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

Board of County Commissioners

Jerrod MacPherson
County Administrator

Matt Rasmussen
Deputy County Administrator

To view items in detail, click on highlighted areas.

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

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

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

AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, November 10, 2020

9:00 AM **Call to Order**
Approval of Minutes
- **November 3, 2020**

Review Agenda
Consent Agenda

Animal Control
a. Contract w/Vista Veterinary Hospital Inc. for Spay & Neutering Services
b. Contract w/Vista Veterinary Hospital Inc. for Veterinarian Medical Services

Clerk
c. Purchase of Office Chairs From Brutzmans Office Solutions
d. Statement of Work w/ImageSoft, Inc. for OnBase Document Management System Support

Commissioners
e. Line Item Transfer, Fund No. 0000-101, Dept. 115
f. Line Item Transfer, Fund No. 0000-101, Dept. 115 to 138
g. Line Item Transfer, Fund No. 0000-101, Dept. 139

District Court
h. Agreement w/WA Administrative Office of the Courts for Interpreter Expenses Reimbursement

Office of Public Defense

i. Amending Superior Court Public Defense Agreement w/Danielle Purcell for Early Termination
j. Amending Juvenile Public Defense Agreement w/Danielle Purcell for Early Termination
k. Superior Court Public Defense Agreement w/Dennis Hanson
l. Superior Court Public Defense Agreement w/Justin Andrews
m. Superior Court Public Defense Agreement w/Karla Kane
n. Superior Court Public Defense Agreement w/Megan Whitmire
o. Superior Court Public Defense Agreement w/Nicholas Blount
p. Superior Court Public Defense Agreement w/Shelley Ajax
q. Superior Court Public Defense Agreement w/Catherine Harkins

Planning

r. Contract w/Susan Drummond, PLLC, for Hearings Examiner Services

Public Works

s. Accepting Work Performed by Craftsman Cabinets & Flooring for Public Safety Building Countertop Replacement Project
t. Approving Construction Plans for Homestead Road & Setting the Speed Limit
u. Purchase of Liquid Magnesium Chloride Storage Tanks From AG Enterprise Supply

Sheriff

v. Line Item Transfer, Fund No. 0127-101, Dept. 000
w. Contract w/Chong Bak dba Columbia Cleaners for Dry Cleaning & Laundry Services

Superior Court

x. Agreement w/State of Washington Administrative Office of the Courts for Interpreter Reimbursement Funding
y. Line Item Transfer, Fund No. 0000-101, Dept. 123
z. Coding Correction Within Current Expense Number 00000-101, Dept. 138 to Public Safety Tax Fund 0148-101, Dept. 138
aa. Rescinding Resolution 2020-751

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

Scheduled Business

Amended Veterans' Relief Fund Policies & Procedures ~ K Sullivan

2021 1-Year Road Program & Equipment Purchases ~ D D'Hondt

Center Parkway Extension Project Disbursement Through Rural County Capital Fund ~ A Fyall

Emergency Declaration for Prosser Railroad Bridge ~ A Fyall

2021-2022 Budget Update ~ L Ivey

Other Business

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Tuesday, November 3, 2020, 9:00 a.m.
Meeting provided by Video Live-Broadcast and Telephonically

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

Absent: Commissioner Shon Small (Excused)

Benton County Employees Present During All or a Portion of the Meeting: Robert Heard, IT Manager; Robert Blain, Operations/Capital Programs; Greg Wendt, Planning Manager; Michael McGhan, Public Works; DPA Ryan Brown.

Approval of Minutes

The Budget Workshop Minutes of October 21, 2020 and October 22, 2020 were approved.

The Minutes of October 27, 2020 were approved.

Consent Agenda

MOTION: Commissioner Delvin moved to approve the consent agenda items "a" through 'o". Chairman Beaver seconded and upon vote, the Board approved the following:

Commissioners
a. Declaring Tax Title Property Surplus
b. Quit Claim Deed on Surplus Tax Title Property
c. Line Item Transfer, Fund No. 0000-101, Dept. 107

Facilities
d. Change Order No. 1 w/Chervenell Construction for the Courtroom Audio Visual Upgrade

Fairgrounds
e. Line Item Transfer, Fund No. 0124-101, Dept. 000

Information Technology
f. Purchase of Cisco Meraki MR56 Access Points From CompuNet, Inc.

Juvenile
g. Contract w/SARC for Youth Assessments
h. Contract w/Tri-Cities Monitoring for Armed Security Guard & Tracking Services

Office of Public Defense
i. Line Item Transfer, Fund No. 0000-101, Dept. 136

Public Safety

j. Line Item Transfer, Fund No. 0148-101, Dept. 136
k. Line Item Transfer, Fund No. 0148-101, Dept. 112

Public Works

l. Approval of Construction Plans & Setting Speed Limit for Grace Estates Subdivision
m. Closing Road Department Cash Drawer

Sheriff

n. Memorandum of Understanding w/WA Traffic Safety Commission for Overtime Funding
o. Contract w/Saul Castillo for Interpreter Services

Public Comment

None.

Revised Equipment Rental & Revolving Fund

Robert Blain and Michael McGhan presented the revised policy for the ER&R Fund and highlighted the following changes:

- All vehicles purchased will fall under the authority of the Commissioners' office and be managed by the Fleet Superintendent and maintained/repaired by ER&R shops
- Increasing replacement mileage from 100,000 to 150,000 miles; and from 10 years to 15 years
- Requiring a memorandum of understanding for departments that want to rent space on the grounds for vehicles or equipment

MOTION: Commissioner Delvin moved to approve the Resolution adopting the Revised Equipment Rental and Revolving Fund (ER&R) Policy, and rescinding Resolution 2019-927 effective January 1, 2021 as presented. Chairman Beaver seconded and upon vote, the motion carried.

Master Trust Water Right Agreement with WA State Dept. of Ecology

Greg Wendt and Ryan Brown presented the Master Trust Water Right Agreement with Washington State Department of Ecology. Mr. Wendt said the final step of the settlement with Futurewise was to enter into an agreement with Ecology to govern the management of separate water rights acquired by Benton County and ensure the water rights will be held in trust with the Department of Ecology.

Mr. Brown said the main purpose of the trust program was to eliminate the "use it or lose it" criteria regarding water rights.

Mr. Wendt added that the rural water supply program was going well, and 51 mitigation certificates were issued since they started the process and six meters were in the ground. They will complete a year-end review on the data collected from the meters and submit that to Department of Ecology in 2021.

MOTION: Commissioner Delvin moved to approve the Master Trust Water Right Agreement between Benton County and the Washington State Department of Ecology for Yakima Basin Groundwater and Surface Water mitigation of Rural Domestic Uses and authorize the Chairman to sign as presented. Commissioner Beaver seconded and upon vote, the motion carried.

Accounts Payable

Check Date: 10/30/2020

EFT's #: 1478-1503
Transfers #: 10302001-10302004
Total all funds: $180,791.96

Warrants #: 211262-211432
Total all funds: $1,636,970.74

Resolutions

2020-794:	Declaring Tax Title Property Surplus
2020-795:	Quit Claim Deed on Surplus Tax Title Property
2020-796:	Line Item Transfer, Fund No. 0000-101, Dept. 107
2020-797:	Change Order No. 1 w/Chervenell Construction for the Courtroom Audio Visual Upgrade
2020-798:	Line Item Transfer, Fund No. 0124-101, Dept. 000
2020-799:	Purchase of Cisco Meraki MR56 Access Points From CompuNet, Inc.
2020-800:	Contract w/SARC for Youth Assessments
2020-801:	Contract w/Tri-Cities Monitoring for Armed Security Guard & Tracking Services
2020-802:	Line Item Transfer, Fund No. 0000-101, Dept. 136
2020-803:	Line Item Transfer, Fund No. 0148-101, Dept. 136
2020-804:	Line Item Transfer, Fund No. 0148-101, Dept. 112
2020-805:	Approval of Construction Plans & Setting Speed Limit for Grace Estates Subdivision
2020-805A:	Closing Road Department Cash Drawer
2020-806:	Memorandum of Understanding w/WA Traffic Safety Commission for Overtime Funding
2020-807:	Contract w/Saul Castillo for Interpreter Services
2020-808:	Approval of Revised Equipment Rental & Resolving Policy (ER&R)
2020-809:	Approval of Master Trust Water Agreement with WA State Dept. of Ecology

There being no further business before the Board, the meeting adjourned at approximately 9:12 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/2020
Subject:	Contract with Vista Veterinary Hospital Spay/Neuter Services
Presenter:	none
Prepared By:	Carin Brown
Reviewed By:	Eric Andrews

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Animals housed at Benton County Animal Control (BCAC), upon adoption are required to be spayed or neutered. A contract with a licensed veterinarian is needed in order to provide such treatment. The BCAC Manager recommends entering into a contract with Vista Veterinary Hospital Inc., P.C. doing business as Vista Veterinary Hospital for "as needed" spay and neuter services for animals housed at BCAC.

Fiscal Impact

Amount not to exceed $15,000 to be paid out of Current Expense (0000-101) Department 137 Animal Control's Budget. No supplement required.

Recommendation

Pass the resolution

Suggested Motion

N/A consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND VISTA VETERINARY HOSPITAL INC., P.C. DOING BUSINESS AS VISTA VETERINARY HOSPITAL FOR "AS NEEDED" SPAY AND NEUTERING SERVICES FOR THE ANIMALS HOUSED IN THE BENTON COUNTY ANIMAL CONTROL FACILITY

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

WHEREAS, the Benton County Animal Control Manager recommends entering into a Professional Service Contract with Vista Veterinary Hospital for "as needed" spay and neutering services and other medical services they are qualified to perform for the animals housed in the Benton County Animal Control facility; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the recommendation and authorizes the Chairman of the Board to sign the attached agreement between Benton County and Vista Veterinary Hospital for a contract amount not to exceed $15,000; and

BE IT FURTHER RESOLVED the contract shall commence January 1, 2021 and shall terminate December 31, 2022.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest_____
Clerk of the Board

Orig: BC Animal Control
cc: Auditor; S. Araiza; Contract Management; Vista Vet, File

Prepared by: C. Brown

PROFESSIONAL SERVICES CONTRACT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY** (hereinafter "COUNTY"), a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), operator of **BENTON COUNTY ANIMAL CONTROL** (hereinafter "BCAC"), and **VISTA VETERINARY HOSPITAL, INC. P.C.**, doing business as Vista Veterinary Hospital (hereinafter "CONTRACTOR"), a professional service corporation organized under the laws of the State of Washington with its principal offices at 5603 W. Canal Drive, Kennewick WA 99336.

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

1. CONTRACT DOCUMENTS

This Contract consists of the Professional Services Contract Terms and Conditions (this document).

2. DURATION OF CONTRACT

The term of this Contract shall commence on January 1, 2021. and shall terminate on December 31, 2021, unless terminated earlier pursuant to Section 11 of this Contract.

3. VETERINARIAN SERVICES TO BE PROVIDED:

a. The CONTRACTOR, through its licensed veterinarians and qualified employees, shall provide as-needed spay and neuter services for animals housed in the Benton County Animal Control Facility operated by BCAC and located at 1116 Grant Place, Kennewick, WA 99336. Services provided under this Contract shall be provided at CONTRACTOR'S facility located at 5603 W. Canal Drive in Kennewick, Washington or at such other suitable location as agreed upon by the parties' Contract Representatives. All services provided under this Contract shall be performed in accordance with current veterinary medical standards in existence at the time that such work is performed.

b. The COUNTY does not guarantee utilization of this Contract. The COUNTY may award contracts to other vendors for similar

services. Actual utilization will be based on availability or any other factor deemed important to the COUNTY.

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

4. CONTRACT REPRESENTATIVES

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

For CONTRACTOR:

Dr. Michelle Meyer
5603 W. Canal Drive
Kennewick, WA 99336
(509) 783-2131

For COUNTY:

Carin Brown and Josh Castilleja
1116 Grant Place
Kennewick, WA 99336
(509) 460-4923

5. COMPENSATION

The COUNTY will pay CONTRACTOR to perform services in accordance with Section 3 of this Contract as follows:

a. Spay Rates:
   i. $95.00 per animal that is less than 50lbs
   ii. $148.00 per animal that is greater that 50lbs or this in heat or that is pregnant

b. Neuter Rates:
   i. $70.00 per animal that is less than 50lbs
   ii. $122.00 per animal that is greater than 50lbs

c. The maximum total amount payable by the COUNTY to the CONTRACTOR for the performance of services outlined in Section 3 of this Contract shall not exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00), including W.S.S.T. Payment of any dollar amount above the maximum payable amount will only be approved with an amendment to this Contract executed in accordance with Section 6 of this Contract.

d. Billings for services shall be submitted for payment to the Benton County Animal Control Facility at 1116 N. Grant Place, Kennewick, WA 99336. Each bill shall detail the name of the animal, case number, date of service, and the service(s) performed. Payment to the CONTRACTOR for such services will be based on the standard rates set forth in Section 5.a. of this Contract. The COUNTY shall authorize payment when the service billed is accepted by the COUNTY, and will remit authorized payments within thirty (30) days after receiving the billing for service.

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

b. No amendment or modification shall be made to this Contract,

unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. QUALIFICATIONS OF CONTRACTOR'S VETERINARIANS AND STAFF

By executing this Contract, CONTRACTOR guarantees that all veterinarians employed and working at its facility, the Vista Veterinary Hospital, are licensed in the State of Washington to practice veterinary medicine. The CONTRACTOR shall ensure that all of its veterinarians are continually licensed throughout the duration of the Contract. The CONTRACTOR guarantees that any employee of the CONTRACTOR who performs work pursuant to this Contract is properly licensed and/or certified in accordance with all applicable federal, state, and local laws, rules, and regulations. The CONTRACTOR shall ensure that any employee performing work pursuant to this Contract is licensed and/or certified at the time he or she performs such work.

8. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

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

9. PERMITS AND LICENSES

The CONTRACTOR shall have and maintain any and all applicable professional, federal, state, or local certifications, licenses, or permits required by law and this Contract. The CONTRACTOR shall have sole responsibility for the cost of obtaining and maintaining such licenses, certifications, and permits. Proof of required certifications, licenses, and permits shall be provided to COUNTY within ten (10) days of the date of this Contract.

10. HOLD HARMLESS AND INDEMNIFICATION

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

In any and all claims against Benton County and its officers, officials, representatives, employees, and agents by CONTRACTOR, any subcontractor, anyone directly or indirectly employed by CONTRACTOR, or anyone for whose acts CONTRACTOR 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 CONTRACTOR or any subcontractor under Workers Compensation acts, disability benefits acts, or other employee benefit acts, it being agreed and understood by the parties hereto that CONTRACTOR expressly waives any immunity CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, 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 CONTRACTOR makes with any other person or agent performing work hereunder. CONTRACTOR'S obligations under this Section 10 shall survive termination and expiration of this Contract.**

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

CONTRACTOR, CONTRACTOR'S representatives, agents, or subcontractors.

11. TERMINATION

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

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

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

12. 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, which must be written subject to limits of not less than one million dollars

($1,000,000) each claim and two million dollars ($2,000,000) 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 thirty-six (36) months after the effective date of termination or completion of this Contract. If coverage is canceled or not renewed, and is not replaced with another claims made policy form with a retroactive date prior to the Contract's effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of thirty-six (36) months after the completion of work. The CONTRACTOR shall annually provide COUNTY with proof of all such insurance.

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

If CONTRACTOR or any subcontractor or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to

CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

c. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury and property damage, which 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 will contain an endorsement naming the COUNTY and its elected and appointed officials, employees, and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR'S commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR must obtain commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 10 of this Contract. 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 auto (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 be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

e. **Other Insurance Provisions**

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

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

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

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

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

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTY requires and 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. All liability insurance required under this Contract, except for professional liability under Section 12(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 Agreement are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

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

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

2. Certificates of Liability Insurance with endorsements attached must be provided to the COUNTY'S Contract Representative set forth in Section 4.

3. All written notices under this Section 12 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY'S Contract Representative set forth in Section 4.

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

13. 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.

14. INDEPENDENT CONTRACTOR

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

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the CONTRACTOR is not entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.

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

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

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

15. COMPLIANCE WITH LAWS

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

16. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and

records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract or created in the performance of this contract for six (6) years after termination of this Contract for audit purposes.

17. NONDISCRIMINATION

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

18. DISPUTES

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

23. ENTIRE CONTRACT

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.

24. 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.

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 the following provisions: indemnification; insurance; non-waiver, inspection of books and records; choice of law; compliance with laws; litigation hold; and the Public Records Act.

26. LITIGATION HOLD NOTICE

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

27. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 *et seq.* Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records actually in its possession or in CONTRACTOR'S possession. This may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which 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.

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

Date: _____

Benton County

Chairman
Benton County Commissioner

Date: 10/26/20

Vista Veterinary Hospital, Inc. PC

Dr. Michelle Meyer
Vice President

Approved as to Form:

Eric Andrews
Civil Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/2020
Subject:	Contract with Vista Veterinary Hospital As Needed Services
Presenter:	none
Prepared By:	Carin Brown
Reviewed By:	Eric Andrews

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Sometimes the animals housed at Benton County Animal Control (BCAC), animals being brought into BCAC, or animals owned by the Sheriff's Office (the K9 dog) need medical treatment that cannot be provided by BCAC staff. A contract with a licensed veterinarian is needed in order to provide such treatment. The BCAC Manager recommends entering into a contract with Vista Veterinary Hospital, Inc. PC doing business as Vista Veterinary Hospital, Inc. PC for "as needed" veterinarian medical services for animals housed at BCAC and animals owned by the Sheriff's Office.

Fiscal Impact

Amount not to exceed $20,000 to be paid out of Current Expense (0000-101) Department 137 Animal Control's Budget (Sheriff's Office will pay the medical bills for the K9 dog out of their budget). No supplement required.

