Upgradable Locks available
- Internal Serial Tag lockout (see picture)
- Weather-resistant with drip edges and recessed slots and doors to keep ballots dry
- Anti-water damage drip out design
  - Water and sand poured in the front slot comes out below on the front of the box
- Decals "Voting Closed" and "Vote Here" included
- High-Performance Powder Coating inside and out
  - Special colors are available!
- Matching 5" x 5" x 40" In-ground steel post (optional)
  - T-Post is the selected post for the 24" Wide Box
  - Twin posts on a welded rack is the best fit for the large 36" Box
  - Optional breakaway post(s) for surface mounting to existing sidewalk
- Can be custom adjusted and upgraded
- Upgrade Locks Available:
  - High-Security Medeco and Abloy Locks (retrieval door only)
  - The Vault Lock (retrieval door only)
  - The Vault Lock EXTREME! (adding the Medeco Lock)
- Optional LED Wireless Light (for collecting ballots during the evening hours)
- Optional Flag logos (custom options available; contact us for details)

MADE TO DEFEND AND SECURE BALLOTS FOR MANY YEARS TO COME!



\*For Ballot capacity, estimates are based on different sized ballots between counties, and also the amount of measures being voted on that have an effect on the size of each ballot. The figures shown below are from previous county estimates.

## RELATED PRODUCTS

GRY. OR BLK.  
12 OZ. SPRAY  
CAN

≡+

BREAK-AWAY  
/ SURFACE  
MOUNT

≡+

SMALL BALLOT  
BOX



Measurements: 36 X  
24 X 12 in  
Weight: 325lbs

M1-LT  
MAILBOX

≡+

Measurements: 20 X  
10 X 10 in  
Weight: 38lbs

---

## CONTACT US FOR ASSISTANCE

We're Here To Help You

Phone: (800)206-8067 • Local: (541)956-0825  
You Can Email Us at: [mail@fortknoxmailbox.com](mailto:mail@fortknoxmailbox.com)

[Home](#)

[Durability](#)

[Product](#)

[Security](#)

[Testimonials](#)

[Contact Us](#)

[Location](#)

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[Home](#) > [CollectionPoint 38" C-Series Ballot Drop Box](#)

# CollectionPoint 38" C-Series Ballot Drop Box

## Outdoor Depository

[Be the first to review this product](#)

**\$3,249.00**

SKU#: 02-9862

CollectionPoint's 38" C-Series Ballot Drop is the largest single drop ballot drop off box offered. It boasts a 38" squared cabinet footprint and can **hold up to 17.5 cubic feet or up to 4000 standard ballots** with a collection bin. This particular unit is part of our premium C-Series line that includes extra features such as our anti-collision depository hood design that allows the cabinet to sit farther back from the curb, reducing the chances of collisions. [Click here to see all of the features.](#)



**FREE SHIPPING**

[\\*click for details](#)

Color



**Aluminum Rolling Collection Bins \***



[Skip to the beginning of the images gallery](#)

## Freight Services

Liftgate service is required if you do not have a truck loading dock or a forklift to get the item out of the delivery truck. For most deliveries, if you need Inside Delivery you will also need the Liftgate service. Charges are per order, not product.

- Liftgate + \$132.00
- Inside Delivery + \$157.00
- Construction Site + \$122.00
- Limited Access (Residential, Schools, Military Bases, etc.) + \$54.00
- Call Ahead + \$20.00

Qty

Add to Cart Add to Quote

**[ADD TO WISH LIST](#) [ADD TO COMPARE](#)  
[EMAIL](#)**

[Skip to the end of the images gallery](#)

These light-weight aluminum bins are designs to fit your depository unit and allow for easy transportation of collected materials. Available with or without an attached metal lid. The lids are perfect for quarantining or storing items in addition to keeping your collected items dry when bringing them inside from an outdoor depository in the rain or snow.

### Extra Keys



Each lock comes with two keys but we know sometimes you need more. If you order extras ahead of time, we'll ship them with your unit. **Please note that additional keys are sold per key and not as a pair.**

┌ Cabinet Door Lock + \$3.95

Qty:

### Bollards



Protect your outdoor units with bolt down bollards. These posts are designed to take a hit so your new unit doesn't. Made of schedule 40 steel with a yellow powder coat. 42" in height with your choice of diameter. Hardware not included.

Qty:



**LASERFAB, INC**

5406 184th St E, Ste D  
Puyallup, WA 98375  
Phone: 253.846.8370  
Fax: 253.846.8371

**Quotation**

Quote Benton County Auditor  
To: 620 Market St  
Prosser, WA 99350

Quote Number:	32936	Contact:	Deidra Beck
Quote Date:	08/13/20	Expires:	09/12/20
Customer:	ACU100	Inquiry:	
Salesman:	Laserfab	Terms:	NET 30 DAYS
Ship Via:	Best Way	Phone:	(509) 786-5620
FOB:	Puyallup	FAX:	

- \* Lead-time is 8 weeks after receipt of an order.
- \* Standard powder coating color is white.
- \* Thank you for the opportunity to submit our quote. Pricing is valid for 30 days from quotation date.

<u>Item</u>	<u>Description</u>	<u>Revision</u>	<u>Quantity</u>	<u>Price</u>
1	VA-5038 Vote Armor Ballot Collection Box 5038 - (50" Deep x 38" Wide)	B.1	3	\$5,795.0000 /EA
2	FREIGHT CHARGES Shipping from Puyallup, WA to 620 Market Street, Prosser, WA 99350		1	\$582.5200 /LOT
			<b>Total:</b>	<b>\$17,967.52</b>

By Mike Natucci  
LASERFAB, INC



Ballot Collection Products

Mike # 5495-5795  
Lead time issue  
Larry 253.405.7196

www.VOTEARMOR.com  
(253)846-8370 Main Office  
sales@votearmor.com

## MODEL VA-5038

### WOULD YOU VOTE IN A DVD RETURN? ... DON'T!

Vote Armor's newest ballot drop box replaces the DVD and library book return containers currently used in elections. Up until now, there haven't been any alternatives with the same capacity, so the light duty boxes had to work for many counties. That changed in early 2014 when Vote Armor, once again, teamed up with an election department to design and produce its new model VA-5038.

#### What separates Vote Armor boxes from the media return boxes?

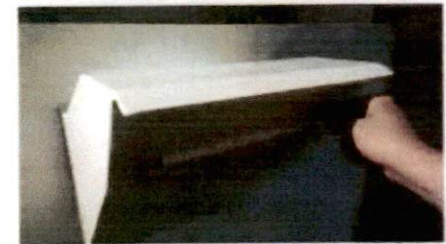
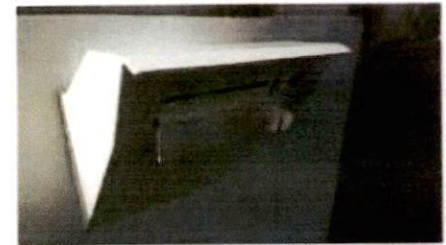
For starters, Vote Armor:

- is 2.5x thicker (3/16" thick)
- has no rivets or sheetmetal screws
- is fully welded at all seams
- fastens to concrete with 3/4" bolts
- has over 2x heavier lock bolts
- separates walk-up & drive-up slots



Vote Armor's unique shape has a practical purpose behind it. The angle of the sides allows the access door to drop open with gravity, so it will not appear closed when it is not securely locked (lower left). This helps prevent election worker error.

The slot doors (right) are built-into the unit eliminating the need for loose covers and padlocks, like those required by other manufacturers. Slots can be locked in both the open and closed position. Without being closed securely, the doors will hang in the open position; one more special design element helping to prevent an election worker from walking away from an unsecured unit.



All Vote Armor products are ADA compliant from the drop slot height & single hand operation to rounded edges and white coating for text contrast.

Vote Armor is a product and trademark of Laserfab Inc



Ballot Collection Products

## IS YOUR DROP BOX SECURE?

If you answer **yes** to any of the following, your drop box is not secure.

Does the metal flex when pushing on the sides?

Will objects larger than a ballot through slots?

Are screws or hex bolts seen outside the box?

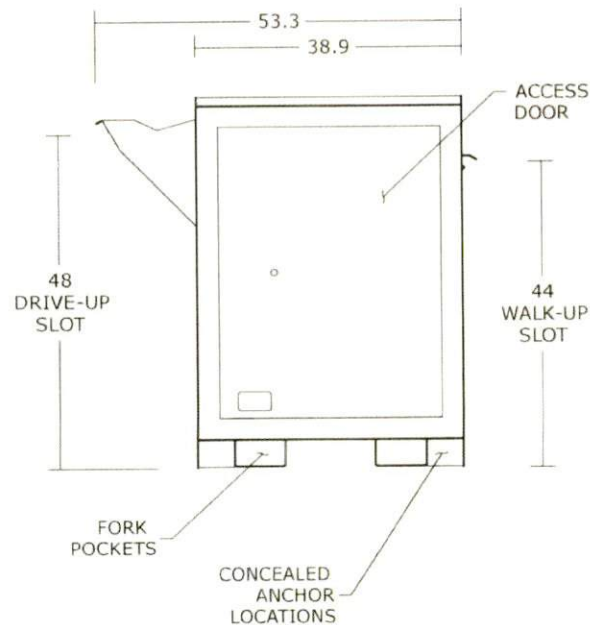
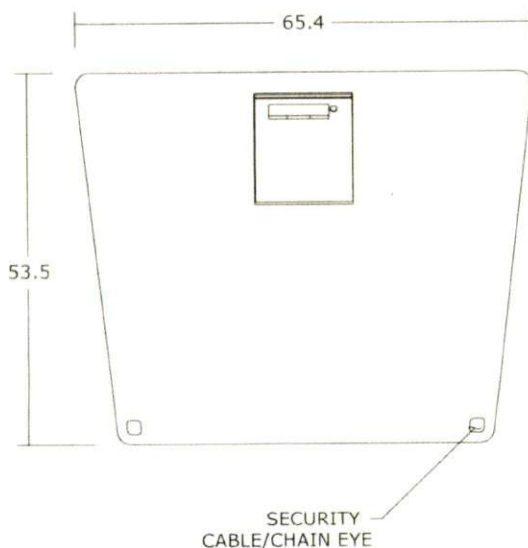
Are rivets or spot welds used to hold it together?

Call or email for fast quotes and friendly service.

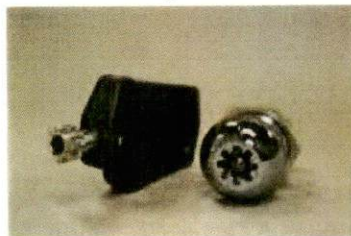
www.VOTEARMOR.com  
(253)846-8370 Main Office

sales@votearmor.com

## MODEL VA-5038



### Locks & Keys



Each unit comes standard with Camlock Series 35 locks and are all coded alike for your specific county. These locks cannot be purchased by any other county or municipality. Key and lock control logs are kept throughout production for security. Logs are available upon written request.

### Deposit points

Vote Armor drop boxes have separate walk-up and drive-up access. This keeps walk-up voters safe from traffic and provides obstruction-free access to drivers. Each deposit point can be moved to one of any three points on the box. The standard configuration comes with one walk-up slot and one drive-up slot on opposing sides. An additional deposit slot can be purchased.

### Shipping

Product ships upright on a 45" x 68" wood pallet with a corrugated cardboard cover. Shipping weight is approximately 1200 lbs. Keys are shipped in a separate box with special attention to any authorized county official.



**Ballot Collection Products**

www.VOTEARMOR.com  
(253)846-8370 Main Office

sales@votearmor.com

## MODEL VA-5038

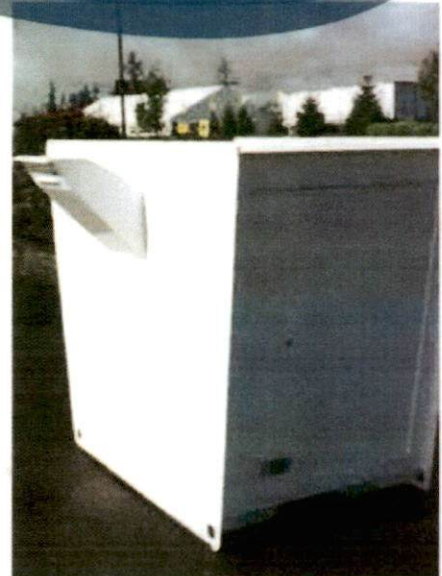
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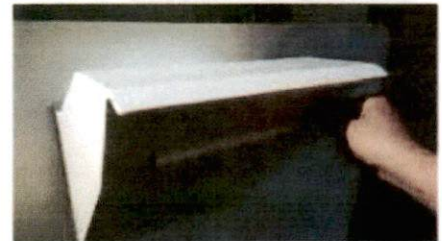
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All Vote Armor products are ADA compliant from the drop slot height & single hand operation to rounded edges and white coating for text contrast.

**2020 HAVA Election Security Grant | PROJECT WORKSHEET**

(to be submitted to the OSOS Security Operations Center)

IG-6920

**RISK AREA OF CONCERN BEING ADRESSED BY THIS PROPOSAL**

(Identified as Q## on your Security Site Visit assessment)

Please also include a worksheet for proposals on use of leftover funding after all Security Site Visits Assessment areas of concern have been addressed. Label this proposal 'N/A'

Proposal for use of leftover funding of HAVA3: Purchase of three (3) large Ballet Drop Boxes for three high demand areas in Benton County

**GENERAL DESCRIPTION OF THE WORK AND OBJECTIVES OF THE PROJECT**

Because Benton County Elections has identified three very highly trafficked areas for our drop boxes, we wish to replace the smaller Ballot Drop Boxes currently installed in those locations with three much larger ones.

**SCOPE OF WORK**

A non-technical description of the work that will be performed

Three new, much larger, Ballot Drop Boxes will be installed at three of the most heavily used locations by voters dropping their ballot; one at our County Justice Center Administration Building, one at our Keene Road location in Kennewick, and one at our Auditor's annex in Kennewick, WA.

**TECHNICAL REQUIREMENTS**

List out specific tasks, phases, analysis, design, and scope of each part of the project

Each of these three Ballot Drop Boxes will be securely mounted in easily accessed drive-up locations that will not impede traffic flow. They will be located such that one side can service drive-up voters dropping off their ballots, and the other side of the drop box can safely service walk-up voters.

**TIMELINE, DELIVERABLES & MILESTONES**

Please provide a timeline for the project, as well as specific deliverables and milestones that are quantifiable and measurable

We plan to purchase and install these larger ballot drop boxes by October 10, prior to the 2020 General Election. Once installed, the drop boxes will be identified with Benton County Election decals.

**ESTIMATED PROJECT COST**

Description of goods/services that will be procured for this project	QUANTITY	UNIT	UNIT PRICE	COST
Ballot Drip Box Model VA-5038	3		\$ 5,795.00	\$ 17,385.00
Shipping	1		\$ 582.52	\$ 582.52
Estimated installation costs	3		\$ 1,000.00	\$ 3,000.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
				\$ 0.00

TOTAL COST      \$ 20,967.52

PREPARED BY	TITLE	SIGNATURE
APPLICANT REP.	TITLE	SIGNATURE
APPROVED BY (For OSOS use only)	TITLE	SIGNATURE

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	09/01/20	
<b>Subject:</b>	Appt of John Becker to the Badger Mt. Irrigation District	
<b>Presenter:</b>	--	
<b>Prepared By:</b>	M Flores	
<b>Reviewed By:</b>	C McKenzie	
<b>PA Review, Approval to Form:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A (If no, include reasoning for no approval)	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> (Multiple boxes can be checked, if necessary)	
<input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only	<input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Decision / Direction	<input checked="" type="checkbox"/> Pass Resolution
<input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Sign Letter / Document	<input type="checkbox"/> Pass Ordinance
		<input type="checkbox"/> Execute Contract

## Summary / Background Information

The Commissioners' Office was notified that the Director with the Badger Mountain Irrigation District resigned his position effective August 14, 2020. The District has recommended the appointment of John Becker to fill the unexpired term.

## Fiscal Impact

--

## Recommendation

That the Commissioners review the attached letter from Badger Mountain Irrigation District requesting consideration in appointing John Becker to fill the unexpired term.