Recommendation

Pass the resolution

Suggested Motion

N/A consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND VISTA VETERINARY HOSPITAL, INC. PC DOING BUSINESS AS VISTA VETERINARY HOSPITAL, INC. PC FOR "AS NEEDED" VETERINARIAN MEDICAL SERVICES FOR THE ANIMALS HOUSED IN THE BENTON COUNTY ANIMAL CONTROL FACILITY AND ANIMALS OWNED BY THE BENTON COUNTY SHERIFF'S OFFICE

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

WHEREAS, the Benton County Animal Control Manager recommends entering into a Professional Service Contract with Vista Veterinary Hospital, Inc. PC for "as needed" veterinarian medical services for the animals housed in the Benton County Animal Control Facility and animals owned by the Benton County Sheriff's Office for a contract amount not to exceed $20,000; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the recommendation and authorizes the Chairman of the Board to sign the attached agreement between Benton County and Vista Veterinary Hospital for a contract amount not to exceed $20,000; and

BE IT FURTHER RESOLVED, the contract shall commence January 1, 2021 and shall terminate December 31, 2021.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig: BC Animal Control
cc: Auditor; S. Araiza; Contract Management; Vista Vet, File

Prepared by: C. Brown

PROFESSIONAL SERVICES CONTRACT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY** ("COUNTY"), a political subdivision of the State of Washington, (hereinafter "COUNTY"), operator of **BENTON COUNTY ANIMAL CONTROL** (hereinafter "BCAC"), with its principal offices at 620 Market Street, Prosser, WA 99350 and **VISTA VETERINARY HOSPITAL INC. P.C.**, doing business as Vista Veterinary Hospital ("CONTRACTOR"), a professional service corporation organized under the laws of the State of Washington with its principal offices at 5603 W. Canal Drive, Kennewick, WA 99336.

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

1. CONTRACT DOCUMENTS

This Contract consists of the Professional Services Contract Terms and Conditions (this document).

2. DURATION OF CONTRACT

The term of this Contract shall commence on the January 1, 2021 and shall terminate on December 31, 2021, unless terminated earlier pursuant to Section 11 of this Contract.

3. VETERINARIAN SERVICES TO BE PROVIDED

a. The CONTRACTOR, through its licensed veterinarians and qualified employees, shall provide as-needed veterinarian medical services and supplies to all animals housed in the Benton County Animal Control Facility, operated by Benton County Animal Control, located at 1116 Grant Place, Kennewick, WA 99336 and all animals owned by the Benton County Sheriff's Office located at 7122 W. Okanogan Place, Building B, Kennewick, WA 99336. All services provided under this Contract shall be performed in accordance with current veterinary medical standards in existence at the time that such work is performed.

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

c. The COUNTY does not guarantee utilization of this Contract. The COUNTY may award contracts to other vendors for similar services. Actual utilization will be based on availability or any other factor deemed important to the COUNTY.

4. CONTRACT REPRESENTATIVES

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

For CONTRACTOR:

Dr. Michelle Meyer
5603 W Canal Drive
Kennewick, WA 99336
(509) 783-2131

For COUNTY:

Carin Brown and Joshua Castilleja
1116 Grant Place
Kennewick, WA 99336
(509) 460-4923

5. COMPENSATION

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

a. The CONTRACTOR shall provide a thirty percent (30%) discount off the CONTRACTOR'S standard fee schedule at the time of service for all exams and radiographs. If an animal requires treatment for a traumatic injury or condition (*e.g.*, a trauma requiring surgery), the applicable discount, at a minimum, shall be no less than thirty percent (30%) off the CONTRACTOR'S standard fee schedule at the time of service; however, the discount may be greater based on a case-by-case determination. The CONTRACTOR shall also provide a thirty percent (30%) discount on all supplies.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR for the performance of services set forth in Section 3 of this Contract shall not exceed Twenty Thousand Dollars and Zero Cents ($20,000.00), including W.S.S.T. Payment of any dollar amount above the maximum payable amount

will only be approved with a Contract Amendment executed in accordance with Section 6 of this Contract.

c. Billings for services and supplies provided under this Contract shall be submitted for payment as follows: (1) for services or supplies for animals housed at the Benton County Animal Control Facility, billings shall be submitted to Benton County Animal Control at 1116 Grant Place, Kennewick, WA 99336; and (2) for services or supplies for animals owned by the Benton County Sheriff's Office, billings shall be submitted to the sheriff's office at 7122 W. Okanogan Place, Building B, Kennewick, WA 99336. Each bill shall detail the name of the animal, the date of service or purchase, and the service(s) performed or the supplies purchased. The COUNTY shall authorize payment when the billed for service or supplies are accepted by the COUNTY and will remit authorized payments to the CONTRACTOR within thirty (30) days after receiving the billing.

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation for those services. All work performed 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 performed, even if the work is accepted by the COUNTY.

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

COUNTY.

7. QUALIFICATIONS OF CONTRACTOR'S VETERINARIANS AND STAFF

By executing this Contract, CONTRACTOR guarantees that all veterinarians employed and working at its facility, the Vista Veterinary Hospital, are licensed in the State of Washington to practice veterinary medicine. The CONTRACTOR shall ensure that all of its veterinarians are continually licensed throughout the duration of the Contract. The CONTRACTOR guarantees that any employee of the CONTRACTOR who performs work pursuant to this Contract is properly licensed and/or certified in accordance with all applicable federal, state, and local laws, rules, and regulations. The CONTRACTOR shall ensure that any employee performing work pursuant to this Contract is licensed and/or certified at the time he or she performs such work.

8. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

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

9. PERMITS AND LICENSES

The CONTRACTOR shall have and maintain any and all applicable professional, federal, state, or local certifications, licenses, or permits required by law and this Contract. The CONTRACTOR shall have sole responsibility for the cost of obtaining and maintaining such licenses, certifications, and permits. Proof of required certifications, licenses, and permits shall be provided to COUNTY within ten (10) days of the date of this Contract.

10. HOLD HARMLESS AND INDEMNIFICATION

The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses,

expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, caused in whole or in part by any act or omission, negligent or otherwise, of the CONTRACTOR or its veterinarians, technicians, agents, representatives, or employees, which arise in connection with the work performed under this Contract, or are caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents.

In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 10 shall survive termination and expiration of this Contract.**

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.

11. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days

written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

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

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

12. 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, which must be written subject to limits of not less than one million dollars ($1,000,000) each claim and two million dollars ($2,000,000) 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 thirty-six (36) months after the effective date of termination or completion of this Contract. If coverage is canceled or not renewed, and is not replaced with another claims-made policy form with a retroactive date prior to the Contract's effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of thirty-six (36) months after the completion of work. The CONTRACTOR shall annually provide COUNTY with proof of all such insurance.

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

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

c. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury and property damage, which 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 will contain an endorsement naming the COUNTY and its elected and appointed officials, employees, and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR'S commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR must obtain commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 10 of this Contract. The 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. Other Insurance Provisions

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

excess and not contributory to CONTRACTOR'S insurance policies.

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

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

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

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

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTY requires and 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. All liability insurance required under this Contract, except for professional liability under Section 12(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 Agreement 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.

e. Verification of Coverage and Acceptability of Insurers

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

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

2. Certificates of Liability Insurance with endorsements attached must be provided to the COUNTY'S Contract Representative set forth in Section 4.

3. All written notices under this Section 12 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY'S Contract Representative set forth in Section 4.

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

13. 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.

14. INDEPENDENT CONTRACTOR

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

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the CONTRACTOR is not entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.

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

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

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

15. COMPLIANCE WITH LAWS

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

16. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract or created in the performance of this contract for six (6) years after termination of this Contract for audit purposes.

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

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

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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.

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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 the following provisions: indemnification; insurance; non-waiver; inspection of books and records; choice of law; compliance with laws; litigation hold; and the Public Records Act.

26. LITIGATION HOLD NOTICE

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

27. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 *et seq.* Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records actually in its possession or in CONTRACTOR'S possession. This may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it

may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which 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 is intentionally left blank -

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

Date: _____

BENTON COUNTY

Chairman
Benton County Commissioner

Approved as to Form:

Eric Andrews
Civil Deputy Prosecuting
Attorney

Date: 10/26/20

VISTA VETERINARY HOSPITAL, INC. PC

Dr. Michelle Meyer
Vice President

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Purchasing Office Chairs for the Clerk's Office from Brutzmans Office Solutions. through Omnia Partners Contract
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

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

Summary / Background Information

The Clerk's Office is in need of replacing their office chairs, as most of them are approaching ten years old. Benton County is a registered member of the OMNIA Partners Purchasing Program, and they have a contract with Haworth Furniture. Brutzmans Office Solutions is the local dealer for Haworth Furniture. A quote was solicited from Brutzmans Office Solutions to purchase the office chairs utilizing the OMNIA Partners Purchasing Program for $15,082.32 plus WSST.

Fiscal Impact

Amount: $15,082.32 plus WSST

Fund: Current Expense – Department 106

Recommendation

The Clerks Office recommends purchasing the Haworth Office Chairs from Brutzmans Office Solution utilizing the OMNIA Partners purchasing program.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE PURCHASE OF HAWORTH OFFICE CHAIRS FROM BRUTZMANS OFFICE SOLUTIONS THROUGH THE OMNIA PARTNERS PURCHASING PROGRAM BY BENTON COUNTY CLERKS OFFICE

WHEREAS, by Resolution 2020-749 dated October 20, 2020, an Agreement for Cooperative Purchasing between Benton County and OMNIA Partners was approved; and

WHEREAS, OMNIA Partners has a contract with Haworth Furniture; and

WHEREAS, Brutzmans Office Solutions is the local dealer for Haworth Furniture; and

WHEREAS, The Clerk's Office is in need of replacing their office chairs, as most of them are approaching ten years old; and

WHEREAS, Brutzmans Office Solutions quoted a price of $15,082.32 plus WSST for Haworth office chairs utilizing OMNIA Partners Contract; and

WHEREAS, the Clerk's Office reviewed the quote for completeness and recommends the purchase of the Haworth office chairs, from Brutzmans Office Solutions through OMNIA Partners Contract; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with the Clerk's Office recommendation and authorizes the purchase of the Haworth office chairs, utilizing OMNIA Partners Contract from Brutzmans Office Solutions in the amount of $15,082.32 plus WSST.

Dated this 10th day of November, 2020.

_____
Chairman of the Board

_____
Chairman ProTem

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

Attest _____
Clerk of the Board

Original: Procurement
cc: Auditor, Clerk

P. Schut

HAWORTH®

Quote Print

A quote within the Lynx application is the capability to submit a list of products prior to order entry for product and price validation. Product availability and pricing may be different at time of order placement. Quotes generated through Lynx are valid for the length of time and under the terms and conditions indicated in the Special Pricing Agreement (SPA) or National Sales Agreement (NSA) approved by Haworth. Additional charges for Grade A COM fabrics and finishes will apply and be added to the order prior to invoicing. List prices may vary depending on the currency and exchange rates applied at the time of order and invoice; i.e. U.S./Canada intermarket transactions.

Sold To PO Number BCCLERK		
Reference PO Number		
Dealer Project ID BC CLERK	**Dealer Project Description** BC CLERK	
Sold To ID 2U607 Benton County 7122 W Okanogan Place Bldg A, Kennewick, WA, 99336, US		
Default Ship To: ID 14300 Brutzmans 2501 N Columbia Ctr Blvd, Richland, WA, 99352, US		

Lynx ID 3197257		**Quote Print Date** 9/15/2020
Quote Created Date 9/4/2020	**Price Date** 9/15/2020	**Quote Type** Pricing Only
Haworth Project ID		**Haworth Project Description**
Price Agreement and Option 80435.0035/AA Omnia Partners		
Freight Terms CPT		
Risk of Loss Transfer Point Delivered to Carrier		
Payment Currency USD		

Error/Disclaimer Messages

A quote within the Lynx application is the capability to submit a list of products prior to order entry for product and price validation. Product availability and pricing may be different at time of order placement. Quotes generated through Lynx are valid for the length of time and under the terms and conditions indicated in the Special Pricing Agreement (SPA) or National Sales Agreement (NSA) approved by Haworth. Additional charges for Grade A COM fabrics and finishes will apply and be added to the order prior to invoicing.

List prices may vary depending on the currency and exchange rates applied at the time of order and invoice; i.e. U.S./Canada intermarket transactions.

Shipping Instructions

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
10 / 100	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4H-PN,MB-CL,TR-F,TR-LE

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Ship To:

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4H_PN	Back 1 Color (Inside)	MB_CL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: CAMAS
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
20 / 200	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,XJ-SM,MB-CF,TR-F,TR-LE

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Ship To:

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	XJ_SM	Back 1 Color (Inside)	MB_CF
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019

Installation Tag: **Packaging Tag:** ALLISON **General Tag:**
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
30 / 300	1		LTL	806.74	50.000 %	50.00 %	Normal	403.37	403.37

SJT-30-711A5A,XJ-BL,XT-7,TR-F,TR-F **Ship To:**

Soji Task,Faux Lea St /Mesh Bk,4D Arm,Lum,Bk Lock,Adj Seat,Plst Base,Hrd Cstr,Assembled

Back Style	MESH	Arm Style	4D
Back Lumbar	LUM	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Seat Height Adjustment	PHA
Base Material	PLST	Base Foot	HRDCSTR
Assembled	ASMB	Surface Treatment,Front Side	NO_TREAT
Seat 1 Color	XJ_BL	Back 1 Color (Inside)	XT_7
Trim Color	TR_F	Base Color	TR_F

Status: Confirmed **Price Date:** 9/15/2020
Panel Location Label: **List Price Date:** 4/1/2019
Installation Tag: **Packaging Tag:** MARIE **General Tag:**
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
40 / 400	1		LTL	1247.39	55.000 %	55.00 %	Normal	561.33	561.33

SCT-20-7141,4H-BE,MS-HR,TR-7,TR-F,TR-F **Ship To:**

Very Task Chair,Fab Seat,Mesh Bk,4D Arms,Alum Bse Hd Ctrs,Bk Lk,Fwd Tlt, W/Lum,

Product Type	TASK	Stools	NO_STOL
Back Jacket	NO_BKJCK	Arm Style	4D
Back Lumbar	LUM	Seat Control	FWDTLT
Seat Height Adjustment	PHA	Seat Height	406-503
Base Material	ALUM	Base Foot	HRDCSTR
Foot Rest	NO_FTRST	Fire Code	NO_COD
Assembled	ASMB	Surface Treatment,Front Side	NO_TREAT
Seat 1 Color	4H_BE	Back 1 Color (Inside)	MS_HR
Back 2 Color (Outside)	NO_COL	Trim Color	TR_7
Frame Color	TR_F	Base Color	TR_F

Status: Confirmed **Price Date:** 9/15/2020
Panel Location Label: **List Price Date:** 4/1/2019
Installation Tag: **Packaging Tag:** JOAN **General Tag:**
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
50 / 500	1		LTL	947.85	55.000 %	55.00 %	Normal	426.53	426.53

SCT-20-0145,4H-GR,MS-KL,TR-7,TR-F,TR-7 **Ship To:**

Very Task Chair,Fab Seat,Mesh Bk,Armless,Plstc Bse Hd Ctrs,Bk Lk,Fwd Tlt, W/Lum,

Product Type	TASK	Stools	NO_STOL
Back Jacket	NO_BKJCK	Arm Style	NO_ARM
Back Lumbar	LUM	Seat Control	FWDTLT
Seat Height Adjustment	PHA	Seat Height	406-503
Base Material	PLST	Base Foot	HRDCSTR
Foot Rest	NO_FTRST	Fire Code	NO_COD
Assembled	ASMB	Surface Treatment,Front Side	NO_TREAT
Seat 1 Color	4H_GR	Back 1 Color (Inside)	MS_KL
Back 2 Color (Outside)	NO_COL	Trim Color	TR_7
Frame Color	TR_F	Base Color	TR_7

Status: Confirmed **Price Date:** 9/15/2020
Panel Location Label: **List Price Date:** 4/1/2019
Installation Tag: **Packaging Tag:** CINDY **General Tag:**
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
60 / 600	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4H-PN,MB-CL,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4H_PN	Back 1 Color (Inside)	MB_CL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag:
General Tag: JEANNINE
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
70 / 700	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,2A-IM,MB-CF,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	2A_IM	Back 1 Color (Inside)	MB_CF
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag:
General Tag: ELAINE
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
80 / 800	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4H-TK,MB-CF,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4H_TK	Back 1 Color (Inside)	MB_CF
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: GLORIA
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net

90 / 900	1	LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4J-CD,MB-RR,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4J_CD	Back 1 Color (Inside)	MB_RR
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: AMY M
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
100 / 1000	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4J-DT,MB-CL,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4J_DT	Back 1 Color (Inside)	MB_CL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: CHRISTINE
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
110 / 1100	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,3A-33,MB-RR,TR-7,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	3A_33	Back 1 Color (Inside)	MB_RR
Trim Color	TR_7	Frame Color	TR_LE
Base Color	TR_7	Arm upright stem Color	TR_7

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: KATHY
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
120 / 1200	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,2A-FT,MB-CF,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	2A_FT	Back 1 Color (Inside)	MB_CF
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: JANEEN
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
130 / 1300	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4J-CD,MB-SL,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4J_CD	Back 1 Color (Inside)	MB_SL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: AMY W
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
140 / 1400	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,XJ-BR,MB-RR,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	XJ_BR	Back 1 Color (Inside)	MB_RR
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: STEPHANIE
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
150 / 1500	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,XJ-GR,MB-SU,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	XJ_GR	Back 1 Color (Inside)	MB_SU
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: JOHN
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
160 / 1600	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4H-MA,MB-CL,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4H_MA	Back 1 Color (Inside)	MB_CL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: DIANE
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
170 / 1700	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,2A-DC,MB-CL,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	2A_DC	Back 1 Color (Inside)	MB_CL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: LORI
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
180 / 1800	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,XJ-CH,MB-LM,TR-F,TR-LE

Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	XJ_CH	Back 1 Color (Inside)	MB_LM
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: JUDY
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
190 / 1900	1		LTL	806.74	50.000 %	50.00 %	Normal	403.37	403.37