## Suggested Motion

--

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF APPOINTING JOHN BECKER TO THE BADGER MOUNTAIN IRRIGATION DISTRICT BOARD OF DIRECTORS**

**WHEREAS**, there is an open position for Director within the Badger Mountain Irrigation District due to a resignation; and

**WHEREAS**, the Revised Code of Washington (RCW 87.03.081) provides that, “a vacancy in the office of director shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had”; and

**WHEREAS**, the Board of Benton County Commissioners has received a recommendation from the Badger Mountain Irrigation District for John Becker to fill the vacant position; **NOW, THEREFORE**,

**BE IT RESOLVED** the Board of Benton County Commissioners hereby appoints John Becker to fill the unexpired term for the position of Director with the Badger Mountain Irrigation District, said term expiring on December 31, 2021.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro Tem

\_\_\_\_\_  
Member

Attest: .....  
Clerk of the Board

Constituting the Board of County  
Commissioners of Benton County,  
Washington



RECEIVED

AUG 12 2020

BENTON COUNTY  
COMMISSIONERS

**Badger Mountain Irrigation District**

87525 East Reata Road  
Kennewick, WA 99338  
August 7, 2020

(509) 628-0777  
Fax (509) 628-0112

Benton County Commissioners  
P O Box 190  
Prosser, WA 99350

RE: Director Vacancy: Badger Mt. Irrigation District

Dear Sirs:

The purpose of this letter is to formally announce that on August 14, 2020 the BMID Board of Directors received the resignation of Director Steve Conley & Vice-President Eric Isern.

The Revised Code of Washington (RCW 87.03.081) provides that; "A vacancy in the office of director shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had. At the next annual election occurring thirty days or more after the date of the appointment, a successor shall be elected who shall take office on the first Tuesday in January following and shall serve the remainder of the unexpired term".

In addition, to qualify as an applicant, (RCW 87.03.051) provides in pertinent part that; "a person eighteen years old, being a citizen of the United States and a resident of the state and who holds title or evidence of title to assessable land in the district..." and further, "a majority of directors shall be residents of the county or counties in which the district is situated and all shall be electors of the district...". Since the District Board already has one non-resident director, the applicants for these vacant positions must reside within Benton County.

I am requesting that the Board of Benton County Commissioners solicit applications from persons who are interested in serving on the BMID Board of Directors. The Commissioners have the discretion to select the Directors. Both of these particular positions will then be up for election in the next general election of the District and the person(s) elected at that time will take office in January, 2021.

We do have 2 interested parties that have been long time residents who are interested in filling the two vacancies.

\*John Becker  
93406 Holly Road  
Kennewick, WA 99338  
509-713-6589

\*Darryll Olsen  
102402 E Vaca Road  
Kennewick, WA 99338  
509-783-1623  
509-628-3739

If you have any questions or if I can be of assistance, please contact me at the District's administrative office.

Sincerely,

Colby Getchell  
Secretary-Manager

CC: BMID Board of Directors

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	09/01/20	
<b>Subject:</b>	Appt of Darryll Olsen to the Badger Mt. Irrigation District	
<b>Presenter:</b>	--	
<b>Prepared By:</b>	M Flores	
<b>Reviewed By:</b>	C McKenzie	
<b>PA Review, Approval to Form:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> <i>(Multiple boxes can be checked, if necessary)</i>	
<input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only	<input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Decision / Direction	<input checked="" type="checkbox"/> Pass Resolution
<input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Sign Letter / Document	<input type="checkbox"/> Pass Ordinance
		<input type="checkbox"/> Execute Contract

## Summary / Background Information

The Commissioners' Office was notified that the Director with the Badger Mountain Irrigation District resigned his position effective August 14, 2020. The District has recommended the appointment of Darryll Olsen to fill the unexpired term.

## Fiscal Impact

--

## Recommendation

That the Commissioners review the attached letter from Badger Mountain Irrigation District requesting consideration in appointing Darryll Olsen to fill the unexpired term.

## Suggested Motion

--

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF APPOINTING DARRYLL OLSEN TO THE BADGER MOUNTAIN IRRIGATION DISTRICT BOARD OF DIRECTORS**

**WHEREAS**, there is an open position for Director within the Badger Mountain Irrigation District due to a resignation; and

**WHEREAS**, the Revised Code of Washington (RCW 87.03.081) provides that, “a vacancy in the office of director shall be filled by appointment by the Board of County Commissioners of the county in which the proceedings for the organization of the district were had”; and

**WHEREAS**, the Board of Benton County Commissioners has received a recommendation from the Badger Mountain Irrigation District for Darryll Olsen to fill the vacant position; **NOW, THEREFORE**,

**BE IT RESOLVED** the Board of Benton County Commissioners hereby appoints Darryll Olsen to fill the unexpired term for the position of Director with the Badger Mountain Irrigation District, said term expiring on December 31, 2022.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro Tem

\_\_\_\_\_  
Member

Attest: .....  
Clerk of the Board

Constituting the Board of County  
Commissioners of Benton County,  
Washington



RECEIVED

AUG 12 2020

BENTON COUNTY  
COMMISSIONERS

**Badger Mountain Irrigation District**

87525 East Reata Road  
Kennewick, WA 99338  
August 7, 2020

(509) 628-0777  
Fax (509) 628-0112

Benton County Commissioners  
P O Box 190  
Prosser, WA 99350

RE: Director Vacancy: Badger Mt. Irrigation District

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509-783-1623  
509-628-3739

If you have any questions or if I can be of assistance, please contact me at the District's administrative office.

Sincerely,

Colby Getchell  
Secretary-Manager  
CC: BMID Board of Directors

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	September 1, 2020	
<b>Subject:</b>	Ratifying an Emergency Purchase of Lexan Window Material for the Courtroom Technology Upgrade Project from Superior Glass, LLC	
<b>Presenter:</b>	N/A	
<b>Prepared By:</b>	Paul Schut	
<b>Reviewed By:</b>	Robert Blain	
<b>PA Review, Approval to Form:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> <i>(Multiple boxes can be checked, if necessary)</i>	
<input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Public Hearing <input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Decision / Direction <input type="checkbox"/> Sign Letter / Document <input type="checkbox"/> Pass Motion <input checked="" type="checkbox"/> Pass Resolution <input type="checkbox"/> Pass Ordinance <input type="checkbox"/> Execute Contract	

## 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 in order to combat the emergency.

The need to implement a remote hearing solution for both Superior & District Courts has become a pressing need as a result of the situation surrounding COVID-19.

Resolution 2020-381 ratified the contract between Benton County & Meier Architecture & Engineering, Inc for the design of the new system.

A portion of the project consists of doing some minor remodeling in the Jail to accommodate remote hearings.

The Capital Programs Department was contacted by the supplier to inform us that Lexan window material for the jail needed to be ordered immediately to ensure the material would arrive on time.

## Fiscal Impact

**Amount: \$11,248.00 Plus W.S.S.T**

**Fund: Various Funds**

## Recommendation

Ratify Emergency Purchase of Lexan Window Material for the Courtroom Technology Project from Superior Glass, LLC.

## Suggested Motion

Consent Agenda

**RESOLUTION**

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF RATIFYING AN EMERGENCY PURCHASE OF LEXAN WINDOW MATERIAL FOR THE COURTROOM TECHNOLOGY UPGRADE PROJECT FROM SUPERIOR GLASS, LLC.**

**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 in order to combat the emergency; and

**WHEREAS**, the need to implement a remote hearing solution for both Superior & District Courts has become a pressing need as a result of the situation surrounding COVID-19; and

**WHEREAS**, resolution 2020-381, ratified the contract between Benton County & Meier Architecture & Engineering, Inc for the design of the new system; and

**WHEREAS**, a portion of the project consists of doing some minor remodeling in the Jail to accommodate remote hearings; and

**WHEREAS**, the Capital Programs Department was contacted by the supplier to inform us that Lexan window material for the jail needed to be ordered immediately to ensure the material would arrive on time; and

**WHEREAS**, the Director of Operations & Capital Programs approved the purchase under the current emergency declaration; **NOW, THEREFORE,**

**BE IT RESOLVED**, the Board of Benton County Commissioners concurs with the Director of Operations & Capital Programs and hereby ratifies the purchase from Superior Glass, LLC. in the amount not to exceed \$11,248.00 plus W.S.S.T.

Dated this 1<sup>st</sup> day of September, 2020.

\_\_\_\_\_  
Chairman.

\_\_\_\_\_  
Chairman Pro-Tem.

Attest: \_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Member.  
Constituting the Board of County Commissioners  
of Benton County, Washington.



6476 West Brinkley Rd.  
Kennewick, WA 99338  
Ph: 509-586-6000  
WA #SUPERGL876N7  
OR #202278

[www.superior-glass.com](http://www.superior-glass.com)  
[office@superior-glass.com](mailto:office@superior-glass.com)

08/18/2020

To: Chervenell Construction  
Attn: Brandon Mayfield  
Email: [bmayfield@chervenell.com](mailto:bmayfield@chervenell.com)

Re: Benton County Court Tech Upgrade  
7122 W Okanogan Pl.  
Kennewick, WA 99336

Superior Glass Proposes to Provide of the Following Items.

**Furnish Only:** ¼" Clear Mar Resistant Polycarbonate (Lexan) Glazing Material.

**Includes:** Manufactures Standard Stock Sheets in Sufficient Quantity to Accommodate Sizes & Quantities per Plans Dated 07/10/2020.

**Excludes:** Material Cutting & Fabrication to Size, Installation & Related Glazing Supplies. Page A101J, Floor Plan Keynote #18, Sheet Metal Window Covering, Prevailing Wages & Sales Tax.

**Lead Time:** 5-7 Business Days.

**Price:** \$11,248.00

**Note:** Immediate Inventory Level Will Support Project. Due to High Demand, Superior Glass Cannot Guarantee Availability Beyond Close of Business Today. Next Available Inventory Jan. 2021.

Feel Free to Contact Me if You Have any Questions or Comments.

Sincerely,

Neal Sowell  
[Neal@superior-glass.com](mailto:Neal@superior-glass.com)

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	01 September 2020	
<b>Subject:</b>	Amendment to Benton County / Benton-Franklin Fair Association Lease	
<b>Presenter:</b>	Adam J. Fyall	
<b>Prepared By:</b>	AJF	
<b>Reviewed By:</b>	AJF	
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A            (If no, include reasoning for no approval)	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> (Multiple boxes can be checked, if necessary)	
<input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Public Hearing <input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Decision / Direction <input type="checkbox"/> Sign Letter / Document	<input type="checkbox"/> Pass Motion <input checked="" type="checkbox"/> Pass Resolution <input type="checkbox"/> Pass Ordinance <input checked="" type="checkbox"/> Execute Contract

**Summary**

For Board consideration is amending the existing lease agreement between the County and the Benton-Franklin Fair Association ("BFFA") for the purposes of making necessary adjustments related to the COVID-19 pandemic.

**Background**

The County and the BFFA are currently contracted under a two-year lease agreement (2019-2020) that spells-out term of use, times of occupancy, insurance, rental fees, and other pertinent matters. The County and BFFA have also already entered into a five-year successor agreement which will begin January 1, 2021.

As everyone is aware, the 2020 Benton-Franklin Fair and Rodeo was cancelled.

The BFFA will receive no sponsorship or sales revenues, and will not occupy or use the Fairgrounds in the usual fashion. BFFA did determine however that they could stage a small event for 4H kids who have raised animals over the year and who would normally show and sell those animals at the Fair. BFFA and the County worked to design an event that could be accommodated that would allow 4H kids (about 500 total) to have their stock weighed and sold. The event will not be open to the public and has COVID protocols in place.

As such, the parties have made amendments to the existing lease. The amendment document is attached. Major points include:

- Sec 2 – Restating which Fairgrounds facilities will be used. Instead of using the entire Grounds, the BFFA footprint is greatly reduced.
- Sec 4 – The BFFA's rental commitment to the County was reduced from what would have been a fee in the neighborhood of \$190,000 to just \$5,000 to cover rent and utilities.
- Sec 5 – Due dates and amounts for BFFA payment to the County is changed.
- Sec 6 – Maintenance responsibilities are changed.
- Sec 9 – Terms for utilities are changed, with the charge-rate being folded into the rental payment (Sec 4).
- Sec 11 – Insurance requirements are changed.

Benton County Administration, Finance, Fairgrounds, Facilities, Risk Management, and Prosecutor staff worked with the BFFA to develop the terms of this lease agreement amendment. The amendment has been approved to form by the Prosecutor.

**Fiscal Impact**

BFFA has essentially no Fair income for the year. As such, the County has offered to reduce the rent for the small livestock event drastically, bringing it more in line with a standard commercial rental. The amount to be paid to the County will be \$5,000.00.

**Recommendation**

Staff recommends signing the lease agreement amendment.

# # #

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF AMENDING RESOLUTION 2018-1029  
AND THE LEASE AGREEMENT BETWEEN BENTON COUNTY  
AND THE BENTON-FRANKLIN FAIR ASSOCIATION  
FOR USE OF CERTAIN FACILITIES AT THE BENTON COUNTY FAIRGROUNDS**

**WHEREAS**, Resolution 2018-1029 approved a two-year lease agreement by and between Benton County and the Benton-Franklin Fair Association for use of the Benton County Fairgrounds, outlining occupancy, storage, fees, uses, maintenance responsibilities, insurance requirements, and other pertinent matters related to the Fair Association's staging of the Benton-Franklin Fair & Rodeo for calendar years 2019 and 2020; and,

**WHEREAS**, among other things, the COVID-19 pandemic caused complete cancellation of the 2020 Benton-Franklin Fair & Rodeo; and,

**WHEREAS**, cancellation of the Fair & Rodeo caused major financial and logistical disruptions for the Fair Association, and as such the County and Fair Association see fit to recalibrate the existing lease agreement in order to adjust to the pandemic-induced 2020 situation; and,

**WHEREAS**, the County worked with the Fair Association to develop and allow to be staged a small livestock event for 4H youth who have raised animals through the year and need to get the animals auctioned; and,

**WHEREAS**, the youth livestock event will be short, have a small footprint on the Fairgrounds, will have no revenue streams for the Fair Association, and will not be open to the public; and,

**WHEREAS**, the County and the Fair Association are amending the 2019-2020 lease agreement to reflect cancellation of the 2020 Fair & Rodeo and accommodation of the youth livestock event; **NOW THEREFORE**,

**BE IT RESOLVED**, that the Board of Benton County Commissioners hereby approves amending Resolution 2018-1029 and the First Amendment to the 2019-2020 Benton County / Benton-Franklin Fair Association Lease Agreement for use of the Benton County Fairgrounds, and authorizes the Chairman to sign said Amendment.

Dated this First day of September, 2020.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Constituting the Board of Commissioners  
of Benton County, Washington.

Attest.....  
Clerk of the Board

orig: Fairgrounds  
cc: Benton-Franklin Fair Association

Prepared by: A.J. Fyall

## FIRST AMENDMENT TO FAIRGROUNDS LEASE AGREEMENT

**THIS FIRST AMENDMENT TO THE FAIRGROUNDS LEASE AGREEMENT** made and entered into this 18th day of August, 2020 by and between **BENTON COUNTY**, a political subdivision of the State of Washington, (hereinafter "Lessor") and the **BENTON-FRANKLIN FAIR ASSOCIATION**, a Washington non-profit corporation (hereinafter "Lessee").

WHEREAS, the Lessor and the Lessee entered into the Fairgrounds Lease Agreement, approved by Resolution 2018-1029 and executed December 18, 2018 (the "Lease Agreement") for the operation by Lessee of an "area fair" as defined in RCW 15.76.120 during calendar years 2019 and 2020; and

WHEREAS, this First Amendment to the Lease Agreement is necessary to modify the scope of the Lease Agreement due to cancellation of the Benton-Franklin Fair & Horse Heaven Round-Up Rodeo (the "area fair") because of restrictions and wide-ranging impacts of the COVID-19 pandemic of 2020 and its replacement with a much smaller and non-public Youth Livestock Auction; and

As such, the Lessor and the Lessee agree that all provisions of the Lease Agreement remain in effect except for the following amendments:

### **2) LEASED FACILITIES.**

The first sentence of Subsection **a)** is amended, striking the words "each year" and replacing them with "2019".

Subsection **a)** is further amended, adding the following sentence to the end of the subsection:

"From the 18th day of August through the 2nd day of September of 2020 during the term of this Lease Agreement, Lessee agrees to lease from Lessor those portions of real property that have commonly been referred to as the Benton County Fairgrounds and is legally described on Exhibit A attached hereto, inclusive of the following buildings, barns, and other facilities: Hog Barn, Hog/Beef Barn, 4H Beef Barn, 4H Sheep Barn, Wash Rack, Sale/Show Barn, Rabbit Barn, Main Bathroom, South Bathroom, Building 15 (form Fair Association office), and Market Stock Office. Lessor retains the right to occupy the Maintenance Shop and Fenced Yard located on tax parcel 1-0880-200-0009-002 depicted on Exhibit B hereto during this period and to travel over the Leased Facilities for ingress and egress to said shop and yard."

### **4) RENTAL FEE AND OTHER CONSIDERATIONS.**

This section is struck as written and replaced in its entirety with the following:

"Lessee agrees to pay to Lessor the sum of \$186,938 for lease year 2019 for the use of the Leased Facilities. Lessee agrees to pay to Lessor the sum of \$5,000 for lease year 2020 for the use of the Leased Facilities."

For lease year 2019 only, Benton County shall also receive:

- a ½-page ad in the Fair and Rodeo Entertainment Guide;
- the Benton County's logo being placed on the Benton-Franklin Fair and Rodeo web site sponsor page; Benton County will provide its logo and a camera-ready ad for use in the Benton-Franklin Fair and Rodeo Entertainment Guide and on the web site;
- a 12'x12' commercial booth in Building 2;
- Benton County will be displayed on the rodeo arena reader board during the Demolition Derby, the Tuesday night event and all four rodeo performances;
- thirty-two (32) season passes to the Benton-Franklin Fair;
- eight (8) VIP Sponsor parking passes;
- sixteen (16) general parking passes for the week of the Fair and Rodeo;
- sixteen (16) tickets to the VIP Hospitality Area for each night of the Benton-Franklin Fair and Rodeo; the hospitality area will feature music, food and beverages.

For lease year 2020 only, the costs of Utilities, as further described in **Section 9**, are included in the Rental Fee.”

#### **5) DATE FOR PAYMENT.**

This section is struck as written and replaced in its entirety with the following:

“For lease year 2019, Lessee agrees to make its annual rental fee payment to Lessor as follows: \$75,000 by September 30, 2019, and the balance due for that year by the first business day of December 2019. For lease year 2020, Lessee agrees to make its entire annual rental fee payment of \$5,000 – which includes utilities and storage fees – by October 1, 2020. Interest at the rate of 1% per month shall be charged and due for each month or portion thereof that the above described rental payments are late.”

#### **6) LESSEE'S RESPONSIBILITIES.**

The first paragraph is struck in its entirety and replaced with the following:

“Prior to August 8 for lease year 2019, and prior to August 18 for lease year 2020, Lessor and Lessee agree to perform a joint safety and utilities inspection (e.g. damages or nonoperational) of the Leased Facilities referenced in Section 2(a) above, and jointly prepare one written document reflecting any such safety and utility concerns identified in the Leased Facilities. Such document shall be signed by Lessee's President and delivered by Lessee to the Benton County Commissioners for approval. Lessee hereby agrees to maintain the Leased Facilities and all improvements thereto, during the permissible times of occupancy of such facilities by Lessee under this Lease Agreement, in as good as condition as exists as of August 8 of lease year 2019 and as of August 18 of lease year 2020 or at the time of other occupancy by the Lessee, reasonable wear and tear, loss by fire or Act of God, expressly excepted. Lessor agrees to provide routine maintenance of the Fairgrounds during the term of this Lease Agreement, except during the periods of August 8 through September 7, 2019, and August 24 through September 2, 2020 during which times Lessee shall perform all maintenance.”

**9) UTILITIES / GARBAGE.**

The following sentence is added to the beginning of the first paragraph:

“For lease year 2019:”

A third paragraph is added:

“For lease year 2020: Utility services for the Leased Facilities are fully included in the Rental Fee of \$5,000 as described in **Section 4**. Lessee agrees to have all garbage removed from the property described in Exhibit A and any personal property of Lessee or of any third parties removed, at Lessee's expense, from such property, except for Lessee's property within the Dairy Barn, 2/3 of Building 9, the Market Stock trailer, or the storage yard referenced in **Sections 2(b) and (d)**, by September 2, 2020. A walk through of the facilities shall be conducted with the Lessor and Lessee upon term expiration to ensure the premises are returned to good state and condition.

**11) LIABILITY INSURANCE.**

The following sentence is added to the beginning of the section:

“For lease year 2019, *all* of subsections a) through f) apply. For lease year 2020, *only* subsections a), d), e), and f) apply.”

**24) NOTICES.**

Subsection **b)** Lessee’s mailing address shall be struck and replaced with the following:

“**LESSEE:**  
Benton-Franklin Fair Association  
812 West Washington Street  
Pasco, Washington 99301”

**IN WITNESS WHEREOF** the parties have caused this First Amendment to the Lease Agreement to be signed by their duly constituted legal representatives and it is effective on the last date signed.

**Lessor: Benton County**

**Lessee: Benton-Franklin Fair Association**

\_\_\_\_\_  
**Chairman**

  
\_\_\_\_\_  
**President**

Date: \_\_\_\_\_

Date: 8/25/2020

**Approved as to Form:**

  
\_\_\_\_\_  
**Deputy Prosecuting Attorney**

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	September 1, 2020	
<b>Subject:</b>	Community Development Block Grant	
<b>Presenter:</b>	Kyle Sullivan	
<b>Prepared By:</b>	Tammy McKeirnan	
<b>Reviewed By:</b>	Kyle Sullivan	
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> <i>(Multiple boxes can be checked, if necessary)</i>	
<input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only	<input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Decision / Direction	<input checked="" type="checkbox"/> Pass Resolution
<input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Sign Letter / Document	<input type="checkbox"/> Pass Ordinance
		<input type="checkbox"/> Execute Contract

## Summary / Background Information

Washington State Department of Commerce would like to re-contract with Benton County to provide the Community Development Block Grant (CDBG). Benton County will make available \$68,884.00 in CDBG funds to the grant subrecipient community action program. Benton-Franklin Community Action Connections. These funds will result in new and increase CDBG eligible public services. The services will benefit approximately 133 persons and target limited clientele based on HUD's low- and moderate-income criteria for Benton and Franklin Counties. The grant will exclusively benefit residents of non-entitlement areas for eligible costs incurred between July 1, 2020 and June 30, 2021.

## Fiscal Impact

**Amount:** Total grant amount of \$65,884.00

**Fund:** 0108-101 Human Services Budget

## Recommendation

Approve signing the resolution allowing Benton County Department of Human Services to accept the Department of Commerce's grant for CDBG funding.

## Suggested Motion

Move to accept the Community Block Grant between Washington State Department of Commerce. Local Government Division and Benton County for a contract amount of \$65,884.00.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

**RE: IN THE MATTER OF EXECUTING CONTRACT NUMBER: 20-62210-002  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG), PUBLIC SERVICES  
GRANT BETWEEN WASHINGTON STATE DEPARTMENT OF COMMERCE,  
LOCAL GOVERNMENT DIVISION, AND BENTON COUNTY**

**WHEREAS**, Washington State Department of Commerce would like to re-contract with Benton County to provide the Community Development Block Grant (CDBG), Public Services Grant; and

**WHEREAS**, Benton County will make \$62,384.00 in CDBG Public Services Grant funds available to the grant subrecipient community action program, Benton-Franklin Community Action Connections; and

**WHEREAS**, these funds will result in new and increased CDBG eligible public services; and

**WHEREAS**, the county will receive up to \$3,500.00 for eligible general administration costs; and

**WHEREAS**, the services will benefit approximately 133 persons and target limited clientele based on HUD's low- and moderate- income criteria for Benton and Franklin Counties; and

**WHEREAS**, the grant will exclusively benefit residents of non-entitlement areas for eligible costs incurred between July 1, 2020 and June 30, 2021 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 Community Development Block Grant (CDBG), Public Services Grant between Washington State Department of Commerce, Local Government Division, and Benton County for a contract amount of \$65,884.00; 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 Community Development Block Grant (CDBG), Public Services Grant; 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

\_\_\_\_\_  
Chairman of Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member  
Constituting the Board of County  
Commissioners of Benton County, Washington

Attest: \_\_\_\_\_  
Clerk of the Board



**Interagency Grant Agreement with**

Benton County

through

Community Development Block Grant (CDBG) Program

Public Services Grant

**For**

Public services through Benton-Franklin Community Action  
Connections to low-and moderate-income persons in Benton and  
Franklin Counties..

**Start date:** July 01, 2020

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Attachment A, Scope of Work and Budget

Attachment B, Letter to Incur Costs (if applicable)

**FACE SHEET**

**Contract Number: 20-62210-002**

**Washington State Department of Commerce  
Local Government Division  
Community Assistance and Research Unit  
CDBG Public Services Grant**

<b>1. Grantee</b> Benton County 7102 W Okanogan Pl Ste201 Kennewick, WA 99336		<b>2. Grantee Doing Business As (optional)</b> NA	
<b>3. Grantee Representative</b> Tammy Mckeirnan, Financial Manager Phone: (509) 737-3914 Email: tammy.mckeirnan@co.benton.wa.us		<b>4. COMMERCE Representative</b> Jeff Hinckle, Project Manager      Address: Phone: (360) 725-3060              PO Box 42525 Fax: (360) 586-8440                1011 Plum Street SE jeff.hinckle@commerce.wa.gov    Olympia, WA 98504	
<b>5. Grant Amount</b> \$65,884	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> 7/1/2020	<b>8. End Date</b> 6/30/2021
<b>9. Federal Funds (as applicable)</b> \$65,884	<b>Federal Agency:</b> U.S. Department of Housing And Urban Development (HUD)	<b>CFDA Number:</b> 14.228	<b>Indirect Rate (if applicable):</b> N/A
<b>10. Tax ID #</b> 91-6001296	<b>11. SWV #</b> 0000322-02	<b>12. UBI #</b> 035000971	<b>13. DUNS #</b> 083738997
<b>14. Grant Purpose</b> Public services through Benton-Franklin Community Action Connections to low-and moderate-income persons in Benton and Franklin Counties. A full description of the project is in Attachment "A" Scope of Work and Budget.			
<b>15. Signing Statement</b> COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and Attachments and have executed this Grant on the date below to start as of the date and year referenced above and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Grant are governed by this Grant and the following documents hereby incorporated by reference: Grant Terms and Conditions including Attachment "A" – Scope of Work and Budget, Attachment "B" – Letter to Incur Costs (if applicable), and the following documents incorporated herein by reference: Grantee's application for funding and the Community Development Block Grant policies and procedures, prepared by Commerce.			
<b>FOR GRANTEE</b>  _____ Jim Beaver, Chairman, Benton County Board of Commissioners Benton County  _____ Date		<b>FOR COMMERCE</b>  _____ Mark K. Barkley, Assistant Director Local Government Division  _____ Date  <b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 07/17/2019. APPROVAL ON FILE.</b>	

**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY GRANT AGREEMENT  
FEDERAL FUNDS**

**1. DEFINITIONS**

- A. "Contractor" and "Grantee" in this Grant, and the term "subrecipient" found in the federal Community Development Block Grant (CDBG) rules and regulations, shall mean the same.
- B. "Low- and moderate-income" shall mean a household income equal to or less than 80 percent of area median income adjusted by family size.
- C. "Subgrantee/Subcontract" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee" and "subcontractors" mean subcontractor(s) in any tier.
- D. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

**2. AUTHORITY**

COMMERCE and Grantee enter into this Contract pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW.

**3. ACKNOWLEDGMENT OF FEDERAL FUNDS**

Federal Award Date: July 22, 2020  
Federal Award Identification Number (FAIN): B-20-DC-53-0001  
Total amount of the federal award: \$13,140,680  
Awarding official: John W. Peters, HUD CPD Director

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

"This project was supported by Grant No. B-20-DC-53-0001 awarded by the U.S. Department of Housing and Urban Development (HUD). Points of view in this document are those of the author and do not necessarily represent the official position or policies of HUD. Grant funds are administered by the Community Development Block Grant Program, Washington State Department of Commerce."

**4. ACQUISITION AND DISPOSITION OF ASSETS**

The Grantee will account for any tangible personal property acquired or improved with this Grant.

The use and disposition of real property and equipment under this Grant will be in compliance with the requirements of all applicable federal law and regulation, including but not limited to 24 CFR Part 84 and 24 CFR Part 570.489,570.502,570.503,570.504, and 570.505 as applicable, which include but are not limited to the following:

Real property that was acquired or improved, in whole or in part, with funds under this Grant in excess of \$25,000 shall be used to meet one of the CDBG national objectives for ten (10) years after the Grant is closed. Any exception must be made with COMMERCE approval and the Grantee will be responsible to pay COMMERCE an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of or improvement to the property. Such payment from the disposition of real property acquired with this Grant within ten (10) years of closeout of the Grant shall be treated as CDBG Program Income.

In cases in which equipment acquired in whole or in part with funds under this Grant is sold, the proceeds will be CDBG Program Income.

**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY GRANT AGREEMENT  
FEDERAL FUNDS**

**5. AUDIT**

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov).

**6. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE Representative on a Washington State Invoice Voucher form not more often than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number identified on the Face Sheet of this Grant. If expenses are invoiced, provide a detailed breakdown of each type.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant, including completion of the Environmental Review and the release of funds (if applicable).

No payments in advance or in anticipation of services or supplies to be provided under this Grant shall be made by COMMERCE.

COMMERCE shall not release the final five (5) percent of the total grant amount until acceptance by COMMERCE of project completion.

**Duplication of Billed Costs**

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

**Disallowed Costs**

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors/subrecipient.

**7. CLOSEOUT**

COMMERCE will advise the Grantee to initiate closeout procedures when there are no impediments to closing and the following criteria have been met or soon will be met:

- A. All costs have been incurred with the exception of closeout costs and any unsettled third-party claims against the Grantee. Costs are incurred when goods and services are received or contract work is performed.
- B. The Grantee has held a public hearing to review program performance.
- C. The Grantee has submitted the Contract Closeout Report. Failure to submit a report will not preclude COMMERCE from effecting closeout if it is deemed to be in the state's interest. Any excess grant

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amount in the Grantee's possession shall be returned in the event of failure to finish or update the report.

- D. Other responsibilities of the Grantee under this Grant and applicable laws and regulations appear to have been carried out satisfactorily or there is no further state interest in keeping this Grant open for the purpose of securing performance.

**8. COMPENSATION**

COMMERCE shall pay an amount not to exceed the amount identified on the Face Sheet of this Grant for the performance of all things necessary for or incidental to the performance of work as set forth in Attachment A, Scope of Work and Budget incorporated herein, and by reference the Grantee's application for funding.

Grantee shall receive reimbursement for travel and other expenses as authorized in advance by COMMERCE as reimbursable. Grantee shall receive compensation for travel expenses at current state travel reimbursement rates

**9. DEBARMENT**

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  - ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
  - iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

**LOWER TIER COVERED TRANSACTIONS**

- a. The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b. Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section,

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have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

**10. ENVIRONMENTAL REVIEW**

**General Purpose, Housing Enhancement, and Economic Opportunity Grants**

Funding in excess of the amount stipulated in **Attachment B, Letter to Incur Costs**, shall not be released to a Grantee by COMMERCE until the following conditions implementing 24 CFR part 58 are met:

- A. The Grantee must complete an environmental review of the project and make a finding of environmental impact. A notice of this finding must be published along with a notice of the Grantee's intent to request release of funds for the project unless the project is exempt from the publication requirements as described. The Grantee must allow a seven (7) or fifteen (15) day period for public review and comment following publication of the notices unless exempt under the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). When this review and comment period expires, the Grantee may, after considering any comments received, submit a request for release of funds to COMMERCE. Upon receipt of the request, COMMERCE must allow a fifteen (15) day period for public review and comment. When COMMERCE's public review and comment period expires, COMMERCE may, after considering any comments received, formally notify the Grantee in writing of the release of federal funds for the project.
- B. This special condition is satisfied when the Grantee completes the environmental review and request for release of funds from COMMERCE. The special condition is effectively removed on the date COMMERCE provides the Grantee with written notice of release of funds.