SJT-20-711A5A,4J-DT,XT-1,TR-F,TR-F
Ship To:

Soji Task,Fab St /Mesh Bk,4D Arm,Lum,Bk Lock,Adj Seat,Plst Base,Hrd Cstr,Assembled

Back Style	MESH	Arm Style	4D
Back Lumbar	LUM	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Seat Height Adjustment	PHA
Base Material	PLST	Base Foot	HRDCSTR
Assembled	ASMB	Surface Treatment,Front Side	NO_TREAT
Seat 1 Color	4J_DT	Back 1 Color (Inside)	XT_1
Trim Color	TR_F	Base Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: ROSA
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
200 / 2000	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,4J-DT,MB-CL,TR-F,TR-LE
Ship To:

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	4J_DT	Back 1 Color (Inside)	MB_CL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Price Date: 9/15/2020
Panel Location Label:
List Price Date: 4/1/2019
Installation Tag:
Packaging Tag: JALISA
General Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
210 / 2100	1		LTL	1247.39	55.000 %	55.00 %	Normal	561.33	561.33

SCT-20-7141,3A-33,MS-F,TR-F,TR-F,TR-LE,TR-F
Ship To:

Very Task Chair,Fab Seat,Mesh Bk,4D Arms,Alum Bse Hd Ctrs,Bk Lk,Fwd Tlt, W/Lum,

Product Type	TASK	Stools	NO_STOL
Back Jacket	NO_BKJCK	Arm Style	4D
Back Lumbar	LUM	Seat Control	FWDTLT
Seat Height Adjustment	PHA	Seat Height	406-503
Base Material	ALUM	Base Foot	HRDCSTR
Foot Rest	NO_FTRST	Fire Code	NO_COD

Assembled	ASMB	Surface Treatment,Front Side	NO_TREAT
Seat 1 Color	3A_33	Back 1 Color (Inside)	MS_F
Back 2 Color (Outside)	NO_COL	Trim Color	TR_F
Frame Color	TR_LE	Base Color	TR_F

Status: Confirmed
Panel Location Label:
Installation Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Price Date: 9/15/2020
List Price Date: 4/1/2019
Packaging Tag: NANCY
General Tag:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
220 / 2200	1		LTL	1431.34	50.000 %	50.00 %	Normal	715.67	715.67

SFT-U0-7S11A5,XJ-NM,MB-SL,TR-F,TR-LE

Fern,Task,Uph Seat,Mesh Back,4D Arm,Lumbar,Pneu w/Back Stop,Adj Seat,Plastic Base,Hd Cst

Ship To:

Product Type	TASK	Back Material	MESH
Base Material	PLST	Arm Style	4D
Arm Cap	SFT	Back Lumbar	LUM
Back Lock	BKLK	Seat Control	SYNTLT
Seat Depth Adjustment	DPTADJ	Base Foot	HRDCSTR
Seat Height Adjustment	PHA	Fire Code	NO_COD
Surface Treatment,Front Side	NO_TREAT	Assembled	ASMB
Seat 1 Color	XJ_NM	Back 1 Color (Inside)	MB_SL
Trim Color	TR_F	Frame Color	TR_LE
Base Color	TR_F	Arm upright stem Color	TR_F

Status: Confirmed
Panel Location Label:
Installation Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Price Date: 9/15/2020
List Price Date: 4/1/2019
Packaging Tag: JOSIE
General Tag:

Line #	Quantity	DG #	Transportation Mode	List Price	Net Effect Discount	Discount	Program	Net Price	Extended Net
230 / 2300	1		LTL	0.00	0.00 %	0.00 %	Normal	0.00	560.00

1-0229

Installation Non-Haworth Provided

Ship To:

Status: Confirmed
Panel Location Label:
Installation Tag:
Line Notes:
Invoice Notes:
Error/Disclaimer Messages:

Price Date:
List Price Date:
Packaging Tag:
General Tag:

Quote Totals	
Total List	29,388.89
Product Net Price	14,522.32
Other Product Charges	0.00
Other Service Adjustments	560.00
Adjustments	0.00
Quote Net Price	15,082.32
Sales Tax	1,297.08
Net Quote Total (USD)	16,379.40

Quote total does not include items in error.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Purchase of software licenses
Presenter:	n/a
Prepared By:	Elaine Osborne
Reviewed By:	Josie Delvin / Eric Andrews

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:

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

Type of Action Needed: *(Multiple boxes can be checked, if necessary)*

- ☐ Discussion Only
- ☐ Decision / Direction
- ☐ Sign Letter / Document
- ☐ Pass Motion
- ☐ Pass Resolution
- ☐ Pass Ordinance
- ☐ Execute Contract

Summary / Background Information

Additional software licenses need to be purchased for the addition of scanners for staff's individual workstations for the scanning of documents into court files. Also, additional licenses need to be purchased in anticipation of public access to court documents by member subscriptions.

Fiscal Impact

Funds have been allocated through the Clerk's Public Safety Tax Fund #0148101

Recommendation

We request that a resolution and the Statement of Work be signed authorizing the Clerk's Office to purchase the additional software licenses.

Suggested Motion

N/A - Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE STATEMENT OF WORK NO. 21130 BETWEEN IMAGESOFT, INC., AND THE BENTON COUNTY CLERK

WHEREAS, on December 3, 2019 the Board of Benton County Commissioners approved Resolution 2019-875 executing a Master Agreement with ImageSoft for annual support for the OnBase Document Management System; and

WHEREAS, OnBase is a document management system utilized by the Benton County Clerk, Benton County District Court and Benton County Superior Court; and

WHEREAS, the Benton County Clerk has a need to purchase 9 Desktop Document Imaging licenses for staff to perform their work tasks at their individual workstations and a need to purchase 6 concurrent licenses for the OnBase web-based version to allow additional public access to court documents; and

WHEREAS, the Benton County Clerk recommends the attached Statement of Work No. 21130 be approved;

NOW, THEREFORE

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners, is hereby authorized to sign the Statement of Work No. 21130 with ImageSoft, Inc for the purchase of additional software licenses; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners authorize the Benton County Clerk to expend funds up to $15,000 from the Clerk's Public Safety Tax budget, fund number 0148-101; and

BE IT FURTHER RESOLVED, this Statement of Work No. 21130 is hereby made a part of the Master Agreement and all other terms remain unchanged.

Dated this _____ day of November 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

cc: J. Delvin, Clerk; File; Original to Clerk

Elaine Osborne

ImageSoft

Statement of Work

Statement of Work No.	21130
Revision No.	2
Customer Name:	Benton County, WA
Project Name:	OnBase Licenses
ImageSoft Contact:	Steve Dale
Submitted Date:	10/23/2020

This Statement of Work is made and entered into by and between ImageSoft, Inc., a Michigan Corporation with its principal offices at 25900 West 11 Mile Rd, Suite 100, Southfield, MI 48034 ("ImageSoft"), and Benton County, WA with its principal offices at 7122 West Okanogan Place, Benton, WA 99336 ("Customer"):

This Statement of Work ("SOW") is to be attached to and is hereby made a part of the Master Agreement ("Master") entered into by and between Customer and ImageSoft dated 12/12/2019.

Unless otherwise specified, the products and services provided within this SOW are hereby added to and covered for the duration and under the terms of the System Maintenance Agreement (SMA) entered into by and between Customer and ImageSoft dated 12/12/2019.

To the extent that any terms and conditions contained in the related Master or SMA are in conflict with, or in addition to the terms and conditions of this Statement of Work, the terms and conditions of this Statement of Work shall control.

Introduction

This SOW will cover the purchase of nine (9) Desktop Document Imaging licenses and six (6) Local Government Concurrent Clients.

Desktop Document Imaging

Scans paper documents using only TWAIN compatible devices. Hyland Requirements: At a minimum a Workstation Client license, which is not included.

Local Government Concurrent Client

Provides retrieval, viewing, printing, and management of documents. Concurrent Clients have a minimum connection (lease) time of five (5) minutes. Both the OnBase Client or OnBase Web Client can use this license.

There are no professional services included in this Statement of Work (SOW). A separate SOW can be provided for the recommended professional service hours.

Pricing

The table below provides estimated pricing for software only.

Software				
	Product	**Unit Cost**	**# Units**	**Cost**
OnBase Software				
Desktop Document Imaging - *For <= 15 pages per minute*	AIIPW1	$500	9	$4,500
Local Government Concurrent Client	GV-B-MU2-CTIPC1	$650	6	$3,900
Recurring Software and Support				
OnBase Annual Maintenance and Telephone Support	OBMAINT			$1,680
Software and Support Subtotal				**$10,080**
Total				
				Cost
Grand Total				**$10,080**
Pricing valid for 30 days				

Payment Schedule

All payments will be due on a Net-30 day basis.

Third-Party Software Procurement and Maintenance

Unless otherwise specified, the third-party software that is being provided within this SOW will be ordered by ImageSoft immediately following the acceptance of this SOW.

Software Maintenance: The first year of software maintenance is required with every third-party software purchase. The software maintenance for the third-party software provided in this SOW will begin based on the selected option below:

☐ The third-party software is for a new system, and therefore maintenance will begin ninety (90) days after the software is ordered by ImageSoft.

☒ The third-party software is an add-on to an existing system, and therefore maintenance will begin immediately after the software is ordered by ImageSoft.

ImageSoft

Approval

Signature is required to accept this SOW. By signing below each party agrees to the proposed project scope and authorizes work to begin.

Agreed to:	*Agreed to:*
Benton County, WA	**ImageSoft, Inc.**
7122 West Okanogan Place, Benton, WA 99336	**25900 West 11 Mile Road, Suite 100, Southfield, MI 48034**
By: _____ Authorized Signature	By: Scott Bade Digitally signed by Scott Bade DN: cn=Scott Bade, o=ImageSoft, Inc, ou=HQ, email=sbade@imagesoftinc.com, c=US Date: 2020.10.27 16:53:26 -04'00' _____ Authorized Signature
Date: _____	Date: 10/27/2020
Name (Type or Print): _____	Name (Type or Print): Scott Bade
Title (Type or Print): _____	Title: (Type or Print): President
Project Name: OnBase Licenses	

Internal Use:	Opportunity #:	21130
	Sales Order #:	
	Doc Control #:	20200407

ImageSoft

Approval

Signature is required to accept this SOW. By signing below each party agrees to the proposed project scope and authorizes work to begin.

Agreed to:	*Agreed to:*
Benton County, WA	**ImageSoft, Inc.**
7122 West Okanogan Place, Benton, WA 99336	**25900 West 11 Mile Road, Suite 100, Southfield, MI 48034**
By: _____ Authorized Signature	By: _____ Authorized Signature
Date: _____	Date: _____
Name (Type or Print): _____	Name (Type or Print): Scott Bade
Title (Type or Print): _____	Title: (Type or Print): President
Project Name: OnBase Licenses	

Internal Use:	Opportunity #:	21130
	Sales Order #:	
	Doc Control #:	20200407

Approved as to form:

/s/ Eric Andrews 10/23/2020
Benton County Deputy Prosecuting Attorney

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 115

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental Dept Nbr: 115

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
511.600	4931	Fenced Item Contingency	$6,000	511.600	9802	ER & R Vehicle Maintenance Costs	$6,000
TOTAL			$6,000	TOTAL			$6,000

Explanation:

To appropriate funding for ER&R Vehicle Maintenance Costs for outstanding unpaid invoices from 2013-2018 for departments in Current Expense or a Current Expense funded Fund.

Prepared by: Linda Ivey Date: 03-Nov-2020

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 115 TO DEPARTMENT NUMBER 138

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental to Adult Drug Cour

Dept Nbr: 115 to Department Number 138

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 138

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
511.600	4931	Fenced Item Contingency	$20,043	512.215	1496	Drug Court Coordinator	$ 3,322
				512.215	1536	Drug Court Coordinator	$ 9,042
				512.215	1542	Adult Drug Court Secretary	$ 2,551
				512.215	2102	Social Security	$ 1,137
				512.215	2103	Medical Insurance	$ 3,891
				512.215	2119	Paid Family Leave Act	$ 100
TOTAL			$20,043	TOTAL			$20,043

Explanation:

Explanation: 2019-2020 Budget. Transfer of funds to accurately cover the costs incurred consistent with the Auditor's coding and the split of expenditures between Benton County and Franklin County for Adult Drug Court.

Prepared by: Linda Ivey

Date: 29-Oct-2020

Approved ❑

Denied ❑

Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 139

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by:
J Bowe

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: CARES Act

Dept Nbr: 139

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
513.100	4103	Professional Services	$1,101,000	557.200	3508	Computer Replacement	$1,000
				594.120	6401	Capital Outlay	$600,000
				594.230	6401	Capital Outlay	$500,000
TOTAL			$1,101,000	TOTAL			$1,101,000

Explanation:

Appropriate funding for CARES Act expenditures to appropriate line items.

Prepared by: Jennifer Bowe

Date: 26-Oct-2020

Approved ❑

Denied ❑

Date: _____

_____
Chairman

_____
Member

_____
Member

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: 11/10/2020	**Execute Contract**	**Consent Agenda X**
Subject: Approval of Interpreter Reimbursement Agreement	**Pass Resolution X**	**Public Hearing**
Prepared by: Ela Selga	**Pass Ordinance**	**1st Discussion**
Reviewed by:	**Pass Motion**	**2nd Discussion**
	None	**Other**

SUMMARY

The Washington State Administrative Offices of the Court (AOC) provides reimbursement for interpreter expenses incurred by Benton County District Court (BCDC). For the fiscal year 2020 which runs July 1, 2020 to June 30, 2021, the maximum reimbursable amount that BCDC can request is $35,689. BCDC is requesting approval of Interagency Agreement #IAA21534.

BACKGROUND INFORMATION

Annually the AOC offers reimbursement for interpreter expenses incurred by the courts for the purpose of improving and making available interpreters in compliance with RCW 2.42 and/or RCW 2.43. The Benton County Board of Commissioners approved the previous agreement between the Benton County District Court and the Washington State Administrative Offices of the Court (AOC) . The expired agreement was contained in Res 2019-981.

RECOMMENDATION

Approve the Interagency Agreement #IAA21534.

FISCAL IMPACT

none

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REQUEST FOR SIGNATURE FROM THE BOARD OF BENTON COUNTY COMMISSIONERS ON THE INTERAGENCY AGREEMENT #IAA21534 BETWEEN BENTON COUNTY, BENTON COUNTY DISTRICT COURT AND THE WASHINGTON ADMINISTRATIVE OFFICE OF THE COURTS, and

WHEREAS, the Washington State Administrative Office of the Courts (AOC) will provide reimbursement of interpreter costs up to $35,689 from the dates commencing July 1, 2020 and terminating on June 30, 2021;

WHEREAS, Rafaela Selga, District Court Administrator, believes it is the best interest of the District Court that the Agreement between the State of Washington Administrative Office of the Courts and Benton County be approved as presented for the term commencing July 1, 2020 and terminating on June 30,2021; **NOW THEREFORE**,

BE IT RESOLVED that the Board of Benton County Commissioners hereby accepts the proposed interpreter reimbursement agreement in the amount of $35,689 for the term commencing July 1, 2020 and terminating June 30, 2021;

BE IT FURTHER RESOLVED, that the Chairman of the Board of County Commissioners is authorized to sign lnteragency Agreement #IAA21534 between Benton County and the State of Washington Administrative Offices of the Courts.

DATED this _____ day of _____, 2020.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners
Of Benton County, WA

Cc: Auditor
Treasurer

RSelga

INTERAGENCY AGREEMENT IAA21534
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
BENTON COUNTY

THIS AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and Benton County, for the purpose of distributing funds for court interpreter and language access service expenses to the Benton County District Court (Court).

1. DEFINITIONS

For purposes of this contract, the following definitions shall apply:

a) "Certified Interpreter" means an interpreter who is certified by the Administrative Office of the Courts, as defined in RCW 2.43.020 (4) or an interpreter certified by the Office of the Deaf and Hard of Hearing (ODHH) pursuant to WAC 388-818-500, *et. seq.* The names and contact information of AOC-certified interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/ The names and contact information of ODHH-certified interpreters are found, and incorporated herein by reference, at: https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx

b) "Registered Interpreter" means an interpreter who is registered by the Administrative Office of the Courts, as defined in RCW 2.43.020 (6). The names and contact information of registered interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/.

c) "Qualified Interpreter" means a spoken language interpreter as defined in RCW 2.43.020 (2), or sign language interpreter as defined in RCW 2.42.110 (2).

d) "Qualifying Event" means a proceeding or event for which an interpreter is appointed by an appointing officer pursuant to RCW 2.42 and/or RCW 2.43.

2. PURPOSE

The purpose of this Agreement is to partner with individual local courts in improving access to the Court for Limited English Proficient (LEP), deaf, and hard of hearing persons in accordance with RCW Chapters 2.42 and 2.43.

a) These funds are intended to address each court's following needs:

- Financial Need – i.e., the gap between the court's available financial resources and the costs to meet its need for certified, registered, and qualified interpreters, and the implementation of the Court's language access plan; and
- Need for Court Interpreters – i.e., the public's right to access the court, and the court's responsibility to provide court certified, registered, and qualified interpreters as required by RCW Chapters 2.42 and 2.43.

- Need for Language Access in General – i.e., translations for websites, translated forms, interpreting equipment, technology enabling remote interpreting, and other things that are necessary for courts to provide fair and equitable access for people who are LEP, deaf, and hard of hearing.