**Planning-Only Activities and Public Services Activities**

Funding shall not be released to a Planning-Only Activities or Public Services Activities recipient until the following conditions are met: The Grantee assures that assisted activities are exempt under NEPA (24 CFR 58.34) and categorically exempt under SEPA (RCW 43.21C.110). The Grantee further assures that the activities do not come under the purview of any other federal, state, and known local environmental laws, statutes, regulations or executive orders. In addition, the Grantee assures it will document, in writing, its determination that each activity or project is exempt and meets the conditions specified for such exemption under (NEPA) 24 CFR 58.34(3) (for Planning-Only) or 58.34(4) (for Public Services) and (SEPA) WAC 197-11-800.

**11. INDIRECT COSTS**

The Grantee shall provide their indirect cost rate that has been negotiated between their entity and the federal government. If no such rate exists a *de minimis* indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

**12. GRANT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

**13. HISTORICAL OR CULTURAL ARTIFACTS, HUMAN REMAINS**

In the event that historical or cultural artifacts are discovered at the project site during construction or rehabilitation, the Grantee shall immediately stop construction and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation (DAHP) at (360) 586-3065. If human remains are discovered, the Grantee shall stop work, report the presence and location of the remains to the coroner and local law enforcement immediately, and contact DAHP and the concerned tribe's cultural staff or committee.

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**14. INSURANCE**

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

- i. Governmental Accounting Standards Board (GASB),
- ii. Financial Accounting Standards Board (FASB), and
- iii. The Washington State Auditor's annual instructions for financial reporting.

Grantees participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Unemployment and Industrial Insurance. The Grantee shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this Contract. Commerce will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Grantee, or any subcontractor or employee of the Grantee, which might arise under the industrial insurance laws during performance of this Contract.

Protection of Project Property, Grantee's Assumption of Risk. The Grantee shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this Contract. The entire work of the Grantee shall be at the sole risk of the Grantee. The Grantee may elect to secure fire, extended coverage, and vandalism insurance or all-risk insurance to cover the project work during the course of construction. The Grantee shall take all necessary precautions for the safety of its employees working on the project, and shall comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.

**15. LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including,

- Housing and Community Development Act of 1974.
- CDBG regulations in 24 CFR Part 570.
- 2 CFR 200.

**16. PERFORMANCE REPORTING**

The Grantee, at such times and in such forms as COMMERCE may require, shall furnish periodic progress and performance reports pertaining to the activities undertaken pursuant to this Contract. These reports may include environmental review records, publication affidavits, procurement and contracting records, documentation of compliance with federal civil rights requirements, job creation records, program income reports, reports of the costs and obligations incurred in connection therewith, the final closeout report, and any other matters covered by this Grant. Activities funded by this Grant providing income-qualified direct assistance or direct services under the limited clientele, housing, or job creation CDBG National Objectives, must submit quarterly beneficiary reports as furnished by COMMERCE. Failure to submit these reports may result in COMMERCE withholding payment or terminating this Contract.

**17. PROGRAM INCOME**

Program income, as defined in 24 CFR 570.489(e), retains federal identity and will be used before drawing additional CDBG funds to complete activities included in the Scope of Work and Budget. The Grantee must maintain records of program income received and expended, and annually report program income received after closeout of this Grant. Program Income shall be used to continue the same activities to benefit low- and moderate-income persons or, with COMMERCE approval, for other activities to benefit low- and moderate-income persons. Interest earned in excess of \$100 on CDBG funds received to reimburse incurred costs must be remitted to COMMERCE for return to the U.S. Treasury.

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**18. SUBCONTRACTOR DATA COLLECTION**

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Agreement performed by subcontractors and the portion of funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

**19. SUBCONTRACTS FOR ENGINEERING SERVICES**

Engineering firms must certify that they are authorized to do business in the state of Washington and are in full compliance with the requirements of the Board of Professional Registration. The Grantee shall require that engineering services providers be covered by errors and omissions insurance. The engineering firm shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the engineering firm and licensed staff employed or under contract to the engineering firm. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

**20. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work and Budget
- Attachment B – Letter to Incur Cost, if applicable
- Grantee's application for funding and the Community Development Block Grant policies and procedures, prepared by Commerce as incorporated by reference on the Face Sheet

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**1. DEFINITIONS**

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subgrantee/Subcontract" shall mean one not in the employment of the Grant, who is performing all or part of those services under this Grant under a separate Grant with the Contractor. The terms "subgrantee" and "subcontractors" mean subcontractor(s) in any tier.

**2. ALL WRITINGS CONTAINED HEREIN**

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

**3. AMENDMENTS**

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**4. ASSIGNMENT**

Neither this Grant, work thereunder, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

**5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
  - i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
  - ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
  - iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law.
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The

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Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**6. COPYRIGHT**

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

**7. DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

**8. GOVERNING LAW AND VENUE**

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**9. INDEMNIFICATION**

Each party shall be solely responsible for the acts of its employees, officers, and agents.

**10. LICENSING, ACCREDITATION AND REGISTRATION**

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

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**11. RECAPTURE**

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grantee.

**12. RECORDS MAINTENANCE**

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grantee.

The Grantee shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**13. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

**14. SEVERABILITY**

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

**15. SUBGRANTING/SUBCONTRACTING**

The Grantee may only subcontract work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subgrantee to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subgrantee fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subgrantee to assure fiscal conditions of this grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subgrantee's performance of the subcontract.

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**16. SURVIVAL**

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

**17. TERMINATION FOR CAUSE**

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the Grant, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the grant. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this Grant are not exclusive and are in addition to any other rights and remedies provided by law.

**18. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Grant, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

**19. TERMINATION PROCEDURES**

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Grantee shall:

- A. Stop work under the Grant on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;

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- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the Grantee and in which the Authorized Representative has or may acquire an interest.

**20. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subgrantees/Subcontractors.

**21. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

**ATTACHMENT A — SCOPE OF WORK AND BUDGET**

Grantee: Benton County  
Contract No. 20-62210-002

**Section A: Project Description / Deliverable**

Benton County will make \$62,384 in CDBG Public Services Grant funds available to the grant subrecipient community action program, Community Action Connections. These funds will result in new and increased CDBG eligible public services. The county will receive up to \$3,500 for eligible general administration costs.

Total project costs are estimated at \$65,884. The services will assist approximately 89 persons and be targeted to limited clientele with low and moderate incomes (LMI) based on HUD LMI criteria for the Benton and Franklin county service areas. This grant will exclusively benefit residents of non-entitlement areas for eligible costs incurred between July 1, 2020 and June 30, 2021.

**Section B: Project Activities, Milestones and Budget**

CDBG Budget Code	Budget Amount	Project Activities	Performance Milestones
21A General Admin.	\$3,500	<p align="center"><b>*Must complete each bulleted project activity to meet the corresponding milestone.</b></p> <ul style="list-style-type: none"> <li>▪ Execute grant contract with Commerce.</li> <li>▪ Verify the subrecipient does not have an active exclusion record in the federal award system (SAM.gov), include documentation in the CDBG file, and submit a copy to Commerce.</li> <li>▪ Establish a subrecipient agreement that includes the project budget and the quarterly beneficiary reporting requirement. Submit a signed copy to Commerce.</li> <li>▪ Establish administrative, financial, reporting, and record keeping systems.</li> </ul> <p>Payment requests:</p> <ul style="list-style-type: none"> <li>▪ Review community action program reimbursement requests against the project costs, project budget, and contract start date.</li> <li>▪ Document the county's CDBG general administration costs.</li> <li>▪ Once costs are approved, prepare and submit payment request Commerce.</li> <li>▪ Document receipt of grant funds and reimbursement of eligible costs.</li> </ul>	<p>Before first payment request</p> <p>Not more than monthly or less than quarterly.</p> <p>By April 30, July 31, Oct 31, Jan 31</p> <p>Before final payment request</p> <p>Before requesting final 5% of CDBG award</p> <p>Before audit</p>
		<ul style="list-style-type: none"> <li>▪ Submit CDBG Beneficiary Reports within 30 days of end of each calendar quarter.</li> <li>▪ Complete applicable civil rights requirements.</li> <li>▪ Conduct an on-site monitoring of the subrecipient to verify the grant is used according to CDBG requirements and all costs reimbursed are allowable.</li> <li>▪ Resolve all monitoring issues.</li> <li>▪ Grant activities are accomplished.</li> <li>▪ Conduct a final public hearing to review project performance.</li> <li>▪ Submit a grantee closeout performance report.</li> <li>▪ List the grantee's CDBG expenditures in the annual Schedule of Expenditures of Federal Awards and arrange an audit with the State Auditor's Office to meet the Uniform Guidance (2 CFR Part 200).</li> </ul>	

**ATTACHMENT A — SCOPE OF WORK AND BUDGET**

Grantee: Benton County  
 Contract No. 20-62210-002

**Section B: Project Activities, Milestones and Budget (continued)**

CDBG Budget Code	Budget Amount	Project Activities  *Must complete each bulleted project activity to meet the corresponding milestone.	Performance Milestones
05 Public Services	\$62,384	<ul style="list-style-type: none"> <li>▪ Deliver the direct services identified in the CDBG application through the local community action program.</li> <li>▪ Allocate and manage public services funds as established in the approved subrecipient agreement and budget.</li> <li>▪ Meet the CDBG national objective of principally benefiting low- and moderate-income persons.</li> <li>▪ Accomplish HUD's outcome of increasing the availability and accessibility of services to achieve HUD's objective of creating suitable living environments.</li> </ul>	Approximately 89 LMI persons receive direct services by 6/30/2021

**TOTAL: \$65,884**

**Grant Number: 20-62210-002**

**Washington State Department of Commerce  
Local Government Division  
Community Development Block Grant (CDBG)**

**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:**

\_\_\_\_\_  
Dept. of Human Services

**Approved as to form:**

  
\_\_\_\_\_  
Benton Co Prosecutor's Office

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	FC 08/18/20 BC 09/01/20
<b>Subject:</b>	Personal Services Contract Amendment No. 1 with Comprehensive Healthcare
<b>Presenter:</b>	N/A
<b>Prepared By:</b>	Rosa Garcia
<b>Reviewed By:</b>	Darryl Banks
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> <i>(Multiple boxes can be checked, if necessary)</i>
<input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Decision / Direction <input checked="" type="checkbox"/> Pass Resolution
<input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Sign Letter / Document <input type="checkbox"/> Pass Ordinance
	<input type="checkbox"/> Execute Contract

## Summary / Background Information

Comprehensive Healthcare currently contracts with the Benton-Franklin Counties Juvenile Justice Center to provide Multi-Systemic Therapy (MST) model of care for youth assessed as eligible by the Positive Assessment Change Tool (PACT).

The purpose of Personal Services Contract Amendment No. 1 is to amend Section 5(b) "Compensation" of the contract. The attached Personal Services Contract Amendment No. 1 commenced July 1, 2019 and expires on June 30, 2021.

## Fiscal Impact

In the amount not to exceed \$36,000.00. These services are paid from state funds. There is no fiscal impact to the county budgets.

## Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Personal Services Contract Amendment No. 1 between Comprehensive Healthcare and Benton-Franklin Counties Juvenile Justice Center for services.

## Suggested Motion

I move that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners be hereby authorized to sign the Personal Services Contract Amendment No. 1 between Comprehensive Healthcare and Benton-Franklin Counties Juvenile Justice Center.

# 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 EXECUTING PERSONAL SERVICES CONTRACT AMENDMENT NO. 1 BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND COMPREHENSIVE HEALTHCARE**

**WHEREAS**, per Benton County Resolution No. 2019 387 dated May 21, 2019 and Franklin County Resolution No. 2019 136 dated May 7, 2019 the Board of Benton County Commissioners and the Board of Franklin County Commissioners entered into a contract with Comprehensive Healthcare to provide Multi-Systemic Therapy (MST) to youth referred by the Counties; and

**WHEREAS**, the purpose of Personal Services Contract Amendment No. 1 is to amend Section 5(b) "Compensation" of the contract; **NOW, THEREFORE**

**BE IT RESOLVED** that the Board of Benton County Commissioners, Benton County, Washington and the Board of Franklin County Commissioners, Franklin County, Washington, concurs with the Juvenile Administrator's recommendation to amend the Personal Service Contract with Comprehensive Healthcare in an amount not to exceed \$36,000.00; and

**BE IT FURTHER RESOLVED**, that the Chairs are authorized to sign the attached Personal Service Contract Amendment No. 1; and

**BE IT FURTHER RESOLVED**, the term of the attached Personal Services Contract Amendment No. 1 shall commence July 1, 2019 and expires on June 30, 2021.

DATED this \_\_\_\_ day of \_\_\_\_\_ 2020  
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this \_\_\_\_ day of \_\_\_\_\_ 2020  
FRANKLIN COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Chairman Pro Tem

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Benton County, Washington

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Franklin County, Washington

Attest:

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board

JUDGES  
Hon. Carrie Runge  
Hon. Cameron Mitchell  
Hon. Bruce Spanner  
Hon. Alexander C. Ekstrom  
Hon. Jacqueline Shea-Brown  
Hon. Joseph M. Burrowes  
Hon. Samuel P. Swanberg

# BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



DARRYL BANKS, Administrator  
Juvenile Court Services

## SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388  
PHONE (509) 783-2151 • FAX (509) 736-2728

JACQUELINE I. STAM  
PAMELA E. PETERSON  
DARIN R. CAMPBELL  
Court Commissioners

## PERSONAL SERVICES CONTRACT AMENDMENT NO. 1

This Contract Amendment No. 1 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 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and Comprehensive Healthcare, 402 South 4<sup>th</sup> Avenue, Yakima, WA 98901 (hereinafter referred to as "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein and in the parties' contract, numbered as Benton County Resolution No. 2019 387 executed on May 21, 2019 and Franklin County Resolution No. 2019 136 executed on May 7, 2019 (the "Contract"), the parties agree to amend the Contract as follows:

1. Section 5(b) of the Contract ("Compensation"), shall be amended in its entirety to increase "do not exceed amount", and shall read:
  - b. The maximum total amount payable by the Counties to the Contractor under this Contract will be \$100.00 per hour and shall not exceed Thirty Six Thousand Dollars (\$36,000.00).

Except as expressly provided in this Contract Amendment No.1, all other terms and conditions of the original Contract and subsequent written contract amendments thereto remain in full force and effect.

This Amendment shall be effective July 1, 2019 and shall expire June 30, 2021.

<p align="center"><b>Comprehensive Healthcare</b></p>	<p align="center"><b>Benton Franklin Counties Juvenile Justice Center</b></p>
<p><i>Jedi Daly</i>      7/31/2020</p>	<p><i>Darryl Banks</i>      8-4-2020</p>
<p>Jedi Daly CEO      Date</p>	<p>Darryl Banks, Juvenile Court Administrator      Date</p>
<p align="center"><b>BENTON COUNTY APPROVAL</b></p> <p>Approved as to Form:</p> <p><i>Stephen Hallstrom</i>      07/31/20</p> <p>_____ Stephen Hallstrom, Deputy Prosecuting Attorney      Date</p> <p>By: _____ Name: _____ Title: <u>Chair, Board of Commissioners</u></p> <p>Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>	<p align="center"><b>FRANKLIN COUNTY APPROVAL</b></p> <p>Approved as to Form:</p> <p>_____ Deputy Prosecuting Attorney      Date</p> <p>By: _____ Name: _____ Title: <u>Chair, Board of Commissioners</u></p> <p>Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	FC 08/18/20 BC 09/01/20
<b>Subject:</b>	Personal Services Contract with Jennifer M. Azure
<b>Presenter:</b>	N/A
<b>Prepared By:</b>	Rosa Garcia
<b>Reviewed By:</b>	Darryl Banks
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> <i>(Multiple boxes can be checked, if necessary)</i>
<input checked="" type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Decision / Direction <input checked="" type="checkbox"/> Pass Resolution
<input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Sign Letter / Document <input type="checkbox"/> Pass Ordinance
	<input type="checkbox"/> Execute Contract

## Summary / Background Information

Jennifer M. Azure wishes to contract with the Benton-Franklin Counties Juvenile Justice Center to provide legal services for Attorney representation of persons in all BECCA dockets.

The attached Personal Services Contract commences on October 1, 2020 and expires on September 30, 2021.

## Fiscal Impact

These are state funds whereby we are reimbursed for services which are incorporated in the Juvenile Court's budget. Amount not to exceed \$31,000.00 to be paid out of Fee For Services Dept. 173. No Supplemental 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 Jennifer M. Azure and the Benton-Franklin Counties Juvenile Justice Center for services.

## Suggested Motion

I move that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners be hereby authorized to sign the Personal Services Contract with Jennifer M. Azure.

# 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 CONTRACT BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND JENNIFER M. AZURE A PERSONAL SERVICES CONTRACT FOR ATTORNEY REPRESENTATION OF PERSONS IN ALL BECCA DOCKETS**

**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**, Benton-Franklin Counties Juvenile Justice Center would like to enter into a Personal Services Contract with Jennifer M. Azure for Attorney Representation of persons in all BECCA dockets; and

**WHEREAS**, the Juvenile Administrator recommends entering into a Personal Services Contract; **NOW, THEREFORE**

**BE IT RESOLVED**, that the Board of Benton County Commissioners, Benton County, Washington; and the Board of Franklin County Commissioners, Franklin County, Washington, concurs with the Juvenile Administrator's recommendation and hereby awards the Personal Services Contract to Jennifer M. Azure in an amount not to exceed \$31,000.00; and

**BE IT FURTHER RESOLVED**, that the Chair is authorized to sign the attached Personal Services Contract; and

**BE IT FURTHER RESOLVED**, the term of the attached contract commences October 1, 2020 and expires on September 30, 2021.

**DATED** this \_\_\_\_ day of \_\_\_\_\_ 2020  
**BENTON COUNTY BOARD OF COMMISSIONERS**

**DATED** this \_\_\_\_ day of \_\_\_\_\_ 2020  
**FRANKLIN COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair of the Board

\_\_\_\_\_  
Chair of the Board

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Benton County, Washington

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Franklin County, Washington

Attest:

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board

**BENTON-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 of the State of Washington, 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 W. Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Jennifer M. Azure**, Azure Law Office, PLLC attorney at law, Washington State Bar Association #30494 with her principal office at 7135 West Hood Place, Kennewick, WA 99336 (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 October 1, 2020 and shall expire on September 30, 2021. 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 legal services for Attorney representation of persons in all BECCA dockets.
- 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: Jennifer M. Azure  
Address: 7135 West Hood Place  
Kennewick, WA 99336  
Phone: (509) 491-3941  
Email: jennifer@azurelawoffice.com

b. For COUNTIES:

Name: Darryl Banks, Administrator  
Address: 5606 W. Canal Place, Suite 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 professional service attorney fees, the sum of \$2,572.63 per month for Attorney's representation of persons in all BECCA dockets under this contract.

1. Contractor agrees to provide own coverage at own expense for any scheduled BECCA dockets Contractor is not able to attend.

2. Any additional coverage due to the size of dockets will be provided at expense of Counties.

b. In the event that public funding for BECCA Programs is lost or reduced the parties will renegotiate in good faith adjustment compensations.

- c. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this CONTRACT shall not exceed \$31,000.00.
- 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 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.
- 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 COUNTIES.
- 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 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.
- 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.

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, 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 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. **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

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 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.

**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 and Franklin Counties 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, 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(b).
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(b).
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 and Franklin Counties Risk Manager to the following address: Benton and Franklin Counties Risk Manager, 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 determine in its sole discretion that such termination is in the best interests of the COUNTIES. Either party may terminate this Contract upon giving ten (10) days written notice by certified mail to the other party. 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 4 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 West Canal Place, Suite 106, Kennewick WA 99336.

**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 agree 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 learn 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 agree 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 **October 1, 2020**.

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

<b>Azure Law Office, PLLC</b>	<b>Benton-Franklin Counties Juvenile Justice Center</b>
 Jennifer M. Azure Date <u>7/24/20</u>	 Darryl Banks Date <u>8-24-2020</u>
<b>BENTON COUNTY APPROVAL</b>	<b>FRANKLIN COUNTY APPROVAL</b>
Approved as to Form:  Stephen Hallstrom, Deputy Prosecuting Attorney      Date <u>073120</u>	Approved as to Form: _____ Civil Deputy Prosecuting Attorney      Date _____
By: _____ Name: _____ Title: _____ Date: _____	By: _____ Name: _____ Title: _____ Date: _____
Attest:  Clerk of the Board: _____	Attest:  Clerk of the Board: _____

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	FC 08/18/20 BC 09/01/20	
<b>Subject:</b>	Fee for Service Truancy Contract with Prosser School District	
<b>Presenter:</b>	N/A	
<b>Prepared By:</b>	Rosa Garcia	
<b>Reviewed By:</b>	Darryl Banks	
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A            (If no, include reasoning for no approval)	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> (Multiple boxes can be checked, if necessary)	
<input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Public Hearing <input type="checkbox"/> Scheduled Business	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Pass Motion <input type="checkbox"/> Decision / Direction <input checked="" type="checkbox"/> Pass Resolution <input type="checkbox"/> Sign Letter / Document <input type="checkbox"/> Pass Ordinance <input type="checkbox"/> Execute Contract	

## Summary / Background Information

The State has contracted with both the Benton and Franklin County Boards of Commissioners for several years for the costs/services associated with processing At-Risk Youth (ARY), Children in Need of Services (CHINS), and Truancy Petitions. Prosser School District wishes to renew their contract with the Juvenile Court so that we may continue to provide services associated with Truancy matters for the term of September 1, 2020, through July 31, 2021.

Prosser School District wishes to contract with the Benton-Franklin Counties Juvenile Justice Center to develop, recruit and train a truancy board; implement and follow-up on truancy board recommendations; assist families in accessing community resources to include, substance abuse assessment and treatment, mental health services and family counseling; assist in the processing of all truancy court referrals; monitor courtroom truancy petitions; and follow-up on truancy petition requirements for the period beginning September 1, 2020 and ending on July 31, 2021.

## Fiscal Impact

These are state funds passed through the school district whereby we are reimbursed for services provided. There is no fiscal impact to the counties. The maximum amount payable by the Prosser School District to the Benton-Franklin Counties Juvenile Justice Center shall not exceed \$2,865.00

## Recommendation

We recommend that the Boards of County Commissioners of Benton and Franklin Counties sign the Fee for Services Contract with the Prosser School District.

## Suggested Motion

I move that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners be hereby authorized to sign the Fee for Services contract with the Prosser School District.

# 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 THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE FEE FOR SERVICES CONTRACT BETWEEN THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND THE PROSSER SCHOOL DISTRICT**

**WHEREAS**, Darryl Banks, Administrator of the Benton-Franklin Counties Juvenile Justice Center believes it is in the best interest of the Juvenile Justice Center that the Fee for Service Contract between the Prosser School District and Benton-Franklin Counties Juvenile Justice Center be approved as presented. **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 Administrator's recommendation and hereby awards the Fee for Service Contract between the Prosser School District and the Benton-Franklin Counties Juvenile Justice Center in an amount payable to the Counties not to exceed \$2,865.00; and

**BE IT FURTHER RESOLVED**, that the Chair is authorized to sign the attached Fee for Services Contract; and

**BE IT FURTHER RESOLVED**, the term of the attached contract commences September 1, 2020 and expires on July 31, 2021.

DATED this \_\_\_\_ day of \_\_\_\_\_ 2020

DATED this \_\_\_\_ day of \_\_\_\_\_ 2020

BENTON COUNTY BOARD OF COMMISSIONERS

FRANKLIN COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair of the Board

\_\_\_\_\_  
Chair of the Board

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Benton County, Washington

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Franklin County, Washington

Attest:

\_\_\_\_\_  
Clerk of the Board

JUDGES  
Hon. Carrie Runge  
Hon. Cameron Mitchell  
Hon. Bruce A. Spanner  
Hon. Alexander C. Ekstrom  
Hon. Jacqueline Shea-Brown  
Hon. Joseph M. Burrowes  
Hon. Samuel P. Swanberg

# BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



DARRYL BANKS, Administrator  
Juvenile Court Services

## SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388  
PHONE (509) 783-2151 • FAX (509) 736-2728

JACQUELINE I. STAM  
PAMELA E. PETERSON  
DARIN R. CAMPBELL  
Court Commissioners

### **BENTON-FRANKLIN COUNTIES FEE FOR 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 W. Canal Place Suite 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and Prosser School District, with its principal offices at 1126 Meade Avenue, Suite A, Prosser, WA, 99350, (hereinafter referred to as "District").

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 be from September 1, 2020, through July 31, 2021, unless terminated prior to that time as provided herein.

#### **2. SERVICES PROVIDED**

The Counties shall perform the following services:

- A.** Develop, recruit and train a truancy board; implement and follow-up on truancy board recommendations; assist families in accessing community resources to include, substance abuse assessment and treatment, mental health services and family counseling; assist in processing all truancy court referrals; monitor courtroom truancy petitions; follow-up on truancy petition requirements; and provide Attendance Specialist Tracker Services on an "as needed" basis up to and including 170 hours at \$15.00 per hour.
- B.** The Counties agree to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the District.

- C. The Counties shall perform the work specified in this Contract according to standard industry practice and shall perform the work in coordination with the Truancy Court Liaison.
- D. The Counties shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- E. The Counties shall confer with the District from time to time during the progress of the work. The Counties shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the District.

### 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 District: **Matt Ellis**  
**Superintendent**  
**Prosser School District**  
**1126 Meade Avenue, Suite A**  
**Prosser WA 99350**  
**Phone: (509) 786-3323**  
**Fax: (509) 786-2062**  
**E-mail: [matt.ellis@prosserschools.org](mailto:matt.ellis@prosserschools.org)**
- B. For Counties: **Darryl Banks**  
**Juvenile Court Administrator**  
**5606 W Canal PI Ste 106**  
**Kennewick WA 99336**  
**Phone: (509) 222-2316**  
**Fax: (509) 222-2311**  
**E-mail: [darryl.banks@co.benton.wa.us](mailto:darryl.banks@co.benton.wa.us)**

### 4. COMPENSATION

For the services performed hereunder, the Counties shall be paid as follows:

- A. The District will pay Counties Two Thousand Eight Hundred and Sixty Five Dollars (\$2,865.00), which includes up to Two Thousand Five Hundred and Fifty Dollars (\$2,550.00) for tracker services for the entire contract period, to be paid in quarterly installments of Seven Hundred Sixteen Dollars and Twenty Five Cents (\$716.25) each, to be processed with the District's first payment cycle after receiving an invoice from Counties.
- B. The maximum total amount payable by the District to the Counties under this Contract shall not exceed Two Thousand Eight Hundred and Sixty Five Dollars (\$2,865.00).

- C. No payment shall be made for any work performed by the Counties, except for work identified and set forth in this Contract.
- D. The Counties will submit invoices to the District once per quarter during the progress of the work. Invoices shall cover the time Counties performed work for the District during the billing period. The District shall pay the Counties for services rendered in the quarter following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

**5. AMENDMENTS AND CHANGES IN WORK**

No amendment, modification or renewal 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 Administrator of Benton-Franklin Juvenile Justice Center and both Benton and Franklin Counties Boards of County Commissioner's Chairperson and shall not be binding until so approved.

**6. HOLD HARMLESS AND INDEMNIFICATION**

The District shall hold harmless, indemnify and defend the Counties, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, 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 by or arising out of the District's acts, errors or omissions in the performance of this Contract. PROVIDED, that the District's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Counties, its officers, officials, employees or agents.

**7. TERMINATION**

- A. The Counties may terminate this Contract in whole or in part whenever the Counties determine, in its sole discretion that such termination is in the best interests of the Counties. The Counties may terminate this Contract upon giving thirty (30) days written notice by certified mail to the District.
- B. If either party breaches any of its obligations hereunder, including but not limited to timely payment of compensation to the Counties in accordance with Section 4 of this Contract, and fails to cure the breach within ten (10) days of written notice to do so, the other party may immediately terminate this Contract by providing written notice by certified mail to the breaching party.
- C. In the event this Contract is terminated prior to the end of the contract term, the District shall pay Counties on a pro-rated basis for all services performed up to the termination date.

**8. ASSIGNMENT, DELEGATION AND SUBCONTRACTING**

- A. The Counties shall perform the terms of the Contract using only its bona fide employees or agents, and the obligations and duties of the Counties under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the District.
- B. The Counties 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 Counties, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

**9. NON-WAIVER OF RIGHTS**

The parties agree that the excuse or forgiveness of performance or waiver of any provision 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.

**10. COMPLIANCE WITH LAWS**

The parties agree that all activity pursuant to this Contract will be in accordance with all applicable federal, state and local laws, rules and regulations. All services provided by the Counties shall not be considered the practice of law, nor will the Counties provide any legal advice or representation.

**11. OWNERSHIP OF MATERIALS/WORKS PRODUCED**

All reports, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be owned by the Counties. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The District agrees that if it uses any materials prepared by the Counties for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the Counties harmless there from to the extent such use is not agreed to in writing by the Counties.

**12. DISPUTES**

Differences between the District 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 Counties 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 District's right to seek judicial relief.

### 13. CONFIDENTIALITY

- A. The District, its employees, subcontractors, and their 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 District shall promptly give the Counties written notice of any judicial proceeding seeking disclosure of such information.
- B. Each party, their employees, subcontractors, and their employees shall maintain the confidentiality of all information provided or acquired in performance of this Contract, and each party will promptly notify the other of any request by a third party for records containing confidential information. Confidential information will not be divulged without the consent of the other party or, pursuant to applicable authority, including without limitation, chapter 42.56 RCW or case law interpreting same. The parties shall promptly give written notice of any judicial proceeding seeking disclosure of such information.
- C. **Confidential Student Information.** The Counties acknowledge and understand that their employees may be granted access by the District to confidential information pertaining to District students and that the term “confidential information” means any and all information which is exempt from state and federal public disclosure laws, and/or which is otherwise protected by state and federal law, and which is provided by the Prosser School District and/or through its student information database system to authorized employees of the Counties. Such confidential information may include, but is not limited to:
1. Personally identifiable student-related information, including, but not limited to student names; the names of a student’s parent, guardian, or other family members; student and family addresses; personal identifiers such as social security numbers or student numbers; personal characteristics related to student identity; testing and assessment results for students, grade-levels, schools, or the district; and any other personally related student information, or portrayal of student related information in a personally identifiable manner.
  2. Information related to student discipline, attendance, log entries, parent/guardian contacts, and other private or sensitive information provided to the district by parents/guardians.

Access to confidential information will be granted to authorized employees of the Counties as determined by the district and such authorizations, to include usernames and passwords, shall not be used by any person other than the individual authorized user. The Counties acknowledge, represent, and warrant direct or indirect making any unauthorized disclosure of any such confidential information to any other person, organization, or entity is strictly prohibited, and will require employees granted authorization by the District to swear or affirm that he/she will not make such unauthorized disclosure, nor will he/she access District student information systems for personal reasons or any reason unrelated to the specific purposes of this Agreement. The Counties understand and acknowledge

the District reserves the right to monitor access of the District's information system by employees of the Counties and the District will terminate County employee access at the district's discretion. The Counties acknowledge that participation in any unauthorized disclosure of confidential information may result in civil or criminal proceedings and/or penalties.

**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 and Franklin Counties, Washington.

**15. SUCCESSORS AND ASSIGNS**

The Counties, to the extent permitted by law, and the District each bind themselves, 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. NONDISCRIMINATION**

The parties, their assignees, delegates, or 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.