3. DESCRIPTION OF SERVICES TO BE PROVIDED

a) The Court will ensure that the interpreter funding is used only for language access purposes and for reimbursement of costs paid to certified, registered, and qualified interpreters for Qualifying Events pursuant to **Exhibit A**, which is incorporated herein by reference.

b) The Court agrees to track and provide interpreter cost and usage data using a form provided by the AOC Interpreter Reimbursement Program, reflecting information about the Court's interpreter and language access costs and services.

c) The Court agrees to work with the AOC Interpreter Program, the Interpreter Commission, and neighboring courts to identify and implement best and promising practices for providing language access and interpreter services.

d) The Court agrees to encourage its staff overseeing interpreter services at the court to attend trainings (in person and/or online) provided by the AOC Interpreter Commission and Interpreter Program.

e) The Court may elect to pay for interpreter services that are not in accordance with the provisions of Exhibit A as set forth; however, such payments will not be reimbursed.

f) The Court is required to have a Language Assistance Plan (LAP) to be a part of the reimbursement program.

1) Courts Currently in the Reimbursement Program must submit their current LAP for review and approval by the Interpreter Commission by November 15, 2020.

2) Courts Joining the Reimbursement Program for the First Time must submit their LAP for review and approval by the Interpreter Commission by April 1, 2021. Staff from the Washington State Supreme Court Interpreter Commission will work with the new courts to develop and implement their LAPs, and will provide technical assistance and training when needed.

4. PERIOD OF PERFORMANCE

The beginning date of performance under this Agreement is **July 1, 2020**, regardless of the date of execution and which shall end on **June 30, 2021**.

5. COMPENSATION

a) The Court shall be reimbursed a maximum of **$35,689** for interpreter and language access services costs incurred during the period of July 1, 2020 to June 30, 2021. No reimbursement shall be made under this Agreement for interpreting services provided after June 30, 2021.

b) The Court shall receive payment for its costs for interpreter and language access services as set forth in **Exhibit A**, and incorporated herein.

c) The Court shall not be reimbursed for interpreter services costs for Qualifying Events or other goods and services set forth in **Exhibit A** until properly-completed A-19

invoices, and corresponding data (*See subsection 3b*), are received and approved by AOC, pursuant to the following schedule:

1) Reflecting Qualifying and non-qualifying Events, and any goods or services purchased, occurring between July 1, 2020 and September 30, 2020, must be received by the AOC no later than December 31, 2020.
2) Reflecting Qualifying and non-qualifying Events, and any goods or services, purchased occurring between October 1, 2020 and December 31, 2020, must be received by the AOC no later than March 1, 2021.
3) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between January 1, 2021 and March 30, 2021, must be received by the AOC no later than April 30, 2021.
4) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between April 1, 2021 and June 30, 2021, must be received by the AOC no later than July 31, 2021.

d) If this agreement is terminated, the Court shall only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.

e) The Court shall submit its A-19 invoices quarterly to: ReimbursementProgram@courts.wa.gov

The Data shall be submitted electronically to the AOC as described in Section 3b, above, and in conjunction with the quarterly invoice.

f) Payment to the Court for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed invoice and the completed data report.

g) The Court shall maintain sufficient backup documentation of expenses under this Agreement.

h) The AOC, in its sole discretion and upon notice, may initiate revenue sharing and reallocate funding among courts. If it appears the Court may not expend the maximum Agreement amount, the AOC may reduce the maximum Agreement amount. AOC may increase the maximum Agreement amount if additional funds become available through these revenue sharing provisions.

6. TREATMENT OF ASSETS AND PROPERTY

The AOC shall be the owner of any and all fixed assets or personal property jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

7. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the AOC. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and video and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. In the event that any of the deliverables under this Agreement include material not included within the definition of "works for hire," the Court hereby

assigns such rights to the AOC as consideration for this Agreement.

Data which is delivered under this Agreement, but which does not originate therefrom, shall be transferred to the AOC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the Court has a right to grant such a license. The Court shall advise the AOC, at the time of delivery of data furnished under this Agreement, 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 Agreement. The AOC shall receive prompt written notice of each notice or claim of copyright infringement received by the Court with respect to any data delivered under this Agreement. The AOC shall have the right to modify or remove any restrictive markings placed upon the data by the Court.

8. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

9. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement 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.

10. RECORDS, DOCUMENTS, AND REPORTS

The Court shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or Agreement. The Court will retain all books, records, documents, and other material relevant to this Agreement for six years after settlement, and make them available for inspection by persons authorized under this provision.

11. RIGHT OF INSPECTION

The Court shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington of the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

12. DISPUTES

Disputes arising under this Agreement shall be resolved by a panel consisting of one representative from the AOC, one representative from the Court, and a mutually agreed upon third party. The dispute panel shall thereafter decide the dispute with the majority prevailing. Neither party shall have recourse to the courts unless there is a showing of noncompliance or waiver of this section.

13. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

14. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

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

a. Applicable state and federal statutes and rules;
b. This Agreement; and
c. Any other provisions of the agreement, including materials incorporated by reference.

15. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

16. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

17. SEVERABILITY

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

18. AGREEMENT MANAGEMENT

The program managers noted below shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement:

AOC Program Manager	Court Program Manager
Michelle Bellmer PO Box 41170 Olympia, WA 98504-1170 michelle.bellmer@courts.wa.gov (360) 350-5373	**Rafaela Selga** Court Administrator 7122 W Okanogan Pl, Bldg A Kennewick, WA 99336-2359 rafaela.selga@co.benton.wa.us (509) 735-8476

19. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Agreement.

AGREED:

Administrative Office of the Courts

Signature *Date*

Dawn Marie Rubio
Name

Administrator, AOC
Title

County

Signature *Date*

Name

Benton County Commissioner
Title

Approved as to form:

Ryan K Brown, DPA

EXHIBIT A

WASHINGTON STATE INTERPRETER SERVICES FUNDING

Funding Conditions and Payment Structure

The Court Interpreter Reimbursement Program funding conditions and payment structure shall be as follows:

1. General Funding Conditions

The AOC will reimburse courts under this Agreement for the cost of interpreters and other goods and services that improve language access in the courts for Limited English Proficient ("LEP"), deaf, and hard of hearing persons. This includes AOC-certified, registered, or otherwise court-qualified interpreters appointed pursuant to RCW 2.42 and RCW 2.43 under the following conditions listed under Section 2 "Qualifying Interpreter Events."

It also includes goods and services that improve language access, listed under Section 3 "Language Access Items," and services listed under Section 4 "Language Access Services".

Courts shall work with AOC staff in determining whether an expense that is not explicitly mentioned below, qualifies as a reimbursable expense under the Agreement.

2. Qualifying Interpreting Events

The AOC will reimburse courts under this Agreement for the cost of AOC-certified, registered, or otherwise court-qualified interpreters appointed pursuant to RCW 2.42 and RCW 2.43 under the following conditions which are herein referred to as "Qualifying Events":

A. Spoken Language Interpreters Qualifying Events

1) Certified and Registered Language Interpreters

Compensation for interpreters currently credentialed by the AOC in the certified and registered language categories shall be reimbursed for actual compensation paid pursuant to the payment structure for those interpreters as outlined in Section 5 entitled "Payment Structure".

2) Non-Credentialed Interpreters in Certified and Registered Language Categories

If the AOC master interpreter list for certified or registered languages does not include any interpreters credentialed by the AOC for those languages, reimbursement will be provided for actual compensation paid pursuant to the payment structure as outlined in Section 5 "Payment Structure", for those interpreters, providing that the interpreter is found otherwise qualified on the record by the Court pursuant to RCW 2.43.

3) Non-Credentialed Languages

Compensation for interpreters for languages for which neither certification nor registration is offered will be reimbursed where the interpreter has been qualified on the record pursuant to RCW 2.43.

B. Sign Language Interpreters Qualifying Events

Reimbursement for actual expenses incurred for services of American Sign Language (ASL) interpreters appointed by an appointing authority pursuant to RCW 2.42 will be authorized pursuant to the payment structure as outlined in Section 5 "Payment Structure", when the interpreter is listed with the Department of Social and Health Services, Office of Deaf and Hard of Hearing (DSHS, ODHH) as a court-certified ASL interpreter.

C. Salaried Staff and Contract Interpreters

Reimbursement will be provided for salaried staff or contracted interpreters meeting the Qualifying Event conditions for the payment of credentialed spoken and sign language interpreters, as referenced in subsections (A) and (B) above.

D. Telephonic and Video Remote Interpreting

The AOC will reimburse local jurisdictions for using certified, registered, or otherwise qualified interpreters operating by telephone or video when providing court interpreting services for Limited English Proficiency (LEP) persons or persons who rely on sign language for in-court proceedings and for services that are provided by the Court to the public outside of the courtroom. To the extent possible, the services must meet the Qualifying Event conditions for the payment of credentialed spoken and sign language interpreters, as referenced in subsections (A) and (B) above.

3. Language Access Goods & Services

Courts can request reimbursement for the cost of goods and services that are meant to increase language access in the Court. A maximum of 50 percent of the court's total contract amount can be spent on goods and services.

The court shall seek approval by Program staff to use a percentage above 50 percent if there is a compelling reason to do so that will directly impact increased language access in the Court. Program staff approval must be documented in writing.

Language access goods and services will be reimbursed at 100% of the total cost, with the exception of interpreter costs and portable video devices, for which only 50% will be reimbursed.

The items listed below are acceptable for reimbursement and the Court does not need prior approval to seek reimbursement for the listed items.

Items or services not listed below, must be approved by Program staff prior to purchase or they will not qualify for reimbursement under the Program.

- Interpreter Scheduling Software or Service
- Document Translations
- Portable Video Device(s) for Video Remote Interpreting (only up to 50% reimbursement)
- Equipment used for Simultaneous Interpretation
- Printed Signage for Language Assistance Purposes
- Staff Training on Language Access, Interpreting, or Bilingual Skills Improvement provided by outside entities - (ex: interpreters skills training for bilingual staff who want to become certified, training for staff who are partly bilingual to improve their skills, general training on working with language access issues. Some examples can be found here: https://www.nmcenterforlanguageaccess.org/cms/en/courts-agencies/about-language-access-basic-training).

Other items or services may qualify for reimbursement, but the Court must gain approval from Program staff prior to purchasing and seeking reimbursement.

4. Scope of Reimbursement Funding

Reimbursement payment under this Agreement will only be made to the Court when the cost is paid out of the budget (or budgets, in the case of multi-court collaborative applicants) of the Court responsible for full payment.

5. Payment Structure

A. Hourly Rate

1) Rate for Spoken Language Interpreters
AOC will reimburse the Court for 50 percent of the hourly cost and hourly minimum charges submitted to the Court by AOC-certified, registered, or otherwise court-qualified interpreters providing services under this Agreement.

2) Rate for Sign Language Interpreters
AOC will reimburse the Court for 50 percent of the hourly cost and the hourly minimum charges for certified interpreters providing services under this Agreement.

3) Salaried Interpreters
AOC will reimburse the Court for 50 percent of the cost of staff interpreters and will reimburse only for their provision of interpreter services.

4) Contracted Interpreters
The cost of contracted interpreters who are paid on an hourly basis will be reimbursed under the same conditions as in 5.A and 5.B above. The cost of contract interpreters who are paid other than on an hourly basis (e.g., on a half-day or flat rate basis) will only be reimbursed for the actual number of hours of interpreting provided for each Qualifying

Event.

5) Telephone Interpreting Rate

The AOC will reimburse local jurisdictions for up to 50 percent of the cost of using certified, registered, or otherwise qualified interpreters providing interpretation by telephone or videophone for LEP persons or persons who rely on sign language.

6) Hourly Minimum Rate Charges

Where a minimum hourly rate charge is imposed, reimbursement will be paid for half of such hourly minimum rate.

B. Travel Time and Mileage

The AOC will reimburse Courts for up to 50 percent of the cost of interpreter travel time and mileage when such charges are in accordance with this Exhibit A and reimbursed as identified below in *Interpreter Travel and Mileage Reimbursement*. In such event, travel time and mileage charges will only be reimbursed for interpreters meeting the Qualifying Event conditions listed in Section 2 above. The AOC reserves the right to limit travel reimbursement to reasonable travel, based on known availability and location of certified, registered, or otherwise qualified interpreters.

INTERPRETER TRAVEL AND MILEAGE REIMBURSEMENT

Interpreter mileage and/or travel time will be reimbursed as follows:

1. MILEAGE

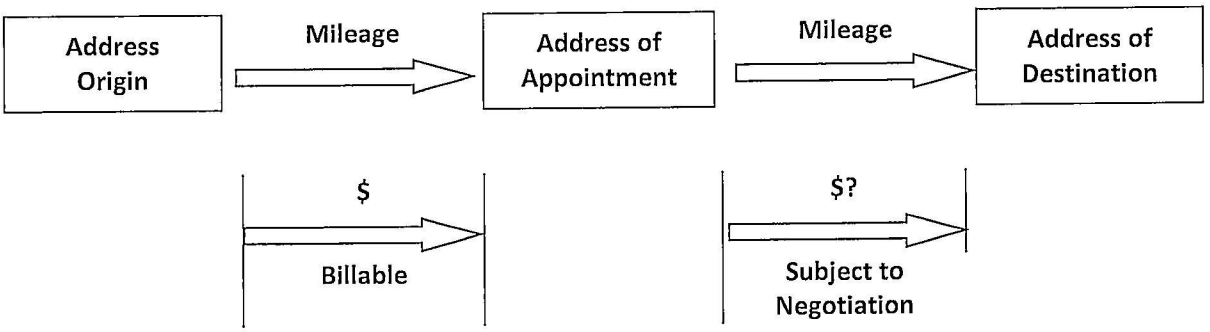
Interpreter mileage will be reimbursed in accordance with the prevailing Administrative Office of the Courts Policy. Notification will be sent prior to rate changes.

Mileage will be reimbursed on a from "address of origin"[1] to "address of appointment"[2] basis. The Court and interpreter will negotiate reimbursement for mileage traveled from the "address of appointment" to "address of destination"[3] on a case-by-case basis. (NOTE: Courts are encouraged to have a consistent policy regarding the return trip.) In Eastern Washington, due to the scarcity of interpreters and vast distance, it is recommended that the Court reimburse the interpreter for mileage on an "address of appointment" to "address of destination" or roundtrip basis[4].

Interpreter mileage related to an appointment is billable if a required party fails to appear. "Failure to appear" means a non-appearance by the LEP or deaf or hard of hearing client, attorneys, witnesses, or any necessary party to a hearing, thereby necessitating a cancellation or continuance of the hearing.

If the interpreter fails to appear, they will not be paid for mileage.

Mileage related to appointments that have been cancelled where the interpreter has received prior notice of the cancellation is not billable.



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[1] "Address of origin" means the interpreter's home, office, or immediately previous appointment meeting place.
[2] "Address of appointment" means the courthouse or other location of the interpreter assignment.
[3] "Address of destination" means the interpreter's home, office, or immediately next appointment meeting place.
[4] "Roundtrip" means from the interpreter's home/office to the appointed meeting place, followed by the interpreter's return to their home/office.

2. TRAVEL TIME

Travel time will be reimbursed on a from "address of origin" to "address of appointment" basis. The Court and interpreter will negotiate reimbursement for travel time from "the address of appointment" to "address of final destination" on a case-by-case basis at the time the appointment is requested. (NOTE: Courts are encouraged to have a consistent policy regarding the return trip.) In Eastern Washington, due to the scarcity of interpreters and vast distance for travel, it is recommended that the Court reimburse the interpreter for travel time on an "address of appointment" to "address of destination" or roundtrip basis.

Interpreters must travel for either a minimum of sixteen (16) miles or for one-half hour in order to be eligible for travel time reimbursement. Exceptions to the sixteen (16) mile minimum requirement shall be made when the use of a ferry contributes to the one-half hour or more of travel time.

Travel time will be reimbursed at a rate of one half the hourly interpreter rate for each hour of travel. Example: Interpreter traveled four hours to an appointment and the hourly rate is $50. One half of the hourly rate is $25. The calculation would be 4 x $25 = $100 for travel time.

Distance ⟹	**Reimbursable**
Origin Appointment 0 -15 Miles	Mileage Only
Origin ⟹ Appointment 16+ Miles or half-hour travel*	Mileage and Travel Time*

*Travel Time can be claimed only when traveling time is half an hour (30 minutes) or more.

Interpreter travel time related to an appointment is billable if a required party fails to appear. "Failure to appear" means a non-appearance by the LEP or deaf or hard of hearing client, attorneys, witnesses, or any necessary party to a hearing, thereby necessitating a cancellation or continuance of the hearing.

If the interpreter fails to appear, he/she will not be paid for travel.

Travel time related to appointments that have been cancelled where the interpreter has received prior notice of the cancellation is not billable.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Amendments to public defense contracts with attorney Danielle Purcell
Presenter:	Eric Hsu
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A PA's office doesn't review OPD contracts
(If no, include reasoning for no approval)

Type of Agenda Item:

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

Type of Action Needed: *(Multiple boxes can be checked, if necessary)*

- ☐ Discussion Only
- ☐ Decision / Direction
- ☐ Sign Letter / Document
- ☐ Pass Motion
- ☒ Pass Resolution
- ☐ Pass Ordinance
- ☒ Execute Contract

Summary / Background Information

Attorney Danielle Purcell provides public defense services for Benton County by way of two separate contracts: 1) Superior Court adult felonies; and 2) Childrens' Representation cases in Juvenile Court. Each of the contracts provide that they may be terminated by either party with or without cause, upon 90 days written notice.

Attorney Purcell has provided notice that she has taken a position as an Administrative Law Judge effective November 1, 2020 and will no longer be able to continue her duties pursuant to the two public defense contracts. She is requesting early termination.

Because of the fact that attorney Purcell has only had her Superior Court contract for a couple of months, there is a minimal caseload to transfer. Furthermore, an additional attorney has already become available. Therefore, the early termination of the Superior Court contract will have minimal impact on Benton County OPD. However, since there is an expense to Benton County as a result of the case transfers, it is appropriate for Attorney to forfeit her compensation for the month of October, 2020.

In the case of the Childrens' Representation contract, the unique nature of the cases (most of the cases of this type last for many years and are very open ended) and the fact that Benton County had been considering the reduction of attorneys assigned to this case type anyway, as a cost-saving measure, also makes accommodating Attorney's early termination request possible. However, since attorney will continue to work her cases in the month of October, 2020, forfeiture of compensation for the month of October, 2020 doesn't appear appropriate.