**17. 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 the 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.




**18. ENTIRE AGREEMENT**

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

**19. NOTICES**

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

The parties have caused this Contract to be signed as follows:

<b>PROSSER SCHOOL DISTRICT</b>	<b>BENTON FRANKLIN COUNTIES JUVENILE JUSTICE CENTER</b>
	
Date <u>7/7/2020</u>	Date <u>7-31-2020</u>
Matt Ellis Superintendent	Darryl Banks Administrator
<b>BENTON COUNTY APPROVAL</b>	<b>FRANKLIN COUNTY APPROVAL</b>
Approved as to Form:	Approved as to Form:
	
Stephen Hallstrom, Deputy Prosecuting Attorney Date	Civil Deputy Prosecuting Attorney Date
By: _____	By: _____
Name: _____	Name: _____
Title: <u>Chairman, Board of Commissioners</u>	Title: <u>Chairman, Board of Commissioners</u>
Date: _____	Date: _____
Date: _____	Date: _____
Attest: _____	Attest: _____
Clerk of the Board: _____	Clerk of the Board: _____

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	September 1, 2020	
<b>Subject:</b>	Execute contract with V K Powell Construction, LLC for the Courthouse Upgrades project	
<b>Presenter:</b>	Robert Blain	
<b>Prepared By:</b>	Shannon Christen	
<b>Reviewed By:</b>	Robert Blain	
<b>PA Review, Approval to Form:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b>	
<input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only (1 <sup>st</sup> )	<input type="checkbox"/> Pass Motion
<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Discussion Only (2 <sup>nd</sup> )	<input checked="" type="checkbox"/> Pass Resolution
<input checked="" type="checkbox"/> Scheduled Business	<input type="checkbox"/> Decision/Direction	<input type="checkbox"/> Pass Ordinance
	<input type="checkbox"/> Sign Letter/Document	<input checked="" type="checkbox"/> Execute Contract

## Summary / Background Information

By Resolution 2020-505 dated July 28, 2020, an award was made to V K Powell Construction, LLC for the Courthouse Upgrades project – CB19-23. As directed a contract has been prepared; and reviewed and approved as to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division, and has been executed by V K Powell Construction, LLC

## Fiscal Impact

**Amount:** \$1,435,000 00 plus WSST

**Fund:** Capital Projects Fund

## Recommendation

It is recommended by the Director of Operations and Capital Programs that the Board approve and sign the contract with V K Powell Construction, LLC for the Courthouse Upgrades project

## Suggested Motion

I make a motion to approve the Chairman to sign the contract with V K Powell Construction, LLC for the Courthouse Upgrades project in an amount not to exceed \$1,435,000 00 plus WSST

**RESOLUTION**

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF AUTHORIZING THE CHAIRMAN TO SIGN THE CONTRACT WITH V K POWELL CONSTRUCTION, LLC FOR THE COURTHOUSE UPGRADES PROJECT**

**WHEREAS**, by Resolution 2020-505 dated July 28, 2020, an award was made to V K Powell Construction, LLC, Yakima, Washington for the Courthouse Upgrades project and as directed, staff has prepared a contract for Board approval; and

**WHEREAS**, our departmental assigned Deputy Prosecuting Attorney from the Civil Division has reviewed and approved as to form said contract; and

**WHEREAS**, the contract in the amount of \$1,435,000.00 plus WSST has been executed by V K Powell Construction, LLC; **NOW, THEREFORE**,

**BE IT RESOLVED**, that the Board of Benton County Commissioners hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract awarded July 28, 2020 to V K Powell Construction, LLC, in the amount of \$1,435,000.00 plus Washington State Sales Tax; and

**BE IT FURTHER RESOLVED**, that the Director of Operations and Capital Programs is hereby authorized to proceed with the Courthouse Upgrades project according to the terms of the contract; and

**BE IT FURTHER RESOLVED**, the project shall begin on the date of the Notice to Proceed and be completed in its entirety within two hundred and seventy (270) calendar days as described in the contract documents.

Dated this 1st day of September, 2020.

\_\_\_\_\_  
Chairman.

\_\_\_\_\_  
Chairman Pro-Tem.

\_\_\_\_\_  
Member.  
Constituting the Board of County  
Commissioners of Benton County,  
Washington.

Attest: \_\_\_\_\_  
Clerk of the Board

## Shannon Christen

---

**From:** Eric Andrews  
**Sent:** Wednesday, August 12, 2020 1:58 PM  
**To:** Shannon Christen  
**Cc:** Robert Blain  
**Subject:** RE. Please review - AIA contracts for Courthouse Upgrades

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

These are approved as to form.

R/

### Eric T. Andrews

Deputy Pros. Attorney, Civil  
Benton Co. Pros. Attorney's Office  
Phone: (509) 735-3591  
Fax: (509) 222-3705

This email, any and all attachments hereto, and all information contained and conveyed herein may contain and be deemed confidential attorney client privileged and/or work product information. If you have received this email in error, please delete and destroy all electronic, hard copy and any other form immediately. It is illegal to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.

**From:** Shannon Christen <Shannon.Christen@co.benton.wa.us>  
**Sent:** Monday, August 3, 2020 6:25 PM  
**To:** Eric Andrews <Eric.Andrews@co.benton.wa.us>  
**Cc:** Robert Blain <Robert.Blain@co.benton.wa.us>  
**Subject:** Please review - AIA contracts for Courthouse Upgrades

Eric-

Attached for your review are both portions of the AIA contract for the Courthouse Upgrades project, A101-2017 and A201-2017. These Draft versions are what was reviewed earlier and sent out with the bid packet. Robert and I have both gone through them and I have left the track changes on them so you could see what we changed. If you could review and make any changes, with track changes on, we will then send it back to the architect to make the changes and give us the documents in Final form. We will then get you a clean copy for signature.

Let Robert or I know if you have any questions. Thanks.

*Shannon Christen*  
*Contract Coordinator*  
Benton County Public Works Department  
509/786-5611 Ext. 5665

 **AIA® Document A101® – 2017**

**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand and twenty  
*(In words, indicate day, month and year )*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

Benton County  
7122 W. Okanogan Place  
Kennewick, WA 99336  
509.736.2704

and the Contractor:  
*(Name, legal status, address and other information)*

VK Powell Construction, LLC  
1521 Voelker Ave.  
Yakima, WA 98902  
509.248.8148

for the following Project:  
*(Name, location and detailed description)*

Benton County Courthouse Upgrades  
620 Market Street  
Prosser, WA, 99350

The Architect:  
*(Name, legal status, address and other information)*

Meier Architecture • Engineering  
12 W. Kennewick Avenue  
Kennewick, WA 99336  
509.735.1589

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**TABLE OF ARTICLES**

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

**EXHIBIT A INSURANCE AND BONDS**

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be upon issuance of the Notice to Proceed by the Owner.  
(Check one of the following boxes )

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work )

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion**

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information )

Init.

[X] Not later than two hundred seventy (270) calendar days after the date established in the Notice to Proceed.

[ ] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one million four hundred thirty-five thousand dollars (\$1,435,000), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance)

Item	Price
------	-------

§ 4.4 Unit prices, if any.  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any)

1. Substantial Completion: If the Contractor fails to achieve Substantial Completion of all the Work within the Contract Time, then the Contractor agrees as part of consideration for awarding the Contract, to pay the Owner the amount of one thousand dollars (\$1000.00) for each calendar day beyond that date as liquidated damages.
2. Final Completion: If the Contractor fails to achieve Final Completion of all the Work within 30 calendar days after Substantial Completion, excluding remedial work affected by seasonal requirements, then the Contractor agrees as part of consideration for awarding the Contract, to pay the Owner the amount of five hundred dollars (\$500.00) for each calendar day beyond that Date as liquidated damages.
3. Final Completion of Seasonally Affected Work. If the Contractor fails to achieve Final Completion of seasonally affected Work within 30 calendar days after commencement of the appropriate season, then the Contractor agrees as

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User Notes: (1299610164)

part of consideration for awarding the Contract, to pay the Owner the amount of five hundred dollars (\$500.00) for each calendar day beyond that Date as liquidated damages.

**§ 4.6 Other:**

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum )*

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the thirtieth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect received the Application for Payment

**§ 5.1.3** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.4** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.5** In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

*(Paragraph deleted)*

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work,
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017,
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

Int.

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment The amount of retainage may be limited by governing law )*

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications )*

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion )*

Retainage will only be released in accordance with RCW 60.28 on completion of the work and once all required forms and reports have been filed with the Owner, Architect, Department of Labor and Industries, Department of Revenue and the Employment Security Department

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows.

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any )*

One percent (1%) per month per RCW 39.76.011

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker

Init.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect )*

Ed Luebben,  
Meier Architecture • Engineering  
12 W. Kennewick Avenue  
Kennewick, WA 99336  
509.520.6099 – cell  
509 737.6965 - office

### **§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box )*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

### **ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience )*

No termination Fee

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

### **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner’s representative:

*(Name, address, email address, and other information)*

Robert Blain  
7122 W. Okanogan Place  
Kennewick, WA 99336  
509.736.2704  
robert.blain@co.benton.wa.us

**§ 8.3** The Contractor’s representative:

*(Name, address, email address, and other information)*

Int.

William Frymier  
1521 Voelker Ave.  
Yakima, WA 98902  
509.248.8148  
bill@vcpowell.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party

**§ 8.5 Insurance and Bonds**

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission )*

The parties shall endeavor to establish necessary protocols governing transmission of Instruments of Service or any other information or documentation in digital form

§ 8.7 Other provisions:

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4

*(Paragraphs deleted)*

- .5 Drawings

Number	Title	Date
	Refer to the Drawing List on Project Title Sheet, drawing T001	

- .6 Specifications

Section	Title	Date	Pages
	Refer to Table of Contents for the Project Specification Book		

- .7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	07/08/2020	9
Addendum No. 2	07/13/2020	8

Init.

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required)*

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below  
*(Insert the date of the E204-2017 incorporated into this Agreement)*

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

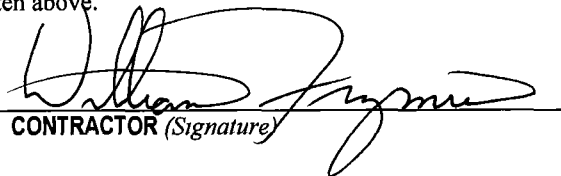
**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

James R. Beaver, Chairman  
Board of County Commissioners  
*(Printed name and title)*

  
\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

William Frymier, Project Manager  
*(Printed name and title)*

Approved as to Form:

\_\_\_\_\_  
Eric Andrews, Deputy Prosecuting Attorney

\_\_\_\_\_  
Date

Init.

# AIA<sup>®</sup> Document A201<sup>®</sup> – 2017

## **General Conditions of the Contract for Construction**

**for the following PROJECT:**

*(Name and location or address)*

Benton County Courthouse Upgrades  
7122 W. Okanogan Place, Kennewick, WA

**THE OWNER:**

*(Name, legal status and address)*

Benton County  
7122 W. Okanogan Place  
Kennewick, WA 99336

**THE ARCHITECT:**

*(Name, legal status and address)*

Meier Architecture • Engineering  
12 W. Kennewick Avenue  
Kennewick, WA 99336

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503<sup>™</sup>, Guide for Supplementary Conditions.

- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.  
/

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(Topics and numbers in bold are Section headings.)

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## **ARCHITECT**

**4**

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (AIA Document A101-2017 as modified therein) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement otherwise, the Contract documents do include bidding requirements (Advertisements or Invitation to Bid, Instruction to Bidders, Supplementary Instructions to Bidders, sample forms, the Contractors bid and portions of addenda relating to bidding requirements).

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.4.1 The entire project shall be considered as one "portion" unless separate areas or phases are designated for separate completion times or separate areas of completion and occupancy. This definition is for use in determining release of retainage.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all, performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 In the event of conflicts or discrepancies among the contract documents, interpretations will be based on the following priorities:

1. Modifications, with those of later date having precedence over those of earlier date.
2. The Agreement (AIA Document A101-2017 as modified by the parties).
3. Addenda, with those of later date having precedence over those of earlier date.
4. General Conditions of the Contract for Construction (AIA Document A201-2017 as modified herein by the parties)
5. Division 1 of the specifications
6. Drawings and Divisions 2 through 33 of the specifications
7. Other documents specifically enumerated in the agreement as part of the Contract Documents.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 The "Section Includes" listing at the beginning of the specification section presents a brief indication of the principal Work included in that section but does not limit Work to a specific subject.

§ 1.2.5 Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Architect for determination.

§ 1.2.6 The specifications have been partially "streamlined" and some words and phrases have been intentionally omitted. Missing portions shall be supplied by inference as with notes and drawings.

§ 1.2.7 The words "approve(s)", "directed", "selected", and similar words and phrases shall be presumed to be followed by "Architect". The words "satisfactory", "submitted", "reported" and similar words and phrases shall be presumed to be followed by the word "Architect". Words like "install", "provide", "furnish", and "supply", shall be construed to include complete furnishings and installing or construction. Words like "shown", "noted", and "scheduled" shall have the same meaning as indicated, and are used to assist the reader in locating particular items, Instructions, directions, and requirements as specified shall be considered to be followed by the phrase "unless otherwise specified or indicated".

§ 1.2.8 A colon (: ) following a material or item shall be used in place of the words, "shall be"

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

## § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.7.1 Contractor acknowledges that Instruments of Service or any other information or documentation Contractor received in digital form may contain transmission or translation errors and are issued for convenience only, and if a discrepancy occurs the Contractor shall rely only on hard-copy Instruments of Service.

## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in the Agreement a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative assigned to the Project.

§ 2.1.2 The Owners Representative as assigned in the Agreement shall be the Owners principal contact with the Contractor, and all communications from the Contractor to the Owner shall be made to the Owners Representative and to the Architect. The Owner shall promptly notify the Contractor in writing of any replacement of the Owner's Representative.

§ 2.1.3 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give not of, or enforce claims pursuant to bonds

## § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2 1, the Contract Time shall be extended appropriately

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require, (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information

## § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 The Contractor will be furnished, free of charge, one set of Drawings and Project Manual for use in construction of this Project. Additional sets may be purchased at the cost of reproductions, postage and handling by the Contractor.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The contractor shall not base any claim for additional time or money on any stop-work order issued under the provisions of this Section.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. The Contractor is an independent contractor and shall not for any purpose relating to or arising out of this Contract be an agent or employee of Owner.

*(Paragraph deleted)*

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the

Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall provide timely notice, in writing, to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures in writing. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. If the Contractor is instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor in writing, the Contractor shall be fully and solely responsible for performing, and shall proceed to perform, the Work as safely as possible, but the Contractor shall not be liable for any loss or damage directly resulting from the Owner's refusal to accept the particular changes proposed by the Contractor, as opposed to loss or damage resulting from unsafe performance by the Contractor or other causes.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor has the responsibility to ensure all of its employees, Subcontractors, suppliers, and their agents, employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors adhere to the Contract documents, that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials in sufficient time to comply with the Project Schedule. The Contractor shall be coordinate its work with that of all others in the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with the Architect and all others involved, before installation, to plan the most effective and efficient method of overall installation.

**§ 3.3.5** Without the prior written consent of Owner, Contractor shall not (i) employ any person to perform work hereunder who is a Close Family member: or (ii) subcontract Work to be performed hereunder to a Close Family Member or to any entity which is controlled by a Close Family Member. For the purposes of this Section, a Close

Family Member means any of the following biological, step, half, foster, or by marriage person. parents, grandparents, children, grandchildren, spouses, brothers, sisters, or in-laws of any employee of Owner who is directly or indirectly involved with the administration, supervision, or implementation of this Agreement or the Work to be performed hereunder

### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 The owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for making agreed upon changes in the Drawings and Specifications and for re-submittals and re-approval by authorities.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.3.1 Contractor shall use adequate numbers of skilled workmen, thoroughly trained and experienced in the necessary crafts and completely familiar with the specified requirements and methods needed for proper performance of the Work. Owner has the right to require Contractor to remove from its work force assigned to the Work any employee deemed incompetent, careless, or otherwise objectionable, or any personnel whose actions are deemed to be contrary to public interest or inconsistent with the best interest of the Project. Contractor shall promptly furnish qualifications for any employees that in the opinion of Owner are unsatisfactory.

§ 3.4.4. After the Contract has been executed, the owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the following conditions.

1. Required product cannot be supplied in time for compliance with Contract requirements
2. Required product is not acceptable to Owner, or determined to be non-compatible, or cannot be properly coordinated, warranted, or insured, or has other recognized liability as certified by Contractor.
3. Substantial advantage is offered to owner after deducting off-setting disadvantages including delays, additional compensation, to Architect for redesign, investigation, evaluation, other necessary services, and/or similar considerations.

§ 3.4.2.1 By making requests for substitutions based on Section 3.4.4 above, the Contractor:

1. Represents that he has personally investigated the proposed substitute product and determined that it is equivalent or superior in all respects to that specified.
2. Represents that he has submitted the proposed substitution to owner and has received approval for said substitution.
3. Represents he will provide the same warranty for the substitution that he would for that specified
4. Certifies that the cost of data presented is complete and includes all related costs under separate contracts, substitution which became apparent; and
5. Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or

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insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The warranty shall continue for a period of 1 year from the date of Substantial Completion of the work unless otherwise specified, or as provided in 3.5.11.

§ 3.5.3 The contractor shall remedy at the Contractor's expense any failure to conform or any defect. In addition, the Contractor shall remedy at the Contractor's expense damage to real or personal property when that damage is the result of.

1. The Contractor's failure to conform to Contract requirements; or
2. Any defect of equipment, material, or workmanship.

§ 3.5.4 The Contractor shall restore any work damaged in fulfilling the terms and condition of this section. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

§ 3.5.5 The Owner shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

§ 3.5.6 If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

§ 3.5.7 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:

1. Obtain Warranties that would be given in normal commercial practice.
2. Require all warranties to be executed in writing, for the benefit of the Owner, if directed by the Owner, and
3. Enforce all warranties for the benefit of the Owner, if Directed by the Owner.

§ 3.5.8 The Contractor is responsible to enforce any subcontractor's, manufacturer's, or supplier's warranty should they extend beyond the period specified.

§ 3.5.9 Unless a defect is caused by the negligence of the Contractor, the Contractor shall not be liable for the repair of any defects of material furnished by the Owner nor for the repair of any damage that results from any defect in Owner-furnished material.

§ 3.5.10 The Owner's rights with respect to latent defects, gross mistakes, or fraud shall not be limited by the warranty provisions of these Contract Documents.

§ 3.5.11 In the event that the Contractor is required to make repairs during the warranty period, the provisions of Article II, Insurance and Bonds, shall remain in effect at no additional cost to the Owner.

§ 3.5.12 Contractor hereby assigns to the Owner, effective upon Substantial Completion, all express and implied warranties made or assigned at any time to the Contractor by any Subcontractor, Sub-subcontractor or material supplier relating to any part of the Work or any product incorporated into Work. Such warranties shall be in addition to and shall not diminish the warranties of the Contractor under Subparagraph 3.5.2 or other provisions of the Contract Documents.

§ 3.5.13 Contractor represents and warrants to owner that neither Contractor nor any individual entity or organization holding any ownership interest or controlling interest in Contractor, including any officer or director, is an individual, entity, or organization with whom any United States law, regulation, or executive order prohibits U.S. companies and individuals from dealing, including without limitation, names appearing on the SDN List. Contractor covenants to Owner that it will not cause Owner to be in violation of any regulation administered by the Office of Foreign Assets Control.

§ 3.5.14 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Owner shall obtain and pay for plan check(s) as required by the State of Washington and City of Prosser and required building permit fees. The Contractor shall pay for mechanical and electrical permits required by the State of Washington or local Authority. The Contractor shall obtain and pay for all licenses and permits and shall pay all fees and charges for connections to materials, parking, utility services, temporary obstructions, enclosures, opening and patching of streets, etc off of the property of the Owner arising from the construction and completion of the work.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction or related thereto (including fines and penalties), which costs shall not be considered consequential damages waived by operation of Section 15.1.6 hereof.

- 1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts,
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances, and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The superintendent shall not be changed except with prior approval of the Architect, unless the superintendent ceases to be in the Contractor's employ. The replacement superintendent shall also be subject to these conditions.

§ 3.9.5 The superintendent's normal and customary duties may include labor related activities associated with installing components of the building.

§ 3.9.6 The superintendent's normal and customary duties shall encompass full-time QUALITY CONTROL, including but not limited to:

1. Proper coordination and sequencing of the various trades, materials, personnel, testing and data during all phases of the project;
2. Process schedule management including critical path analysis.
3. Written confirmation of all important communications shall be kept in the daily construction log.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion, (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Prepare and submit all required data under the provisions of Section 01 33 00 – Submittals.

§ 3.10.1.1 Contractor shall promptly notify the Owner and the Architect in writing of any proposed changes in the Project Schedule or the Contract Time or of any event which could delay performance of any item of the Work, stating the cause of the delay, expected duration of the delay, the anticipated effect of the delay on the Project Schedule and the action being taken to correct the delay. Notification of potential delay does NOT constitute a change in the Contract Time; only a Change Order signed by the Owner can amend the Contract Time.

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§ 3.10.1.2 If any Project Schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the Date(s) of Substantial Completion established in the Work Authorization (as the same may be extended as provided in the Contract Documents), the Contractor shall submit to the Architect and the Owner for their review and approval a narrative description of the means and methods which the Contractor proposes to use to expedite the progress of the Work to ensure timely completion of the various phases of the Work and Work as a whole. Regardless of the cause of any delay, the Contractor shall exercise reasonable efforts to bring the Project back into compliance with the Project Schedule.

§ 3.10.1.3 To the extent that the Contractor or any Subcontractor, Sub-subcontractor or material supplier is responsible for the delay, the Contractor shall take all necessary action to bring the Project back into compliance with the Project Schedule, including without limitation increasing the number of personnel on the Project and implementing overtime and double shifts, and in that event, the Contractor shall not be entitled to an adjustment in the Contract Sum, Contract Time or the Project Schedule.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Prepare and submit all required data under the provisions of Section 01 33 00 – Submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 The Contractor shall comply with cleaning instructions contained in the specifications. In absence of specific cleaning instructions, follow accepted cleaning practices or the recommendation of the manufacturer of the material to be cleaned.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of Owner and Architect.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall engage a successor architect whose status under the Contract Documents shall be that of the Architect

#### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.2.1 The Owner is entitled to receive reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work

§ 4.2.7 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the

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Contract Documents The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12 The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4 The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3 7 4

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, issue Certificates of Substantial Completion pursuant to Section 9 8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9 10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.2.1 The term "Subcontractor" or "Sub-subcontractor" includes every person or entity who has a contract to perform a portion of the Work at the site, of every tier regardless of how remote. The term "supplier" includes every supplier of materials or equipment used in the Work, of every tier regardless of how remote.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has

reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**5.3.1 Verification of subcontractor responsibility criteria.** A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

§ 5.3.2 The Contractor shall first pay out payments received under this Agreement to (and secure the discharge of any liens asserted by) all persons furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors, Sub-subcontractors and supplier). The Contractor agrees that, provided the Owner has paid the Contractor in accordance with this Agreement, the Owner has the right to a lien-free Project. The Owner may, at its discretion, make joint payments to the Contractor and its creditors. The Owner reserves the right in event any claim is made against the Owner arising out of any obligation incurred by the Contractor under this Agreement or in connection with performance of Work, to withhold payments due or to become due, to the Contractor, in such amounts as are necessary to cover the claim(s) and any costs or expenses arising in connection with the legal settlement thereof. The Contractor further agrees that if any lien or claim is filed or made against the Project site, the Project or the Owner as a result of the Contractor's failure to meet its obligations, the Owner upon fourteen (14) days prior written notice shall have the right to settle said lien or claim directly and deduct the cost of the settlement from payments due the Contractor (and, if the amount still due the Contractor is insufficient to cover such costs, to recover the shortfall from the Contractor directly), provided that the Contractor within such fourteen (14) day period has not settled such lien or claim or provided a bond against such lien or claim in a manner satisfactory to the Owner

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**§ 5.4 Contingent Assignment of Subcontracts**

- § 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12

**§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum, and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the work covered by such Change Order in Application for Payment as if such work were originally part of the Project and Contract Documents.

§ 7.2.3 The allowances outlined in 7.3.11 shall also apply to Change Orders.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods.

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, or
- .4 As provided in Section 7 3.4

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7 3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect,
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed,
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others,
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect in writing within forty-eight hours of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive

§ 7.3.11 In Subparagraph 7 3 4, the allowance for the combined overhead, insurance, bonds, coordination, supervision and profit included in the total cost to the owner shall be based on the following schedule:

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1. For the Contractor, for Work performed by the Contractor's own forces, 10 percent of the cost.
2. For the Contractor, for Work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor
3. For each Subcontractor or Sub-subcontractor involved, for work performed by that Subcontractor's or Sub-subcontractor's own forces, 10 percent of the cost
4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, 5 percent of the amount due the Sub-subcontractor
5. Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.4.
6. Overhead shall be considered to include hand tools, field office costs other than included in subparagraph 7.4.7.5, home office costs, and all other costs not specifically listed in paragraph 7.3.4
7. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, equipment and subcontract. Labor, materials and equipment shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$1,000.00 be approved without such itemization.

After consultation with the owner, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The time stated for final completion shall include final cleanup of the premises and all documentation required by the Contract Documents

**§ 8.1.1.1** The Contractor shall substantially complete the work as defined by paragraph 9.8.1, no later than 270 days from the issuance of the Notice Proceed.

**§ 8.1.2** The date of commencement of the Work is the date established in the Notice to Proceed.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**§ 8.1.4.1** When computing any period of time, the day of the event from which the period of time begins to run shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day which is not a weekend or holiday. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

#### **§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 It is the Contractor's option to complete the project earlier than the date specified in the Contract Documents, thus any claim based on delay shall be evaluated based upon the dates specified in the Contract Document, not an earlier projected completion that the Contractor may propose.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work, (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control, (4) by delay authorized by the Owner pending mediation and binding dispute resolution, or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of Owner, its Architect, its agents or employees or any other Contractor, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. **This project closeout amount is different than project retainage, and shall cover expenses related to final corrections, cleaning, submittal of closeout documentation, and related work/value. Prepare and submit Schedule of Values under the provisions of Section 01 29 00 – Contract Considerations.**

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. **This project closeout amount is different than project retainage, and shall cover expenses related to final corrections, cleaning, submittal of closeout documentation, and related work/value. Prepare and submit Schedule of Values under the provisions of Section 01 29 00 – Contract Considerations**

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### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directive, or by interim determinations of the Architect and included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The form of application for payment shall be AIA Form G702-Application and Certificate for Payment, supported AIA Form G703-Application and Certification for Payment Continuation Sheet. Submit one original and 2 copies.

§ 9.3.1.4 The Contractor shall not withhold from a subcontractor or supplier more than the percentage of retainage held from processed payment certification for their part of the work.

§ 9.3.1.5 Until conditions set forth in Paragraph 9.10 are met, the Owner shall pay ninety-five (95) percent of the amount due the Contractor on account of progress payments.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Offsite storage will not be approved at locations more than 10 miles from the project site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor

deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Architect

**§ 9.6.1.1** Progress Payments shall fall due on or about the 25<sup>th</sup> of each month (30 days after receipt of the Application for Payment by the Architect)

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

#### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time

within which the Contractor shall finish all items on the list accompanying the Certificate Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The payment shall be sufficient to increase the total payment to ninety-five (95) percent of the contract sum, less such amounts as the Architect shall determine for incomplete work and unsettled claims. The amount of retainage held for incomplete work and unsettled claims shall be double the value of the items remaining to facilitate completion of work and settlement of claims.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The final retainage shall become due and payable to the Contractor in not more than sixty (60) days after issuance of the final Certificate of Payment by the Architect; provided releases have been obtained from the Washington State Department of Revenue, the Washington State Employment Security Department, and the Washington State Department of Labor and Industries, and provided the conditions of paragraph 9.10.2 are fully satisfied.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond.

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satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The owner will suffer financial loss if the Project is not Substantially Complete on the date set forth in the Contract Documents. The Contractor (and his Surety) shall be liable for and shall pay to the Owner the sums hereafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete. See A101 paragraph 4.5.

§ 9.10.7 The work of this Contract shall be commenced on a date to be specified in the Notice to Proceed and shall be completed within the time limits stipulated in the Contract Documents. The Contractor shall reimburse the Owner for any loss suffered through failure to meet the schedule.

§ 9.10.8 If an extension of Contract time is granted to the Contractor by Change Order, the Contractor shall indemnify and hold harmless the Owner and Architect from any loss to any other Contractor or Subcontractor caused by such extension of time. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

§ 9.10.9 It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act; and where under the Contract a time extension is allowed pursuant to Paragraph 8.3, Delays and Extensions of Time, the new time limit fixed by such extension shall be of the essence of this Contract.

§ 9.10.10 When the Contract work is substantially complete, the Architect will notify the Contractor in writing of the substantial completion date. If the Work is not substantially complete by the date established in the Contract Documents, the Contractor shall pay the dollar amount, as defined in the provisions of A101 Paragraph 4.5 as liquidated damages for each and every calendar day that the Contractor is in default until the Work is substantially complete. Said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount shall be deducted from the Contract amount and not paid by the Owner.

§ 9.10.11 For overruns in contract time occurring after substantial completion, damages shall be assessed on the basis of direct architectural, administrative, and related costs assignable to the project until the date of actual completion of all the contract work. The Owner may offset these costs against any payment due the Contractor. The Contractor shall

complete the remaining work as promptly as possible. Upon request by the Architect, the Contractor shall furnish a written schedule for completing the Contract.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby,
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor, and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations, and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.4.1** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### **§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.2.1 The insurance required by Subparagraph 11.1 shall be written for not less than the following limits and as follows:

Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than two million dollars (\$2,000,000) each occurrence, two million dollars (\$2,000,000) general aggregate, and two million dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including:

- 1 Damages because of bodily injury, sickness or disease, including the occupational sickness or disease, and death of any person,
- 2 Personal and advertising injury;
3. Damages because of physical damage to or destruction of tangible property, including the loss of use of such property,
- 4 Bodily injury or property damage arising out of completed operations; and
- 5 the Contractor's indemnity obligations under Section 9.15

Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than one million dollars (\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 11.1.2.3 The Owner, Owner's employees, Architect, and their consultants shall be named as an Additional Insured on the insurance required above with a 30 day notice to cancel any coverage, and the insurance shall contain the severability of interest clause as follows. "The insurance afforded herein applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability"

§ 11.1.2.4 All coverage shall be placed with an insurance company duly admitted in the State of Washington and shall be reasonable acceptable to Owner

§ 11.1.2.5 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 1.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. For insurance written on a Commercial General Liability policy form, an ACORD form 255 will be acceptable. All insurance Certificates of Liability Insurance must name Owner's Project Number, Project Title and Project Address

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished

§ 11.1.4 Insurance During Warranty Period – In the event the Contractor is required to make corrections on the premises in accordance with the warranty provisions of the Contract, the above insurance requirements shall remain applicable at no additional cost to the Owner.

§ 11.1.5 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 The Owner shall purchase and maintain, from any insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payee.

§ 11.2.2.1 The insurance required by this Section 11.2.2 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

§ 11.2.2.2 Specific Required Coverages. The insurance required by this Section 11.2.2 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

§ 11.2.2.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 11.2.2 or, if necessary, replace the insurance policy required under Section 11.2.2 or, if necessary, replace the insurance policy required under Section 11.2.2 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 1 of the General Conditions.

§ 11.2.2.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section 11.2.2 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions of \$5,000.00.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does

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not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor, (2) the Contract Time and Contract Sum shall be equitably adjusted, and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages to the work caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that

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purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

#### **§ 11.4 Performance Bond and Payment Bond**

**§ 11.4.1** The Contractor shall furnish Owner with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Owner, in an amount equal to 100% of the Contract sum as security for the performance by the Contractor of this Contract and payment of all the persons performing labor and supplying materials pursuant to this Contract.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.4.3** The Bond shall include maintenance provisions covering workmanship and materials for a period of one year or for longer periods where so specified, from and after the Date of Substantial Completion. The Contractor shall include the cost of the Bond as part of the Contract Price.

**§ 11.4.4** The Contractor shall promptly furnish additional security required to protect the Owner and persons supplying labor or materials under this Contract if:

1. Any surety upon any bond furnished with this Contract becomes unacceptable to the Owner;
2. Any surety fails to furnish reports on its financial condition if requested by the Owner

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during

that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4

§ 13.1.1 Contractor shall comply with applicable provisions of Revised Codes of Washington (RCW) and the Washington Administrative Code (WAC), including but not limited to the following (this listing is not intended to limit applicable RCWs and WACs but to emphasize the following:

1. Prevailing Wage Rates, RCW 39.12 and Certified Payroll Records WAC 296-127-320
2. Nondiscrimination, RCW 49.60
3. Hours of Labor, RCW 49.28
4. Contractor's Bond, RCW 39.08
5. Contractor's Regulations, RCW 18.27
6. Handicapped Provisions, RCW 70.92

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

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**§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing

**§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.5 Interest**

Payments due and unpaid under the Contract Documents (30 days from date received by the Architect) shall bear interest from the date payment is due at one percent (1%) per month per RCW 39.76.011.