Fiscal Impact

None beyond budgeted.

Recommendation

Approve resolutions as proposed. Sign contract amendments

Consent Agenda

Be it resolved that the contract amendments to the public defense agreements with attorney Danielle Purcell, originally executed by and through Resolution 2019-541 (as amended by Resolution 2019-850), and Resolution 2020-481, be executed as proposed.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE SUPERIOR COURT PUBLIC DEFENSE AGREEMENT WITH ATTORNEY DANIELLE PURCELL, TO PROVIDE FOR EARLY TERMINATION OF THE AGREEMENT UPON CERTAIN AGREED TERMS

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for criminal cases; and

WHEREAS, Benton County contracts with, among others, attorney Danielle Purcell for public defense services in Benton County Superior Court; and

WHEREAS, the agreement with attorney Purcell provides that it may be terminated by either party, with or without reason, upon 90 days written notice; and

WHEREAS, Benton County OPD has been notified by attorney Purcell that she has taken on an Administrative Law Judge position starting November 1, 2020 and therefore is unable to continue with the contract and is further unable to continue any case responsibilities past October 31, 2020; and

WHEREAS, since it has only been a short time since attorney Purcell has started her contract, she only has a minimal caseload needing to be transferred; and

WHEREAS, it is therefore possible to accommodate her request for early termination of her agreement with minimal disruption; and

WHEREAS, since Benton County will be incurring costs to reassign her caseload, it is therefore appropriate for attorney Purcell to forfeit her right to compensation for the month of October even though she will continue to do work during the month including work necessary to reassign the cases; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Danielle Purcell, previously executed by and through Resolution #2020-481, is hereby amended to provide for the early termination of the agreement (as requested by attorney, *see Exhibit A)*, effective October 31, 2020, upon certain terms including Attorney's forfeiture of right to compensation for the month of October, 2020.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Danielle Purcell
Copy – Auditor, S Godinez

E. Hsu

Exhibit A

Eric Hsu

From: Danielle Purcell <dpurcelllaw@gmail.com>
Sent: Tuesday, October 6, 2020 9:25 AM
To: Eric Hsu
Subject: [EXTERNAL] Contracts

CAUTION: This email originated from outside of Benton County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Eric -

This is very difficult for me to write, but I must give my notice to terminate. This morning I was offered an opportunity to be an Administrative Law Judge for 12 months with OAH, & I cannot pass this opportunity up. They also require that I start almost immediately, with a full-time start date of 11/2/2020. This means I will have to give up my criminal & dependency cases by then.

I know my contract requires a 60 day notice, but I'm hoping we can work together & agree on a smooth & early transition because of the 11/2 start date. Is that workable? & what would it look like (i.e. when to reassign cases? when will my county pay stop just so I have a date in mind?)? If OPD administratively reassigns, I can quickly provide new attorneys with my files & subs of counsel & notify defendants.

I am very very sorry to do this to you, & I sincerely hope I have not burned a bridge with you. This job is set to last just 12 months, so if you will have me (& there is room for me), I would love to come back to work with/for you! Further, after my 5-7 week training period I am able to do outside work. So, if you have appeals, I would love to do those again, or even a docket that is only one day a week (because I can have a flex schedule to accommodate one day off a week).

Anyway, if you prefer that I go even sooner to not delay defendants' cases with later reassignments, I can start with OAH as of 10/16 if you think it is better to just reassign cases sooner rather than later? If 11/2 is better for you, I can work until 11/1. Again, I'm sorry & I hope you forgive me.

--

Danielle Purcell
Attorney At Law
Danielle L. Purcell Law Office, PLLC
1030 N Center Pkwy
Kennewick, WA 99336
509.438.6785
DPurcelllaw@gmail.com

"Prisons don't disappear problems, they disappear people."

Confidential And/Or Privileged Communication This message is intended solely for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the addressee, you are hereby notified that any use, distribution, or copying of this message is strictly prohibited. If you received this message in error, please notify us by reply e-mail or by telephone and immediately delete this message and any and all of its attachments.

AMENDMENT TO

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

BCSC2022DLP001A

CONTRACT SUMMARY			
Contract Type	Superior Court Full		
Contract Number	BCSC2022DLP001	**Contract Holder**	Danielle Purcell
WSBA #	45245	**Effective Dates**	August 1, 2020 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$680 per case (2020)** ***Eligible for increase in 2021/22 pursuant to increase for other contracts.***
Assigned Court	**Benton Superior**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly**

THIS AGREEMENT, previously entered into by and between **Danielle Purcell,** attorney at law, Washington State Bar Association #45245 ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court executed by and through Resolution #2020-481,

IS HEREBY AMENDED AS FOLLOWS:

A. Attorney is taking on a new position as an Administrative Law Judge effective the beginning of November and therefore needs to terminate this Agreement.

B. Due to conflict of interest and other reasons, Attorney will be unable to continue handling any cases appointed by and through this Agreement, after October 31, 2020.

C. Since Attorney has only been appointed cases pursuant to this Agreement for a short time, the number of cases on her caseload needing to be reappointed to new counsel is minimal.

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

1. **Early Termination.** Notwithstanding any provisions to the contrary in the underlying fully executed Agreement, Attorney shall be permitted to terminate this Agreement on less than 90 days written notice. Specifically, Attorney shall be permitted to terminate this Agreement, effective October 31, 2020, pursuant to her written notice dated October 6, 2020.

2. **No Continued Responsibility for Cases.** Attorney shall have no continued responsibility for her assigned caseload, pursuant to this Agreement, beyond the termination effective date of October 31, 2020.

3. **Reassignment of Cases.** Attorney shall cooperate with Benton County OPD, Benton County Superior Court, and other defense attorneys in facilitating the orderly and expedient reassignment of her cases throughout the month of October. Once cases are reassigned, Attorney shall provide any discovery she has received from the State to the new attorney. It is anticipated that Attorney will have, or will have had, minimal continued involvement in her cases in the month of October other than to facilitate the reassignment of the cases to new counsel.

4. **Compensation Forfeiture.** In consideration for being allowed to terminate this Agreement on short notice and for the elimination of otherwise applicable continued responsibility for assigned cases, Attorney agrees to forfeit her otherwise applicable contract compensation for the month of October, 2020. *If compensation for October, 2020 has, nevertheless, been provided to Attorney because of the timing of this contract amendment, then Attorney agrees to reimburse Benton County for the compensation or return the compensation check to the Benton County Auditor's Office.* **No other compensation shall be due Attorney after the effective date of the termination.**

5. This amendment shall be designated BCSC2022DLP001A

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 27, 2020 12:09 PDT)

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Oct 27, 2020
Date_____

D. Purcell
D.Purcell (Oct 27, 2020 12:07 PDT)

_____
Danielle Purcell, WSBA #45245

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Amendments to public defense contracts with attorney Danielle Purcell
Presenter:	Eric Hsu
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A PA's office doesn't review OPD contracts
(If no, include reasoning for no approval)

Type of Agenda Item:

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

Type of Action Needed: *(Multiple boxes can be checked, if necessary)*

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Fiscal Impact

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Recommendation

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Consent Agenda

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RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE JUVENILE "CHILDRENS' REPRESENTATION" PUBLIC DEFENSE AGREEMENT WITH ATTORNEY DANIELLE PURCELL, PROVIDING FOR EARLY TERMINATION OF THE AGREEMENT, EFFECTIVE OCTOBER 31, 2020

WHEREAS, Benton County is obligated by law to provide childrens' representation services (including representation by an attorney under certain circumstances) to children subject to termination of parental right proceedings and who meet certain age and other criteria ("Childrens' Representation"); and

WHEREAS, Benton County currently contracts with, among others, attorney Danielle Purcell ("Attorney"), to provide Childrens' Representation services ("Agreement"); and

WHEREAS, the agreement with Attorney provides that it may be terminated with or without cause on 90 days' written notice; and

WHEREAS, Benton County OPD has been notified by Attorney that she has taken on an Administrative Law Judge position starting November 1, 2020 and therefore is unable to continue with the contract and is further unable to continue any case responsibilities past October 31, 2020; and

WHEREAS, due to the nature of the typical Childrens' Representation caseload (cases continue for many years and are pretty open-ended) and the fact that Benton County had been reviewing the reduction of attorney contracts for Childrens' Representation as a cost-saving measure anyway, the early termination of the Agreement, as requested by Attorney, can be accommodated without negative impact to County; **NOW, THEREFORE**

BE IT RESOLVED that the Childrens' Representation public defense agreement with attorney Danielle Purcell, previously executed by and through Resolution #2019-541, as amended by Resolution 2019-850, is hereby amended as proposed, providing for early termination (as requested by Attorney) effective October 31, 2020, on the stated terms and conditions.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Danielle Purcell
Copy – Auditor, S Godinez

E. Hsu

AMENDMENT TO

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT (DEPENDENCY CASELOAD)

CONTRACT SUMMARY			
Contract Type	**Juvenile – Dependency**		
Contract Number	**BCJUV1921DLP001**	**Contract Holder**	**Danielle Purcell**
WSBA #	**45245**	**Effective Dates**	**7/15/19 – 12/31/21**
Caseload Cap	**30**	**Compensation**	**2019 - $3,065.36** **2020 - $3,126.50** **2021 - $3,189.20**

THIS AGREEMENT, previously entered into by and between **Danielle Purcell**, attorney at law, Washington State Bar Association **# 45245** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions ("County"), for and on behalf of the Benton-Franklin County Superior Court, executed by and through Resolution 2019-541,

IS HEREBY AMENDED AS FOLLOWS:

A. Attorney is taking on a new position as an Administrative Law Judge effective the beginning of November and therefore needs to terminate this Agreement.

B. Due to conflict of interest and other reasons, Attorney will be unable to continue handling any cases appointed by and through this Agreement, after October 31, 2020.

C. Attorney plans on, and has, continued to handle her existing caseload through the month of October, 2020.

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

1. **Early Termination.** Notwithstanding any provisions to the contrary in the underlying fully executed Agreement, Attorney shall be permitted to terminate this Agreement on less than 90 days written notice. Specifically, Attorney shall be permitted to terminate this Agreement, effective October 31, 2020, pursuant to her written notice dated October 6, 2020, **and this Agreement is hereby so terminated, with an effective date of October 31, 2020.**

2. **No Continued Responsibility for Cases.** Attorney shall have no continued responsibility for her assigned caseload, pursuant to this Agreement, beyond the termination effective date of October 31, 2020.

3. **Reassignment of Cases.** Attorney shall cooperate with Benton County OPD, Benton County Juvenile Court, and other defense attorneys in facilitating the orderly and expedient reassignment of her cases throughout the month of October. **Attorney agrees to continue providing services on all cases to which she has been previously assigned pursuant to this Agreement, throughout the month of October, 31, 2020.**

4. **Cessation of Compensation.** Attorney's monthly compensation shall cease as of October 31, 2020, after she has been compensated for the month of October, 2020.

5. This amendment shall be designated BCJUV1921DLP001A

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

Attorney		Benton County Office Of Public Defense	
D. Purcell D.Purcell (Oct 27, 2020 12:07 PDT)	Oct 27, 2020	Eric Hsu (Oct 27, 2020 12:09 PDT)	Oct 27, 2020
Danielle Purcell	**Date**	**Eric Hsu**	**Date**

BENTON COUNTY APPROVAL

By: _____

Name: _____
Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Awarding public defense contracts for Superior Court criminal cases
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A PA's Office doesn't review OPD contracts *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2021-2022 contract cycle:

a) Shelley Ajax
b) Karla Kane
c) Megan Whitmire
d) Dennis Hanson
e) Nicholas Blount
f) Catherine Harkins
g) Justin Andrews

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH DENNIS HANSON TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO ADULT DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for adult defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing contracts for public defense services on Criminal Cases ("Contracts") is set to expire on December 31, 2020; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new Contracts; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a Contract to attorney Dennis Hanson for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Dennis Hanson, designated BCSC2122DAH001, for services to be provided in Benton County Superior Court to adult defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $700 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Dennis Hanson
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122DAH001

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122DAH001	**Contract Holder**	Dennis A. Hanson
WSBA #	41655	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Contract Slot Identifier **SCF-3**			

THIS AGREEMENT is entered into by and between **Dennis A. Hanson,** attorney at law, Washington State Bar Association #41655 ("Attorney"), dba Rodriguez, Interiano, Hanson, and Rodgers, PLLC and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021,** and shall continue thereafter through and including **December 31, 2022,** unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this

Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 7502 W. Deschutes Pl, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 783-5551 and (509) 736-1151, respectively; and Attorney's current office/work e-mail address is Dennis@rihr-law.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS**. Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from

the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

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

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment

Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance

notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **140 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case

Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case.** For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $8,166, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

All compensation shall be made payable to: **Rodriguez, Interiano, Hanson, and Rodgers, PLLC** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by

submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for

any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's

review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for

any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to

obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 30, 2020 14:04 PDT)

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 30, 2020

Dennis Hanson (Oct 30, 2020 14:06 PDT)

_____
Dennis Hanson, WSBA 41655
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

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

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

Attorney acknowledgment:

Dennis Hanson (Oct 30, 2020 14:06 PDT)

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

Dennis Hanson 2021-2022 SC Contract

Final Audit Report 2020-10-30

Created:	2020-10-30
By:	Eric Hsu (eric.hsu@co.benton.wa.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAHvQdG1g3rlsZt2CmTffSDQ6PuykMn3i-

"Dennis Hanson 2021-2022 SC Contract" History

Document created by Eric Hsu (eric.hsu@co.benton.wa.us)
2020-10-30 - 8:59:21 PM GMT- IP address: 47.44.184.221

Document emailed to Dennis Hanson (dennis@rihr-law.com) for signature
2020-10-30 - 9:00:25 PM GMT

Document emailed to Eric Hsu (eric.hsu@co.benton.wa.us) for signature
2020-10-30 - 9:00:25 PM GMT

Document e-signed by Eric Hsu (eric.hsu@co.benton.wa.us)
Signature Date: 2020-10-30 - 9:04:20 PM GMT - Time Source: server- IP address: 47.44.184.221

Email viewed by Dennis Hanson (dennis@rihr-law.com)
2020-10-30 - 9:05:14 PM GMT- IP address: 174.204.69.155

Document e-signed by Dennis Hanson (dennis@rihr-law.com)
Signature Date: 2020-10-30 - 9:06:16 PM GMT - Time Source: server- IP address: 174.204.69.155

Agreement completed.
2020-10-30 - 9:06:16 PM GMT

Adobe Sign

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Awarding public defense contracts for Superior Court criminal cases
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A PA's Office doesn't review OPD contracts *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2021-2022 contract cycle:

a) Shelley Ajax
b) Karla Kane
c) Megan Whitmire
d) Dennis Hanson
e) Nicholas Blount
f) Catherine Harkins
g) Justin Andrews

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH JUSTIN ANDREWS TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO ADULT DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for adult defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing contracts for public defense services on Criminal Cases ("Contracts") is set to expire on December 31, 2020; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new Contracts; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a Contract to attorney Justin Andrews for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Justin Andrews, designated BCSC2122JJA001, for services to be provided in Benton County Superior Court to adult defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $700 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Justin Andrews
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122JJA001

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122JJA001	**Contract Holder**	Justin J. Andrews
WSBA #	48718	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation paid to:	Law Office of Justin J. Andrews, PLLC		
Contract Slot Identifier	**SCF-5**		

THIS AGREEMENT is entered into by and between **Justin J. Andrews**, attorney at law, Washington State Bar Association #48718 ("Attorney"), dba Law Office of Justin J. Andrews, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021,** and shall continue thereafter through and including **December 31, 2022,** unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's

staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 1030 N. Center Parkway, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 737-0068 and (509) 222-2223, respectively; and Attorney's current office/work e-mail address is jandrewslaw@gmail.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and

competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

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

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment

Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance

notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **140 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case

Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $8,166, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

All compensation shall be payable to **Law Office of Justin J. Andrews, PLLC** since attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by

submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for

any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's

review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for

any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to

obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

33. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 27, 2020 13:00 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 27, 2020

Justin J. Andrews (Oct 27, 2020 15:30 PDT)

Justin J. Andrews, WSBA 48718
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

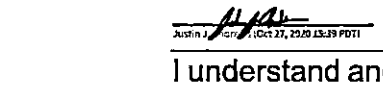
a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

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

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

Attorney acknowledgment:



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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Awarding public defense contracts for Superior Court criminal cases
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A PA's Office doesn't review OPD contracts *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2021-2022 contract cycle:

a) Shelley Ajax
b) Karla Kane
c) Megan Whitmire
d) Dennis Hanson
e) Nicholas Blount
f) Catherine Harkins
g) Justin Andrews

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH KARLA KANE TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO ADULT DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for adult defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing contracts for public defense services on Criminal Cases ("Contracts") is set to expire on December 31, 2020; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new Contracts; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a Contract to attorney Karla Kane for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Karla Kane, designated BCSC2122KKA001, for services to be provided in Benton County Superior Court to adult defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $700 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Karla Kane
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122KK001

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122KK001	**Contract Holder**	Karla Kane (Hudson)
WSBA #	31930	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation paid to:	Kane Law, PLLC		
Contract Slot Identifier **SCF-7**			

THIS AGREEMENT is entered into by and between **Karla Kane,** attorney at law, Washington State Bar Association #31930 ("Attorney"), dba Kane Law, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021,** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's

staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 21 N. Cascade St, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 545-4646 and (509) 545-8086, respectively; and Attorney's current office/work e-mail address is karla@kanelawpllc.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and

competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

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

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment

Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance

notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **140 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case

Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $8,166, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

All compensation shall be payable to **Kane Law, PLLC** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by

submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for

any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's

review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for

any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to

obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 27, 2020 13:02 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 27, 2020

Karla Kane (Oct 27, 2020 13:18 PDT)

Karla Kane, WSBA 31930
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

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

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

Attorney acknowledgment:



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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Awarding public defense contracts for Superior Court criminal cases
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A PA's Office doesn't review OPD contracts *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2021-2022 contract cycle:

a) Shelley Ajax
b) Karla Kane
c) Megan Whitmire
d) Dennis Hanson
e) Nicholas Blount
f) Catherine Harkins
g) Justin Andrews

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH MEGAN WHITMIRE TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO ADULT DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for adult defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing contracts for public defense services on Criminal Cases ("Contracts") is set to expire on December 31, 2020; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new Contracts; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a Contract to attorney Megan Whitmire for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Megan Whitmire, designated BCSC2122MW001, for services to be provided in Benton County Superior Court to adult defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $700 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Megan Whitmire
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122MW001

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122MW001	**Contract Holder**	Megan Whitmire
WSBA #	29933	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Contract Slot Identifier **SCF-9**			

THIS AGREEMENT is entered into by and between **Megan Whitmire,** attorney at law, Washington State Bar Association #29933 ("Attorney"), and **BENTON COUNTY, WASHINGTON,** a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021,** and shall continue thereafter through and including **December 31, 2022,** unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this

Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 1030 N Center Parkway, Suite 111, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 735-5059 and *no fax no*, respectively; and Attorney's current office/work e-mail address is whitmirelaw@gmail.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from

the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

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

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment

Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance

notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS**. During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **140 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case

Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $8,166, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall

include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent

credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the

expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for

any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to

obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 27, 2020 13:04 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 27, 2020

MEGAN WHITMIRE
MEGAN WHITMIRE (Oct 27, 2020 13:31 PDT)

Megan Whitmire, WSBA 29933
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

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

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

Attorney acknowledgment:

MEGAN WHITMIRE
MEGAN WHITMIRE (Oct 27, 2020 13:41 PDT)

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Awarding public defense contracts for Superior Court criminal cases
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A PA's Office doesn't review OPD contracts *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2021-2022 contract cycle:

a) Shelley Ajax
b) Karla Kane
c) Megan Whitmire
d) Dennis Hanson
e) Nicholas Blount
f) Catherine Harkins
g) Justin Andrews

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH NICHOLAS BLOUNT TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO ADULT DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for adult defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing contracts for public defense services on Criminal Cases ("Contracts") is set to expire on December 31, 2020; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new Contracts; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a Contract to attorney Nicholas Blount for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Nicholas Blount, designated BCSC2122NGB001, for services to be provided in Benton County Superior Court to adult defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $700 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Nicholas Blount
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122NGB001

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122NGB001	**Contract Holder**	Nicholas G. Blount
WSBA #	44783	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Contract Slot Identifier **SCF-2**			

THIS AGREEMENT is entered into by and between **Nicholas G. Blount,** attorney at law, Washington State Bar Association #44783 ("Attorney"), and **BENTON COUNTY, WASHINGTON,** a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021,** and shall continue thereafter through and including **December 31, 2022,** unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this

Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 1030 N. Center Parkway, Suite 307, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 735-5054 and (509) 222-2223, respectively; and Attorney's current office/work e-mail address is blountlawoffice@gmail.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from

the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

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

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS**. During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment

Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance

notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **140 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case

Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY**. The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case.** For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $8,166, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall

include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent

credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the

expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION**.

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for

any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to

obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 29, 2020 16:51 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date 10/29/2020

Nicholas Blount

Nicholas G. Blount, WSBA 44783
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

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

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

Attorney acknowledgment:

Nicholas Blount

_____

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

Nicholas Blount 2021-2022 SC Contract

Final Audit Report 2020-10-29

Created:	2020-10-29
By:	Eric Hsu (eric.hsu@co.benton.wa.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAANN_XAWOyDGqzZZdCTMqhnMRk_SowkFyK

"Nicholas Blount 2021-2022 SC Contract" History

Document created by Eric Hsu (eric.hsu@co.benton.wa.us)
2020-10-29 - 11:49:24 PM GMT- IP address: 47.25.191.53

Document emailed to Nicholas Blount (blountlawoffice@gmail.com) for signature
2020-10-29 - 11:51:07 PM GMT

Document emailed to Eric Hsu (eric.hsu@co.benton.wa.us) for signature
2020-10-29 - 11:51:07 PM GMT

Document e-signed by Eric Hsu (eric.hsu@co.benton.wa.us)
Signature Date: 2020-10-29 - 11:51:16 PM GMT - Time Source: server- IP address: 47.25.191.53

Document e-signed by Nicholas Blount (blountlawoffice@gmail.com)
E-signature obtained using URL retrieved through the Adobe Sign API
Signature Date: 2020-10-29 - 11:55:19 PM GMT - Time Source: server- IP address: 64.184.153.226

Agreement completed.
2020-10-29 - 11:55:19 PM GMT

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Awarding public defense contracts for Superior Court criminal cases
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A PA's Office doesn't review OPD contracts *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2021-2022 contract cycle:

a) Shelley Ajax
b) Karla Kane
c) Megan Whitmire
d) Dennis Hanson
e) Nicholas Blount
f) Catherine Harkins
g) Justin Andrews

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH SHELLEY AJAX TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO ADULT DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for adult defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing contracts for public defense services on Criminal Cases ("Contracts") is set to expire on December 31, 2020; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new Contracts; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a Contract to attorney Shelley Ajax for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Shelley Ajax, designated BCSC2122SAA001, for services to be provided in Benton County Superior Court to adult defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $700 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Shelley Ajax
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122SAA001

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122SAA001	**Contract Holder**	Shelley A. Ajax
WSBA #	36227	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Contract Slot Identifier **SCF-8**			

THIS AGREEMENT is entered into by and between **Shelley A. Ajax,** attorney at law, Washington State Bar Association #36227 ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021,** and shall continue thereafter through and including **December 31, 2022,** unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this

Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 5861 W. Clearwater Ave, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 783-3330 and (509) 783-3334, respectively; and Attorney's current office/work e-mail address is shelley@ajaxlawfirm.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from

the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

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

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment

Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance

notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **140 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	Treatment
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case

Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case.** For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $8,166, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall

include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent

credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the

expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for

any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to

obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 27, 2020 13:08 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 27, 2020

Shelley Ajax
Shelley Ajax (Oct 27, 2020 13:24 PDT)

Shelley A. Ajax, WSBA 36227
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

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

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

Attorney acknowledgment:

Shelley Ajax
Shelley Ajax (Oct 27, 2020 13:24 PDT)

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Awarding public defense contracts for Superior Court criminal cases
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A PA's Office doesn't review OPD contracts *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2021-2022 contract cycle:

a) Shelley Ajax
b) Karla Kane
c) Megan Whitmire
d) Dennis Hanson
e) Nicholas Blount
f) Catherine Harkins
g) Justin Andrews

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH CATHERINE HARKINS TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO ADULT DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for adult defendants charged with criminal offenses ("Criminal Cases") and is also obligated to provide public defense services in Benton County's "Veterans' Court" therapeutic court ("Veterans' Court"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys and provides representation in Veterans' Court by way of a contract attorney; and

WHEREAS, the existing contracts for public defense services on Criminal Cases ("Contracts") is set to expire on December 31, 2020; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new Contracts; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a Contract to attorney Catherine Harkins for public defense services on Criminal Cases in Superior Court as well as for public defense services in Veterans' Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Catherine Harkins, designated BCSC2122CEH001, for services to be provided in Benton County Superior Court to adult defendants charged with criminal offenses and for public defense services in Benton County's Veterans' Court, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $700 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Catherine Harkins
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122CEH001

CONTRACT SUMMARY			
Contract Type	Full Monthly		
Contract Number	BCSC2122CEH001	**Contract Holder**	Catherine Harkins
WSBA #	38113	**Effective Dates**	Jan 1, 2021-Dec 31, 2022
Caseload Cap	**98 + Veterans' Court**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court Veterans' Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation paid to:	Harkinslaw, PLLC		
Contract Slot Identifier	**SCF-1/VTC-1**		

THIS AGREEMENT is entered into by and between **Catherine Harkins,** attorney at law, Washington State Bar Association #38113 ("Attorney"), dba Harkinslaw, PLLC, and **BENTON COUNTY, WASHINGTON,** a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021,** and shall continue thereafter through and including **December 31, 2022,** unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's

staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 8350 Grandridge Blvd Suite 200, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 316-0596 and *no fax no*, respectively; and Attorney's current office/work e-mail address is harkinslaw@gmail.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and

competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

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

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

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

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

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

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law.

A) The first part of Attorney's caseload will consist of criminal cases pending in Benton County Superior Court for which public defense is required by law, as further described by the following ("Superior Court Criminal Cases"):

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.

- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

B) The second part of Attorney's caseload will consist of full public defense representation to all participants or prospective participants in Veteran's Court ("VC").

More specifically, Attorney shall have the following duties regarding cases accepted into VC:

i. Attendance at all VC "Team meetings";

ii. Attendance at all VC dockets;

iii. Meeting with VC participants as necessary to advise them about the VC process or system, assist them with participation hurdles, encourage compliance, answer questions, and prepare to advocate against sanctions;

iv. Preparation for, and advocacy on behalf of, clients at any sanctions hearings;

v. Taking any and all other action necessary to effectively advocate for the legal rights and interests of, participants in VC as would be required of Attorney by the Rules of Professional Conduct and such standards as are recognized by the appellate courts of Washington State that would be applicable to attorneys defending participants in a similar therapeutic court;

Attorney shall have the following duties regarding cases involving *prospective* VC participants (ie that have been identified as potential candidates for VC or have been referred to VC for review, but have not yet been formally accepted into the VC program):

vi. Meeting with potential VC participants to discuss the VC program and advise them of their legal rights and options in regard thereto ("Pre-VC Counseling");

vii. Participation in VC case screening with the VC Manager or other VC staff or team members;

viii. Consulting with other criminal defense lawyers as requested to assist them with referrals to the VC program;

ix. If the case has been appointed to Attorney pre-VC acceptance, then Attorney shall attend pre-trial court dates with the client and take any necessary action, including, but not limited to, advising the court and prosecutor of the fact that the case may be admitted to VC, in order to protect the rights of such a client until a decision is made whether to admit the case to VC;

6. **CONTINUED REPRESENTATION.**

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

conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **98 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-

provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with

the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case** for Superior Court felony matters to which she is appointed (i.e. the portion of her contract duties encompassed by Section 5A). For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $5,716.66, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

Additionally, Attorney shall be compensated in the amount of **$4,166 per month** for Veterans' Court representation (i.e. the portion of her contract duties encompassed by Section 5B).

All compensation shall be payable to **Harkinslaw, PLLC** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently

due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution

of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the

expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for

any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to

obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

33. **PERFORMANCE STANDARDS MONITORING.** The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (Oct 27, 2020 12:52 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 27, 2020

Catherine Harkins (Oct 27, 2020 13:33 PDT)

Catherine Harkins, WSBA 38113
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

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

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

Attorney acknowledgment:



Cadienne Hankins (Oct 27, 2020 13:33 PDT)

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020 **Memo Date:** November 3, 2020
Subject:	Hearings Examiner Contract Renewal 2021-2022
Presenter:	
Prepared By:	Donna Hutchinson
Reviewed By:	Greg Wendt

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☐ Public Hearing	☒ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☒ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

The Board of County Commissioners on October 28, 2014, replaced the Board of Adjustment with a Hearings Examiner as the party responsible for making decisions on various permits, decisions and appeals. The Board signed a Hearing Examiner Personal Services Contract (Contract) with Susan E. Drummond, PLLC on November 19, 2019 which expires on December 31, 2020. The Benton County Planning Department contacted Ms. Drummond with regards to the expiration of the Contract and she responded by stating that she would be willing to renew the Contract with Benton County for two years ending on December 31, 2022.

Fiscal Impact

For the 2021-2022 Contract years the compensation for the performance of services for the Hearings Examiner as shown in Exhibit B of the contract will remain the same. The expenses for the Hearing Examiner have been included with the Draft Planning Department budget cycle for 2021-2022 not to exceed $3500.00 per month.

Recommendation

It is the Planning Department's recommendation that the Board of County Commissioners sign the two-year Contract with Susan Elizabeth Drummond, PLLC for January 1, 2021 to December 31, 2022.

Suggested Motion

A motion to approve the attached Hearing Examiner Personal Services Contract with Susan Elizabeth Drummond, PLLC for two years, beginning on January 1, 2021 and ending on December 31, 2022.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

BEFORE THE BENTON COUNTY BOARD OF COMMISSIONERS IN THE MATTER OF COUNTY PLANNING RE: A PERSONAL SERVICES CONTRACT WITH SUSAN ELIZABETH DRUMMOND, PLLC, TO PROVIDE HEARINGS EXAMINER SERVICES FOR THE 2021-2022 CALENDAR YEARS.

WHEREAS, the Board of County Commissioners on October 28, 2014, adopted Ordinances which replaced the Board of Adjustment with a Hearings Examiner as the party responsible for making decisions on various permits, decisions and appeals; and,

WHEREAS, on November 19, 2019 a Hearing Examiner Services Contract with Susan Elizabeth Drummond, PLLC, was prepared and signed by the Board of County Commissioners commencing on January 1, 2020 and expiring on December 31, 2020; and,

WHEREAS, Susan Elizabeth Drummond was contacted by the Benton County Planning Department informing her that the Contract would expire on December 31, 2020 and asked if she would be willing to extend the contract for another two years; and,

WHEREAS, Susan Elizabeth Drummond has indicated that she is willing to extend the contract for two years; NOW THEREFORE,

BE IT RESOLVED, that the Board of County Commissioners hereby approves the attached Personal Services Contract between Benton County and Susan Elizabeth Drummond, PLLC for Hearings Examiner Services effective January 1, 2021 and which shall expire on December 31, 2022 unless extended by written amendment by both parties; and,

BE IT FURTHER RESOLVED that the County agrees to compensate Ms. Drummond no more than $3500.00 per month for the 2021-2022 Calendar Years.

Dated this _____ day of November 20____.

_____
Chairman of the Board

_____
Member

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

Attest.....
Clerk of the Board

GW/djh

Copy to PA's Office

BENTON COUNTY
HEARING EXAMINER 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 (hereinafter "COUNTY"), and the Law Offices of Susan Elizabeth Drummond, PLLC, a Washington corporation with its principal offices at 5400 Carillon Point, Bldg. 5000, Ste. 476, Kirkland, WA 98033 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

a. These Terms and Conditions**;**
b. Exhibit A, Scope of Work; and
c. Exhibit B, Compensation**.**

2. DURATION OF CONTRACT

This Contract shall be effective January 1, 2021 and shall expire on December 31, 2022 unless extended for another two years by written amendment of this section by the parties. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

a. A detailed description of the services to be performed by the CONTRACTOR is set forth in "Exhibit A, Scope of Work", which is attached hereto and incorporated herein by reference.

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 COUNTY.

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 and deadlines agreed by the parties.

e. Except as limited by the Appearance of Fairness Doctrine or other applicable laws, the CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports

and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

The COUNTY shall:

a. Prepare SEPA determinations, if required, on matters heard by CONTRACTOR.

b. Prepare agendas and schedule hearing items.

c. Publish all necessary legal advertisements and notices required for CONTRACTOR'S hearings.

d. Provide written staff reports to CONTRACTOR at least seven (7) calendar days prior to hearings, as well as maps and other exhibits as may be necessary regarding each matter to be heard.

e. Provide a staff person at all hearings to set up hearing room, record the hearing and receive the record of the hearing.

f. Maintain the official file for each case.

g. Distribute CONTRACTOR decisions to COUNTY departments, parties of record and any other person entitled to receipt of a decision.

h. Provide CONTRACTOR with copies of all ordinances adopted by the COUNTY during the duration of the contract, related to land use laws and the Office of the Hearing Examiner, within a reasonable time after adoption.

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR: Susan Elizabeth Drummond, PLLC
5400 Carillon Point, Bldg. 5000, Ste. 476
Kirkland, WA 98033

b. For COUNTY: Benton County Planning Manager
P.O. Box 910
Prosser, WA 99350

5. COMPENSATION

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

a. A detailed description of the compensation to be paid by the COUNTY is set forth in "Exhibit B, Compensation", which is attached hereto and incorporated herein by reference.

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

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

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

7. INDEMNIFICATION BY CONTRACTOR

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments asserted by any

employee or agent of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

b. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature, including reasonable costs and attorney's fees in defense thereof, for injuries, sickness or death of persons, and damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONTRACTOR, its officers, agents, or employees, occurring in connection with the services required under this Contract; provided, this section shall not apply to allegations of any negligent act, error, or omission of CONTRACTOR in making a recommendation or a decision on an application as the Hearing Examiner.

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, the CONTRACTOR'S employees, agents or subcontractors.

8. LEGAL REPRESENTATION/INDEMNIFICATION BY COUNTY

a. The COUNTY agrees to provide insurance in the amount and kinds the COUNTY purchases in its policy with the Washington Counties' Risk Pool during the terms of this Contract for claims and lawsuits against CONTRACTOR alleging error in CONTRACTOR'S decisions as Hearing Examiner, and the COUNTY will hold harmless, indemnify and defend CONTRACTOR with respect to claims and lawsuits brought by third parties seeking monetary damages and/or reversal of CONTRACTOR'S decision under the same terms and conditions that a COUNTY employee would enjoy; provided, no indemnification or defense will be provided if the COUNTY elects to appeal or challenge CONTRACTOR'S decision as the Hearing Examiner unless CONTRACTOR has been named as a party in its personal capacity in the lawsuit.

b. The costs of such legal representation by the COUNTY under section 8.a above shall not be charged to the Hearing Examiner as long as the decision rendered is

within the scope of the duties called for by this Contract. CONTRACTOR agrees that the COUNTY may settle any matter for which it provides legal representation in any manner deemed appropriate by the COUNTY, with or without consulting with or obtaining the consent of CONTRACTOR. In the event any decision rendered by CONTRACTOR is determined to be outside the scope of CONTRACTOR'S duties, the COUNTY shall have no obligation to represent or defend CONTRACTOR or any decision rendered, and CONTRACTOR'S indemnity obligations set forth in this Contract shall apply.

9. INSURANCE

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

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

b. **Automobile Liability**: The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any auto (Symbol 1), or if the Contractor has no owned autos, 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 be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR. CONTRACTOR may use an excess or umbrella policy in conjunction with the underlying auto policy to satisfy the limit requirements of this subsection.

c. **Other Insurance Provisions**:

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY,

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

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

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

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

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

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

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

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.

10. Umbrella or excess liability policies shall provide coverage at least as broad as specified for underlying coverages and cover those insured by the underlying policies. Coverage shall be "pay on behalf", with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against another.

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

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

1. Any insurance or self-insurance maintained by the COUNTY, its elected and 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, are to be provided to the County's Contract Representative referenced in Section 4.b.

3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.b.

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

10. TERMINATION

a. The COUNTY may terminate this Contract, with or without cause, upon sixty (60) days written notice personally delivered to the CONTRACTOR or mailed to the address set forth above in section 4.a. In the event of termination, all finished or unfinished documents, reports, or other material or work of the CONTRACTOR pursuant to this Contract shall be submitted to the COUNTY, and the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the date of termination in accordance with the Compensation section of this Contract.

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

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the services accepted by the COUNTY, in accordance with Exhibit B of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere.

11. NON-ASSIGNMENT AND PRO-TEM HEARING EXAMINER

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

b. It is contemplated that there will be times when CONTRACTOR cannot serve because of conflict of interest, an appearance of fairness conflict, illness or other good cause, and that the COUNTY may appoint or contract with a third party to serve as a pro-tem hearing examiner in the event of CONTRACTOR'S failure or inability to perform under this Contractor for any other reason at the COUNTY'S sole discretion.

12. OWNERSHIP OF WORK PRODUCTS

The COUNTY shall keep the official record in each matter before CONTRACTOR and all primary copies of exhibits. CONTRACTOR shall possess only secondary, working copies of all data, materials, reports, memoranda and other documents or recordings developed under this Contract. Upon any notice of termination, CONTRACTOR shall complete any outstanding, unfinished matter within all time periods required under this Contract. All completed decisions shall become the property of the COUNTY. Upon termination or expiration of this Contract, CONTRACTOR shall return any working copies in its possession, as requested by COUNTY, but shall be entitled to retain attorney work product.

13. 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.

14. INDEPENDENT CONTRACTOR

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

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

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

d. CONTRACTOR shall pay for all federal, state and local taxes, fees, licenses, or other payments or contributions required by federal, state or local law which are now or may be enacted during the term of this Contract that are due with respect to Contractor's business or employees engaged in the performance 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 made with reasonable basis to do so from the COUNTY'S contract representative or designee.

15. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including but not limited to laws pertaining to the ability of CONTRACTOR to act as hearing examiner in situations where CONTRACTOR may have an actual or apparent conflict of interest or appearance of unfairness.

16. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

17. NONDISCRIMINATION

The CONTRACTOR, its 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.

18. DISPUTES

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

19. CHOICE OF LAW, JURISDICTION AND VENUE

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

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

20. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR 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.

21. 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.

22. 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.

23. 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.

24. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections 7, 8, and 9); inspection and keeping of records and books (Section 16); litigation hold notice (Section 25); and Public Records Act (Section 26).

25. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 16 of this agreement may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Section 16.

26. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 *et seq*. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which 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.

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman

_____
Member

_____
Member

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

Attest:_____, Clerk of the Board

Approved as to Form:

_____, Deputy
Prosecuting Attorney

DATED: October 28, 2020

CONTRACTOR
Law Offices of Susan Elizabeth Drummond, PLLC

_____
Susan Drummond, Member

EXHIBIT A

SCOPE OF WORK

1. All duties of CONTRACTOR shall be performed pursuant to the direction of the COUNTY'S Planning Manager or his or her designee.

2. CONTRACTOR shall assist in the implementation and improvement of a hearing examiner system for the COUNTY, and such assistance shall include but is not limited to monitoring and consulting on possible updates to the COUNTY'S Rules of Procedure of the Office of Hearing Examiner that comply with Benton County Code Chapter 17.20 and all applicable law.

3. CONTRACTOR shall, at the COUNTY'S request, conduct hearings, render decisions and perform all necessary related acts in order to fulfill the duties set forth in Benton County Code Chapter 17.20, as currently in effect or as hereafter amended. Such related acts include, but are not limited to, receiving and examining all information presented to it, conducting all necessary public hearings, preparing and adopting written Findings of Fact and Conclusions of Law and Decisions, when legally required or when otherwise appropriate. Such decisions shall be rendered within the time period allowed by Benton County Code Chapter 17.20 as currently in effect or as hereafter amended.

4. CONTRACTOR shall regularly hold hearings on dates convenient to staff and as frequently as needed to review and decide upon applications in a timely manner. Unless special notification is given otherwise, hearings will be held in Prosser, Washington. CONTRACTOR may schedule special meetings and continued meetings, as deemed necessary and with concurrence of the COUNTY.

5. CONTRACTOR will work independently and without direct supervision. CONTRACTOR will remain fully knowledgeable of COUNTY zoning code and all other COUNTY codes, regulations, ordinances, resolutions and policies affecting the areas of concern related to CONTRACTOR'S duties.

6. CONTRACTOR shall perform its duties under the Contract to the COUNTY'S satisfaction, including, but not limited to, conducting orderly and impartial hearings, creating a professional and courteous environment for applicants, citizens and staff; and timely preparing decisions based on sound reasoning and all applicable law. When deemed appropriate and under the circumstances allowed by law, CONTRACTOR shall make site visits to familiarize itself with the site of the proposed land use and surrounding area.

7. CONTRACTOR shall provide all office space and equipment necessary to perform its obligations under this Contract and shall maintain an active e-mail address for electronic communications and transfer of information.

8. CONTRACTOR shall annually report in writing to the COUNTY by December 31st of each year regarding the decisions rendered during the year and state any recommendations for changing or improving the COUNTY'S hearing examiner system.

EXHIBIT B

COMPENSATION

For the performance of services under this Contract, the COUNTY agrees to compensate CONTRACTOR as follows:

A. For months where hearing(s) are held in Benton County:

(1) $3,000.00 for a month if only one trip to the County for public hearings is required in a month and the hearing(s) on that day end by 9:00 p.m. or,

(2) $3,500.00 for each month that more than one trip by the contractor is necessary for public hearing(s), or if the hearing(s) extends past 9:00 p.m. on a particular date; or,

B. For months where no hearings are held in Benton County:

(1) $250.00, as compensation for advice and non-hearing items.

C. CONTRACTOR is not entitled to reimbursement for expenses incurred under this Contract, and the above amounts are the sole compensation and consideration payable to CONTRACTOR under this Contract.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Accepting work performed by Craftsman Cabinets & Flooring, Inc. for the Public Services Building Countertop Replacement project
Presenter:	
Prepared By:	S. Christen
Reviewed By:	R. Blain

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

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

Summary / Background Information

The County entered into a contract with Craftsman Cabinets & Flooring, Inc. for the Public Services Building Countertop Replacement project on September 15, 2020 (Res. 2020-610). Craftsman Cabinets & Flooring, Inc. has completed all work required under the contract. The project has been examined by the Director of Operations and Capital Programs and has been found to be in compliance with the project specifications and drawings.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The Director of Operations and Capital Programs recommends that the Board formally accept Craftsman Cabinets & Flooring, Inc.'s work and the project as complete.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ACCEPTING WORK PERFORMED BY CRAFTSMAN CABINETS & FLOORING, INC. UNDER CONTRACT FOR THE PUBLIC SERVICES BUILDING COUNTERTOP REPLACEMENT PROJECT

WHEREAS, on September 15, 2020 the Board of County Commissioners entered into a contract with Craftsman Cabinets & Flooring, Inc. of Richland, Washington (Resolution 2020-610) for the Public Services Building Countertop Replacement project; and

WHEREAS, the contractor has completed all work required pursuant to their contract with Benton County for the project; and

WHEREAS, all releases for the project retainage have been received and all close out paperwork is in order; and

WHEREAS, this project has been examined by the Director of Operations and Capital Programs and has been found to be in compliance with the applicable project specifications and drawings; and

WHEREAS, it is the Director of Operations and Capital Programs' recommendation that the Board of Benton County Commissioners formally accept the contractor's work and the project as complete; **NOW, THEREFORE,**

BE IT RESOLVED that the Board of Benton County Commissioners concurs with the Director of Operations and Capital Programs' recommendation and hereby accepts the work performed by Craftsman Cabinets & Flooring, Inc. under contract for the Public Services Building Countertop Replacement project as being completed in conformance with the contract documents.

Dated this 10th day of November 2020.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: Public Works
c: PA

S. Christen

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10th, 2020
Subject:	Approval of Construction plans for Country Acres Subdivision
Presenter:	N/A
Prepared By:	Cristina Woods
Reviewed By:	Douglas D'Hondt

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:

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

Type of Action Needed: *(Multiple boxes can be checked, if necessary)*

- ☐ Discussion Only
- ☐ Decision / Direction
- ☐ Sign Letter / Document
- ☐ Pass Motion
- ☒ Pass Resolution
- ☐ Pass Ordinance
- ☐ Execute Contract

Summary / Background Information

RCW 36.77.010 requires that all plans for the construction or improvement of a county road be filed with and approved by the Board of County Commissioners.

Tyler Tapani with TTAP Construction has submitted plans which have been approved by the Benton County Engineer. The plans are now being submitted to the Board of Benton County Commissioners, and the corresponding resolution authorizes the Chairman to sign the construction plans for Country Acres, with a road named Homestead Road.
Upon completion of this project said road is to have a speed limit of 25 mph.

The plans for the above referenced project, having been signed by the County Engineer, are hereby presented for approval to the Board of County Commissioners.

* Note: Original signature sheet will be brought to commissioners meeting to be signed.

Fiscal Impact

N/A

Recommendation

Staff recommends that the Commissioners sign the cover sheet, approving the project

Suggested Motion

Approve as part of consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF BENTON COUNTY APPROVING CONSTRUCTION PLANS FOR HOMESTEAD ROAD AS PART OF COUNTRY ACRES SUBDIVISION AND SETTING THE SPEED LIMIT FOR HOMESTEAD ROAD.

WHEREAS, RCW 36.77.010 requires that all plans for the construction or improvement of County roads be filed with and approved by the Board of County Commissioners; **and**

WHEREAS, plans for the above referenced project, having been reviewed and approved by the County Engineer, are hereby presented for approval to the Board of County Commissioners; **and**

WHEREAS, the County recommends placing a 25 mph speed limit on Homestead Road; **and**

WHEREAS, the Board of County Commissioners of Benton County, Washington, is desirous of making certain restrictions on the traffic using the County Roads designated below in the protection of life, health, safety, welfare and convenience of the inhabitants of the County; **NOW, THEREFORE,**

BE IT RESOLVED that the construction plans for Homestead Road be approved and that the Chairman is authorized to sign said construction plans; **and**

BE IT FURTHER RESOLVED by the Board of County Commissioners of Benton County, Washington, that the traffic control on County Roads shall be as follows:

It shall be unlawful for the operator of any vehicle to operate the same in excess of 25 mph on the following roadways:

Homestead Road – From Country Heights Drive to end of road

Dated this 10th day of November 2020.

_____
Chairman

_____
Chairman Pro-Tern

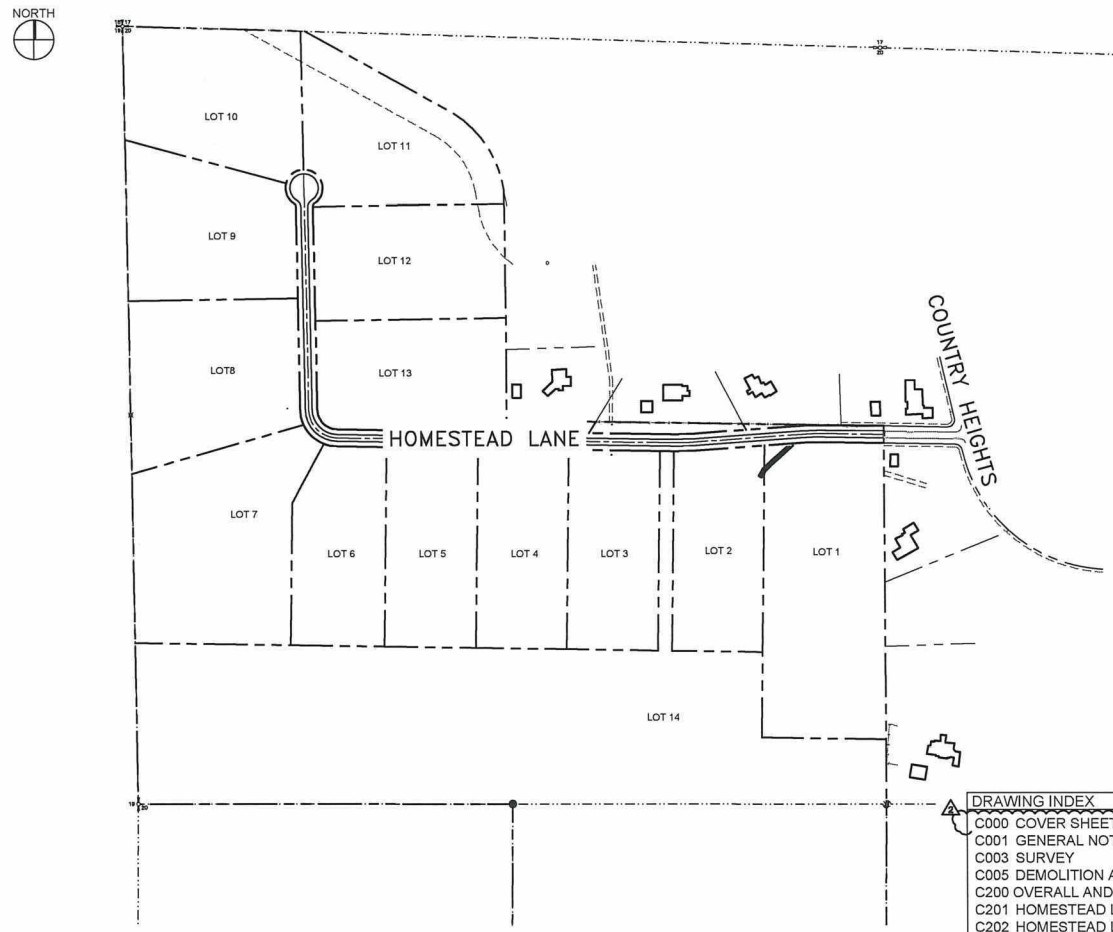
_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works C. Woods

COUNTRY ACRES



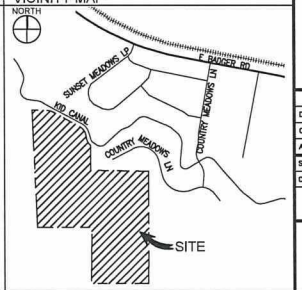
DRAWING INDEX

C000	COVER SHEET
C001	GENERAL NOTES AND LEGEND
C003	SURVEY
C005	DEMOLITION AND EROSION CONTROL PLAN
C200	OVERALL AND UTILITY SITE PLAN
C201	HOMESTEAD LN PLAN AND PROFILE PLAN
C202	HOMESTEAD LN PLAN AND PROFILE PLAN
C203	HOMESTEAD LN PLAN AND PROFILE PLAN
C204	HOMESTEAD LN PLAN AND PROFILE PLAN
C205	HOMESTEAD LN PLAN AND PROFILE PLAN
C206	HOMESTEAD LN PLAN AND PROFILE PLAN
C207	HOMESTEAD LN PLAN AND PROFILE PLAN
C501	DETAILS, PROFILES AND SECTIONS

BENTON COUNTY SIGNATURE BLOCK

OWNER	APPROVED	DATE
BENTON PUD		
ZIPLY FIBER		
KENNEWICK IRRIGATION DIST		
BENTON COUNTY ENGINEER		
BOARD OF COMMISSIONERS		
CLERK OF THE BOARD		
FIRE MARSHALL		

VICINITY MAP



KNUTZEN ENGINEERING
5401 RIDGELINE DR.
SUITE 160
KENNEWICK, WA 99338
1-509-222-0959
www.knutzenengineering.com

No.	REVISIONS	DATE	DESIGN	CHKD	APPD
1	COUNTY COMMENTS	10/09/20	JAW	NJM	NJM
2	ADDITIONAL COUNTY COMMENTS	10/28/20	JAW	NJM	NJM

NATHAN J. MACHELA 39372 REGISTERED PROFESSIONAL ENGINEER
10/28/20

COVER PAGE, DRAWING INDEX AND VICINITY MAP
TTAP CONSTRUCTION
COUNTRY ACRES
BENTON COUNTY, WASHINGTON

APPROVAL		
DESIGN	JAW	09/22/20
CHECKED	NJM	09/22/20
APPROVED	NJM	09/22/20

SCALE: AS NOTED
CADFILE: 20118C01
JOB No. 20118
REV. 2
DWG. No. C000

I:\2020\20118-Country Acres\DWG\20118C01.dwg - Oct 29, 2020 - 03:50pm - nma

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Purchase of deicer storage tanks from Ag Enterprise Supply, Inc. utilizing State Contract No. 07514
Presenter:	N/A
Prepared By:	Andrea Myers
Reviewed By:	Blanca Parham

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

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

Summary / Background Information

The Benton County Public Works Department has found a need for additional deicer storage tanks and components for public works usage. Deicer storage tanks and components can be purchased utilizing the Washington State Master Contract Usage Agreement-Contract No. 07514 from Ag Enterprise Supply, Inc.

Fiscal Impact

Amount: Not to exceed $40,000.00 including WSST

Fund: Road (0101-101)

Recommendation

The County Engineer recommends approving the purchase of deicer storage tanks and components from Ag Enterprise Supply, Inc. utilizing Washington State Contract No. 07514 from November 10, 2020 through December 16, 2022 at or below the current state contract rate in an amount not to exceed $40,000.00 including WSST.