**§ 13.6 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at, or sent by e-mail, facsimile, registered or certified mail or by courier service to the last business address or e-mail address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual date of dispatch for e-mail or facsimile, or three (3) calendar days after the date of postmark for mail

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons.

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.2.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Architect.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials,
2. fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers,
3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. otherwise is guilty of substantial breach of a provision of the Contract Documents
5. becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency or makes an assignment for the benefit of creditors without the previous written consent of the Owner, except to a financial institution authorized to do business in the State of Washington, then, the Owner may, after serving seven days' notice to the Contractor and surety, either:
  1. Transfer the performance of work from the Contractor to the surety or,
  2. Terminate the Contract and, at the Owner's option, provide such labor or materials as required to complete the work or delete the remaining work. Any extra costs or damages to the Owner shall be deducted from any money due or coming due to the Contractor under the Contract

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 The Contractor and the surety shall bear any extra expenses incurred by the Owner in completing the work, including all increased costs for completing the work, and all damages sustained, or which may be sustained, by the Owner by reason of such refusal, neglect, failure, or discontinuance of work by the Contractor. After all the Work contemplated under the Contract has been completed, the Owner will calculate the total expenses and damages for the completed work. If the total expenses and damages are less than any unpaid balance to the Contractor, the excess will be paid by the Owner to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the surety shall be jointly and severally liable to the Owner and pay the difference to the Owner on demand.

§ 14.2.5 Upon receipt of a notice that the work is being transferred to the surety, the surety shall enter upon the premises and take possession of all materials, tools, and appliances for the purpose of completing the work included under the Contract and employ by Contract or otherwise any person or persons satisfactory to the Owner to finish the work and provide the materials without termination of the Contract. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments on estimates covering work subsequent to the transfer shall be made to the extent permitted under law to the surety or its agents without any right of the Contractor to make any claim.

§ 14.2.6 The Contractor and its surety shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in the work.

§ 14.2.7 If the termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been pursuant to Section 14.3 Suspension by the Owner for Convenience and Section 14.4 Termination by the Owner for Convenience.

§ 14.2.8 The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible, or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts, and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2

#### § 15.1.3 Notice of Claims

If the Contractor asserts there is cause for a claim, the Contractor shall:

- 1 Immediately give a signed written Notice of Claim to the Architect and the Owner before doing the Work,
- 2 Supplement the written claim notice within 7-calendar days with a written statement and supporting documents providing the following:
  - a The date and nature of the claim;
  - b A full discussion of the circumstances which caused the claim, including names of persons involved, time, duration and nature of the Work involved, and a review of the Plans and Contract Provisions referenced to support the claim,
  - c The estimated dollar cost, if any, of the Work related to the claim and a detailed breakdown showing how that estimate was determined; and
  - d An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption; and
  - e. If the claim is continuing, the information required above shall be supplemented upon request by the Architect until the claim is resolved.

Once such Claim is identified, the claimant shall cooperate with the Architect and the other party against whom the Claim is made in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. The claim resolution procedure defined in Section 15.2 shall be followed upon receipt of Contractor's claim

Throughout any Work related to a claim, the Contractor shall keep complete records of extra costs and time incurred. The Contractor shall permit the Architect and Owner access to these and any other records related to the Work as determined by the Architect and Owner. The records for disputed work shall be in accordance with Section 7.3.7. By failing to follow the procedures of this Section, the Contractor completely waives any right for compensation or extended duration claims for protested Work. An additional Claim made after the initial Claim has been implemented by Change Order will not be allowed.

*(Paragraphs deleted)*

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker

### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10 4

§ 15.1.5.1 No adjustment in the Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project

§ 15.1.5.2 The parties agree that an integral part of this Contract is the ability to resolve claims and disputes in a timely manner. To achieve this timely resolution, the parties agree to establish a set cost allowance for delays and time extensions. There will be no additional allowance for equitable adjustment for any general conditions, costs or mobilization, demobilization, layout, temporary facilities, equipment, home office, or field overhead costs (extended overhead) or other costs of supervision herein relating to change orders, time extensions, or delays, other than as set forth in this paragraph. The Owner will pay only for the following verifiable costs associated with the time extension or delay: 1) the actual labor costs, fringe benefits, employment taxes and insurance related to the Project Superintendent; 2) the cost associated with the fair rental value of the Project Superintendent's vehicle directly related to the time extension, 3) the direct costs attributable to the extension for the field office facility including telephone line, utilities, power, lights, water, and sewer (toilets). Mark-up on these costs will not be allowed.

### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make claim for an increase in the Contract time, as stated in the Contract Documents, written notice, as provided herein, shall be given. The Contractor's claim shall include an estimate of cost and of probable effect of delay on progress of the Work based on contract time as stated in the Contract Documents. In case of a continuing delay, only one claim is necessary. All claims for costs related to claims for additional time shall be pursuant to Section 4 3 5. No adjustment in the Contract Time shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents

Init.

## § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing, (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

## § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Init.

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# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	September 1, 2020	
<b>Subject:</b>	Public Hearing for Community Development Block Grant-CV1	
<b>Presenter:</b>	Kyle Sullivan & Tammy McKeirnan	
<b>Prepared By:</b>	Tammy McKeirnan	
<b>Reviewed By:</b>	Kyle Sullivan	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b>	
<input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Discussion Only (1 <sup>st</sup> )	<input type="checkbox"/> Pass Motion
<input checked="" type="checkbox"/> Public Hearing	<input type="checkbox"/> Discussion Only (2 <sup>nd</sup> )	<input checked="" type="checkbox"/> Pass Resolution
<input checked="" type="checkbox"/> Scheduled Business	<input type="checkbox"/> Decision/Direction	<input type="checkbox"/> Pass Ordinance

## Summary / Background Information

Benton County is applying to the state Department of Commerce for funding assistance. It is necessary that certain conditions be met as part of the application requirements. Kyle Sullivan Manager of Benton County Department of Human Services is authorized to submit this application to the state of Washington on behalf of Benton County.

Benton County authorizes submission of this application to the state Department of Commerce to request \$287,929 and any amended amounts to fund public service activities in coordination.

## Fiscal Impact

**Amount:** Total grant amount of \$287,929.00

**Fund:** 0108-101 Human Services Budget

## Recommendation

Approve Benton County Department of Human Services to apply for the CDBG-CV1 in the amount of \$287,929.00 for 2020/2021 grant.

## Suggested Motion

Move to approve Benton County Department of Human Services to apply for the CDBG-CV1 in the amount of \$287,929 for 2020/2021 grant.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;**

**RE: IN THE MATTER OF APPLICATION FOR COMMUNITY DEVELOPMENT  
BLOCK GRANT CV-1 (CDBG CV-1) PUBLIC SERVICE FUNDS FROM THE  
STATE DEPARTMENT OF COMMERCE**

**WHEREAS**, Benton County is authorized to apply to the State Department of Commerce for a Community Development Block Grant CV-1 (CDBG CV-1); and

**WHEREAS**, Benton County has identified a community development and housing priority need for which to seek CDBG CV-1 funding; and

**WHEREAS**, it is necessary that certain conditions be met to receive CDBG CV-1 funding; and

**WHEREAS**, Kyle Sullivan, Manager of Benton County Department of Human Services is authorized to submit this application to the State of Washington on behalf of Benton County; and

**WHEREAS**, Benton Franklin Community Action Connections is submitting quarterly reports which are acceptable to Benton County Department of Human Services; NOW THEREFORE,

**BE IT RESOLVED**, that Benton County authorizes submission of this application to the State Department of Commerce to request \$287,929.00 and any amended amounts to fund public service activities in coordination with Benton Franklin Community Action Connections, and certifies that if funded it:

Will comply with applicable provisions of Title I of the Housing and Community Development Act of 1974, as amended, and other applicable state and federal laws;

Has provided and will provide opportunities for citizen participation that satisfy the CDBG requirements of 24 CFR 570.486;

Will not use assessments against properties owned and occupied by low-and moderate-income persons or charge user fees to recover the capital costs of CDBG CV-1-funded public improvements from low- and moderate-income owner-occupants;

Has established or will establish a plan to minimize displacement as a result of activities assisted with CDBG CV-1 funds; and assist persons actually displaced as a result of such activities as provided in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;

Has provided technical assistance to citizens and groups representative of low- and moderate-income persons that request assistance in developing proposals;

Will provide opportunities for citizens to review and comment on proposed changes in the funded project and program performance;

Will conduct and administer its program in conformance with Title VI of the Civil Rights Act of 1964

and the Fair Housing Act, will affirmatively further fair housing (Title VIII of the Civil Rights Act of 1968); and

Has adopted (or will adopt) and enforce a policy to prohibit the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and has adopted (or will adopt) and implement a policy to enforce existing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction, in accordance with Section 104(1) of the Title I of the Housing and Community Development Act of 1974, as amended;

**BE IT FURTHER RESOLVED**, Benton County delegates Benton County Board of Commissioner Chairman James Beaver, Benton County Administrator Jared MacPherson, and Benton County Department of Human Services Manager Kyle Sullivan as the authorized Chief Administrative Official and authorized representatives to act in all official matters in connection with this application and Benton County's participation in the Washington State CDBG Program, and

**BE IT FURTHER RESOLVED**, that the Board of Benton County Commissioners accepts the current 2020/2021 grant requirements for Benton Franklin Community Action Connections, and the new 2020/2021 grant requirements for the Community Development Block Grant CV-1 (CDBG CV-1) Public Service Funds.

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

\_\_\_\_\_  
Chairman of Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member  
Constituting the Board of County  
Commissioners of Benton County, Washington

Attest: \_\_\_\_\_  
Clerk of the Board

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	9/1/2020	
<b>Subject:</b>	Posting and Advertising Restrictions for Open Positions	
<b>Presenter:</b>	L. Wingfield	
<b>Prepared By:</b>	L. Wingfield	
<b>Reviewed By:</b>	J. MacPherson & M. Rasmussen	
<b>PA Review, Approval to Form:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> <i>(Multiple boxes can be checked, if necessary)</i>	
<input type="checkbox"/> Consent Agenda <input type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> Scheduled Business	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Decision / Direction <input type="checkbox"/> Sign Letter / Document	<input type="checkbox"/> Pass Motion <input checked="" type="checkbox"/> Pass Resolution <input type="checkbox"/> Pass Ordinance <input type="checkbox"/> Execute Contract

## Summary / Background Information

While Benton County continues to examine ways to be financially prudent during the ongoing pandemic, we find that a large portion of the budget is made up of salaries and benefits. In order to maintain financial stability prior approval for posting and filling vacant positions based on the position being essential to continued County services will be required. We currently have 82 vacant and funded positions including full time, part time, and temporary help positions, not all of these positions are actively hiring. Prior approval before posting and hiring vacant positions is required effective immediately except for the following:

Department	Position Title	Hiring Authorization
Auditor	Accounting Assistant II	1 Employee
Auditor	Temp Election Help	Auditor discretion
Clerk	Legal Process Assistant II	1 Employee
District Court	Legal Process Assistant III	1 Employee
Human Services	Housing Program Navigator	1 Employee
Juvenile	Legal Process Assistant III	1 Employee
Juvenile	Juvenile Detention Officer	1 Employee
Public Works	Accounting Support Specialist	1 Employee
Sheriff's Office	Deputy	1 Employee
Treasurer	Accounting Assistant II	1 Employee

## Fiscal Impact

No supplement required.

## **Recommendation**

Approve the resolution requiring prior approval for posting and filling vacant positions except those specifically outlined.

## **Suggested Motion**

I move to approve the resolution as presented to require prior approval to post and fill vacant positions except positions specifically outlined in the resolution.

# RESOLUTION

## BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

### IN THE MATTER OF REQUIRING APPROVAL BEFORE POSTING AND FILLING VACANT POSITIONS.

**WHEREAS**, Benton County is examining ways to be financially prudent during the ongoing pandemic and finds that a large portion of the budget is made up of salaries and benefits; and,

**WHEREAS**, continuing Benton County's high level of service while maintaining financial stability is important and therefore, the Benton County Board of Commissioners will require prior approval for posting and filling vacant positions based on the position being essential to continued County services; and,

**WHEREAS**, there currently are 82 vacant and funded positions including full time, part time, and temporary help positions, not all of these positions are actively hiring; **NOW THEREFORE**,

**BE IT RESOLVED** the Benton County Board of Commissioners require prior approval before posting and hiring vacant positions effective immediately; and,

**BE IT FURTHER RESOLVED** the Benton County Board of Commissioners authorizes the following positions, due to their current step in the hiring process, to hire in accordance with the chart below:

Department	Position Title	Hiring Authorization
Auditor	Accounting Assistant II	1 Employee
Auditor	Temp Election Help	Auditor discretion
Clerk	Legal Process Assistant II	1 Employee
District Court	Legal Process Assistant III	1 Employee
Human Services	Housing Program Navigator	1 Employee
Juvenile	Legal Process Assistant III	1 Employee
Juvenile	Juvenile Detention Officer	1 Employee
Public Works	Accounting Support Specialist	1 Employee
Sheriff's Office	Deputy	1 Employee
Treasurer	Accounting Assistant II	1 Employee

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

cc: All Offices/Departments

L. Wingfield

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Member

Constituting the Board of Commissioners  
of Benton County, Washington

Attest.....

Clerk of the Board

# COMMISSIONERS' AGENDA ACTION SHEET

<b>Meeting Date:</b>	9/1/2020	
<b>Subject:</b>	Authorizing signatures authority for additional counseling services contract	
<b>Presenter:</b>	L. Wingfield & M. Rasmussen	
<b>Prepared By:</b>	L. Wingfield	
<b>Reviewed By:</b>	J. MacPherson & M. Rasmussen	
<b>PA Review, Approval to Form:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <i>(If no, include reasoning for no approval)</i>	
<b>Type of Agenda Item:</b>	<b>Type of Action Needed:</b> <i>(Multiple boxes can be checked, if necessary)</i>	
<input type="checkbox"/> Consent Agenda <input type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> Scheduled Business	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Pass Motion <input type="checkbox"/> Decision / Direction <input checked="" type="checkbox"/> Pass Resolution <input type="checkbox"/> Sign Letter / Document <input type="checkbox"/> Pass Ordinance <input type="checkbox"/> Execute Contract	

## Summary / Background Information

On August 11, 2020, the Board asked staff to explore options to provide the Sheriff's Office employees additional counseling services beyond those provided by EAP. Providing these services as quickly as possible is important and therefore, waiving the County's regular contract approval protocol based on the Commissioners' schedule and agenda process is imperative to executing a contract in a timely fashion.

Staff has reached out to a number of counselors after talking with Deputies and have selected one to move forward with a contract.

## Fiscal Impact

No supplement required.

## Recommendation

Approve the resolution authorizing the County Administrator and Deputy County Administrator to sign the counseling services for Sheriff's Office employees contract.

## Suggested Motion

I move to approve the resolution to authorize the County Administrator and Deputy County Administrator to sign the counseling services for Sheriff's Office employees contract.

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR AND THE DEPUTY COUNTY ADMINISTRATOR TO SIGN THE CONTRACT FOR SHERIFF'S OFFICE EMPLOYEES ADDITIONAL COUNSELING SERVICES.

**WHEREAS**, On August 11, 2020, the Benton County Board of Commissioners asked staff to explore additional options for counseling services for the employees of the Benton County Sheriff's Office; and,

**WHEREAS**, staff started exploring options and will work on a contract with a provider for counseling services beyond those currently available through EAP; and,

**WHEREAS**, setting up the contract and being able to provide these services as soon as possible is important so waiving the County's regular contract approval protocol based on the Commissioners' schedule and agenda process is imperative; and,

**WHEREAS**, there is precedent in other areas of County business for Commissioners to transfer contract signature authority to other County officials on a case-by-case basis; **NOW THEREFORE**,

**BE IT RESOLVED** by the Benton County Board of Commissioners that Jerrod MacPherson, County Administrator, is authorized to approve and sign the counseling services for Sheriff's Office employees contract as prepared by staff; and,

**BE IT FURTHER RESOLVED** by the Benton County Board of Commissioners that in the absence of Mr. MacPherson, Matt Rasmussen, Deputy County Administrator, is also authorized to approve and sign the counseling services for Sheriff's Office employees contract as prepared by staff.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Constituting the Board of Commissioners  
of Benton County, Washington

Attest.....

Clerk of the Board

cc: Commissioners

L. Wingfield