Suggested Motion

Approve the resolution as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF LIQUID MAGNESIUM CHLORIDE (DEICER) STORAGE TANKS UTILIZING THE WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES MASTER CONTRACT USAGE AGREEMENT-CONTRACT NO. 07514 FROM AG ENTERPRISE SUPPLY, INC., CHENEY, WASHINGTON

WHEREAS, per Resolution 2013-431 dated June 11, 2013, the Board of County Commissioners approved the Master Contract Usage Agreement for the purpose of purchasing or acquiring goods and services under contracts entered into by the Department of Enterprise Services; and

WHEREAS, the Public Works Department has found a need for additional deicer storage tanks and components for public works usage; and

WHEREAS, deicer storage tanks and components are listed on Contract 07514 and are available from Ag Enterprises Supply, Inc., Cheney, Washington; and

WHEREAS, the County Engineer recommends approving the purchase of deicer storage tanks and components utilizing the Master Contract Usage Agreement-Contract No. 07514; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners authorizes the Public Works Department to purchase deicer storage tanks and components from Ag Enterprises Supply, Inc., Cheney, Washington utilizing the Washington State Master Contract Usage Agreement-Contract No. 07514 from November 10, 2020 through December 16, 2022, at or below the current state contract rate in an amount not to exceed $40,000.00 including WSST.

Dated this 10th day of November, 2020.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Public Works
c: Auditor

A. Myers

State of Washington
Pricing & Ordering Information

Effective Date: December 1, 2017

Contract number:	07514
Contract title:	Deicer Storage Tanks
Current period:	12/17/15 to 12/16/18
Contract term:	Not to exceed 12/16/22.
Contract type:	This contract is designated as **mandatory** use.
CONTRACTORS:	This contract is awarded to **AG Enterprise Supply, Inc.**
For use by:	All State Agencies, Political Subdivisions of Washington and Oregon State, Qualified Non-profit Corporations, Participating Institutions of Higher Education (College and Universities, Community and Technical Colleges). ORCPP Members add 10% to purchase price.
Contractor:	AG Enterprise Supply, Inc. 17005 W. SR904 Cheney, WA 99004
Sales/Customer Service:	**PHONE: 1-800-782-7786** Ryan Kuster kusterr@agenterprise.com Collin Mikkelborg mikkelborg@agenterprise.com
Purchasing Cards Accepted:	Visa, Mastercard, American Express
Products/Services available:	Deicer Storage Tanks (polyethylene) 5,000 Gallon up to 10,500 Gallon

State of Washington Contract 07514
Deicer Storage Tanks

PRICE SHEET

(Prices listed are for a delivered tank without offloading or setup)

Description	Region 1 Unit Price	Region 2 Unit Price	Region 3 Unit Price	**Region 4 Unit Price**	**Region 5 Unit Price**	**Region 6 Unit Price**
Den Hertog 10,500 Gallon Tank	$ 7,350	$ 6,957	$ 7,350	$ 7,350	$ 7,101	$ 6,464
Den Hertog 9,150 Gallon Tank	$ 5,994	$ 5,602	$ 5,994	$ 5,994	$ 5,745	$ 5,105
Den Hertog 8,000 Gallon Tank	$ 5,427	$ 5,034	$ 5,325	$ 5,427	$ 5,177	$ 4,538
Den Hertog 7,000 Gallon Tank	$ 4,805	$ 4,413	$ 4,805	$ 4,805	$ 4,556	$ 3,916
Den Hertog 6,250 Gallon Tank	$ 4,419	$ 4,026	$ 4,419	$ 4,419	$ 4,169	$ 3,530
Den Hertog 5,000 Gallon Tank	$ 4,007	$ 3,613	$ 4,007	$ 4,007	$ 3,756	$ 3,118
Den Hartog 6,900 Gallon CONICAL BOTTOM Tank w/Stand	$ 6,826	$ 6,413	$ 6,826	$ 6,826	$ 6,564	$5,891
Agitation Package	$ 695.00	(price valid for all regions)				
Will Call Discount :	Contact vendor for will call discounts.					

Will Call Location: 17005 West SR904, Cheney, WA 99004

DELIVERY REQUIREMENTS

DELIVERY REQUIREMENTS

General provisions:

- Schedule and acknowledgement: Delivery must be made within 60 calendar days after receipt of order unless a later date is noted on the order document. The contractor must submit an acknowledgment of the order within three business days from the time of their receipt of the order.
- Delivery times: Delivery must be made during purchaser's normal work hours, per purchaser's security and access processes, or as otherwise mutually agreed in writing between the purchaser and contractor at the time of order placement. The purchaser may refuse shipment when delivered after normal working hours.
- Location and performance: All deliveries are to be made to the applicable delivery location as indicated in the order document. When applicable, the contractor must take all necessary actions to safeguard items during inclement weather. In no case may the contractor initiate performance prior to receipt of written or verbal authorization from authorized purchasers. Expenses incurred otherwise will be borne solely by the contractor.
- Supplier shall be solely responsible for any tank damages that occur prior to acceptance of delivery.

WSDOT Provisions

- Suppliers must notify WSDOT at the phone number listed on the purchase order 24 hours prior to the tank delivery. This is to ensure that a WSDOT employee is available to sign and date the bill of lading (or other delivery document) to indicate WSDOT has accepted delivery of the tank.
- When the tank is ready for final delivery, it may be delivered to WSDOT facilities (as specified on the order document) between the hours of 7:00am and 3:00pm, Monday through Friday. Deliveries shall not be made during other hours, on weekends or on legally recognized state holidays.
- WSDOT will not accept any responsibility for equipment that has been delivered to, or left at, a WSDOT facility unless a WSDOT employee has signed and dated the delivery documents indicating WSDOT has accepted delivery of the equipment.

DELIVERY LOCATIONS TO WSDOT

This contract will provide deicer storage tanks to a variety of locations for the Washington State Department of Transportation and other authorized contract users. The locations for WSDOT include, but are not limited to the list below. DES reserves the right to add or remove locations as necessary. Additionally, other purchasers may utilize this contract and will identify separate delivery locations. Delivery of deicer storage tanks to customers other than WSDOT will be based on pricing provided for the location closest to the delivery point.

WSDOT Regions by County:

Northwest Region 1: San Juan, Whatcom, Skagit, Island, Snohomish, King

North Central Region 2: Okanogan, Chelan, Douglas, Grant

Olympic Region 3: Clallam, Jefferson, Grays Harbor, Mason, Kitsap, Thurston, Pierce

Southwest Region 4: Pacific, Wahkiakum, Lewis, Cowlitz, Clark, Skamania, Klickitat

South Central Region 5: Kittitas, Yakima, Benton, Franklin, Walla Walla, Columbia, Garfield, Asotin

Eastern Region 6: Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Adams, Whitman

Washington State Department of Enterprise Services

Contract Summary

Deicer Storage Tanks

Contract #: 07514 Replaces: 07413

Deicer Storage Tanks (HDPE) size 5,000 gallon to 10,500 gallon. ORCPP Members add 10% to purchase price.

Current Term Start Date: 12-17-2014
Current Term Ends On: 12-16-2022

Award Date: 11-19-2014
Final Term Ends On: 12-16-2022

Est. Annual Worth: $124,914
Commodity Code(s): 02372, 810-57, 830-33, 830-54

Diversity: 0% WBE 0% MBE

# of Bids Received: 2

Contact Info: Mark Vessey (360) 407-8728
mark.vessey@des.wa.gov

Secondary Contact Info: Team D (360) 407-2215
DESContractsTeamCedar@des.wa.gov

Who Can Use This Contract?

- Organizations with Master Contract Usage Agreements
- MCUA Customer Communication Profile
- Oregon Coop Members

- Pricing & Ordering
- Specifications
- Contract & Amendments

- Original Solicitation Documents
- Original Solicitation Amendments
- Bid Tab
- Memo to File

This Contract has no Resource Documents

Showing 1 to 1 of 1 Vendors

All Vendors Per Page. Search Vendors:

Vendor	Vendor #	Authorized Fulfillment Partners	OMWBE	Veteran	Small Business
AG ENTERPRISE SUPPLY, INC.	w1859				

M = OMWBE Certified Minority Owned | W = OMWBE Certified Women Owned | MW = OMWBE Certified Minority Women Owned

= Veteran Owned = Small Business

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(360) 407-2210

contractingandpurchasing@des.wa.gov

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RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN BOATING & SAFETY PATROL FUND FUND NUMBER 0127101, DEPARTMENT NUMBER 000.

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Auditor; File, BCSO

K. Gillies

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Boating & Safety Patrol Fund | Fund Nbr: 0127101

TRANSFER FROM: 000 | TRANSFER TO 000

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.220	3201	Vehicle Fuel	$5,380	521.220	9802	ER&R Vehicle Maintenance C	$5,380
TOTAL			$5,380	TOTAL			$5,380

Explanation:

In December 2018, Invoice 018536 was sent to the Sheriff's Office for boat maintenance of $5,379.46. This invoice was not paid in a time frame that allowed the ER&R department to include it in the 2019/2020 assessments. This then has created a deficit in the ER&R line in the boat fund once the invoice was paid in 2019. The movement of these funds is to appropriate funding to cover the 2018 repair expense.

Prepared by: Katie Gillies | Date: 29-Oct-2020

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/2020
Subject:	Contract w/Columbia Cleaners for "as needed" Dry Cleaning and Laundry Services
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Ryan Lukson, PA

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

Per Resolution 2018-538 dated August 7, 2018 the Board of County Commissioners approved the Contract between Benton County and Chong Bak dba/Columbia Cleaners for laundry services for the Benton County Sheriff's Office with a contract termination date of December 31, 2020.

Attached is a contract between Benton County Sheriff's Office and Chong Bak dba/Columbia Cleaners for said services with an overall contract amount not to exceed $35,000 including W.S.S.T.

The term of the attached contract shall commence January 1, 2021 and shall terminate December 31, 2022.

Fiscal Impact

Amount: $35,000 including W.S.S.T.
Fund: Expenditures shall be paid from Sheriff's Office budget

Recommendation

Approve the attached Resolution and Personal Service Contract between Benton County Sheriff's Office and Chong Bak dba/Columbia Cleaners for "as needed" Dry Cleaning and Laundry Services for the Benton County Sheriff's Office, authorizing the Chairman of the Board to sign the attached contract.

Suggested Motion

Approve as part of the Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PERSONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND CHONG BAK DBA/COLUMBIA CLEANERS FOR "AS NEEDED" DRY CLEANING AND LAUNDRY SERVICES FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, per Resolution 2018-538 dated August 7, 2018 the Board of County Commissioners approved the Contract between Benton County and Chong Bak dba/Columbia Cleaners for laundry services for the Benton County Sheriff's Office, which at that time included Corrections, with a contract termination date of December 31, 2020; and

WHEREAS, the Sheriff's Office currently has two different contracts for "as needed" dry cleaning and laundry services; and

WHEREAS, Tower Plaza Cleaners & Laundromat LLC, Pasco, WA offers free delivery and pick up from the BCSO, which is a benefit to those employees who work 12 hour shifts and cannot make it to the cleaners during regular business hours; and

WHEREAS, there are some Benton County Sheriff's Office employees who would rather handle their own laundry service and have the ability to drop their laundry off at a convenient location such as Columbia Cleaners, Kennewick, WA; and

WHEREAS, the BCSO is happy with Columbia Cleaners and their convenient location and recommends entering into a contract with Chong Bak dba/Columbia Cleaners for a period commencing January 1, 2021 and terminating December 31, 2022 for "as needed" dry cleaning and laundry services; and

WHEREAS, Columbia Cleaners has agreed to perform all services provided for the BCSO in accordance with the attached contract and rates in Exhibit A and Exhibit B for an overall contract amount not to exceed $35,000 including WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, concurs with the recommendation and hereby approves the attached Contract between Benton County and Chong Bak dba/Columbia Cleaners for "as needed" dry cleaning and laundry services for the BCSO, with an overall contract amount not to exceed $35,000 including WSST; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman to sign the attached said contract; and

BE IT FURTHER RESOLVED, the term of the attached said Contract shall commence January 1, 2021 parties and shall terminate December 31, 2022.

Dated this _____ day of _____, 2020

_____
Chairman

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners
of Benton County, Washington

Orig: BCSO
Auditor; PA Office, Columbia Cleaners K. Gillies

BENTON COUNTY
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 (hereinafter "COUNTY"), and **CHONG BAK dba/COLUMBIA CLEANERS**, a sole proprietor organized under the laws of the State of Washington with its principal offices at 1102 N Columbia Center Blvd. Ste. A, Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Quote and Compensation

2. DURATION OF CONTRACT

The term of this Contract shall begin effective January 1, 2021 and shall expire on December 31, 2022. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall perform all necessary dry cleaning and laundry services, to include any necessary repairs, for employees of the Benton County Sheriff's Office. All dry cleaning and laundry services shall be completed within two (2) days of drop off date.

b. The CONTRACTOR shall be responsible for ensuring the pockets of all laundry are free of any item, including but not limited to pens, that may damage the laundry during the dry cleaning process. Failure of CONTRACTOR to do so will result in payment to the COUNTY of the fair market value of the laundry damaged.

c. The COUNTY does not guarantee utilization of this Contract. The COUNTY may award contract to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the COUNTY.

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

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

f. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule outlined in 3.a. above.

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Chong Bak
Address:	1102 N. Columbia Center Blvd. Ste. A Kennewick, WA 99336
Phone:	(509) 783-4477

b. For COUNTY:

Name:	Katie Gillies, Chief Financial Officer
Address:	7122 W. Okanogan Place, Bldg. A Kennewick, WA 99336
Phone:	(509) 735-6555 Ext. 3273
Email:	katie.gillies@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid by the COUNTY as set forth in Exhibit A "Quote and Compensation".

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed thirty-five thousand dollars and zero cents ($35,000), including W.S.S.T.

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

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on

the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for

such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

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

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

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

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

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

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

c. **Other Insurance Provisions:**

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

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

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

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are

completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract 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.

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

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

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

not contribute to it.

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

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

9. TERMINATION

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

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

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

performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer

these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

a. This Contract has been and shall be construed as having been

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also

be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

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

27. PUBLIC RECORDS ACT

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

Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

28. OBLIGATION TO SAFEGUARD

The CONTRACTOR acknowledges that some of the clothing taken temporary custody of includes Corrections uniforms currently in use by sworn peace officers employed by the Benton County Corrections Department and as such represent important public safety equipment that must be safeguarded against theft, loss or unauthorized access. The CONTRACTOR acknowledges that unauthorized use of such uniforms may result in criminal impersonation of police officers by criminal third parties and may lead to property loss, and bodily injury of death to victims. Accordingly, CONTRACTOR agrees to take all reasonable steps to safeguard any law enforcement uniforms that are temporarily in its custody for laundry services. The steps include, but are not limited to:

a. Ensuring that law enforcement uniforms are stored in a secure portion of CONTRACTOR's premises away from clothing that will be available for customer pickup so as to avoid confusion and inadvertent access by walk-in customers.

b. Ensure that only CONTRACTOR and bona fide employees has access to the law enforcement uniforms.

c. Ensuring that a system is in place by which CONTRACTOR can track the number and type of uniforms it has in custody at any given time in such a manner that theft, loss or misuse can be detected immediately and the type, size, description etc. of any missing uniforms can be readily ascertained.

d. In the same manner as stated in the indemnification section of this Contract, CONTRACTOR shall indemnify, defend and hold COUNTY harmless for any claims, liability, attorney fees, judgements, expenses or costs whatsoever, related in any way to claims or lawsuits filed as a result of use or handling (including misuse or mishandling) of any uniform while it is legally in CONTRACTOR's custody.

e. CONTRACTOR shall immediately (within 24 hours) report any incident where CONTRACTOR, or any of its employees, are arrested

or convicted of a crime, or informed by police that CONTRACTOR is a suspect in a crime. Upon receiving such information, CONTRACTOR shall report such information to COUNTY within 24 hours.

f. Immediately (i.e. within 15 minutes) upon learning of the loss, stolen, or misuse of any law enforcement uniform in its custody, CONTRACTOR shall contact the on-duty Corrections Sergeant at the Benton County Corrections Department at (509) 783-1451 ext. 3293, and report such loss, theft or misuse including the type, size and description of the lost, stolen, or misused uniform, the approximate time of the loss, and the circumstances under which it occurred.

This section was intentionally left blank

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and it is effective January 1, 2021.

Dated: _____

BENTON COUNTY

Jim Beaver, Chairman
Benton County Commissioner

Approved as to Form:

Ryan J. Lukson, Civil DPA

Dated: 10-29-2020

CHONG BAK
DBA/COLUMBIA CLEANERS

Signature

Title:

CHONG BAK

Print Name

EXHIBIT A – QUOTE AND COMPENSATION

PROJECT DESCRIPTION:
Benton County Sheriff is soliciting qualifications and quotation proposals for uniform cleaning from January 1, 2021 – December 31, 2022.

The following is a brief description of what Benton County is soliciting a quotation for, but not limited to:

Uniforms (2 Piece)	$ 6.40	Blouse / Skirt	$ 3.20
Trousers	$ 3.20	Sport Coat / Blazer	$ 3.92
Laundered Shirt	$ 2.35	Rain Coat	$ 7.22
Dry Cleaned Shirt / Pants	$ 3.20	Winer Coat	$ 5.46
Neck Tie	$ 2.00	Water-Proofing	$ 2.62
Sweater	$ 3.35	Coveralls	$ 7.06
Pants / Shirt Starched	$ 3.20/2.35	Labcoat	$ 5.40

Minor Repairs (such as: buttons, hemming, sew patches on, split seams, etc) $0.75 - $4.10
Does your company have the ability to deliver and pick up items? YES (NO)
Do you have multiple locations within the Tri-City's area? YES (NO)
Would your company consider a flat monthly rate based on average use? YES (NO)

Company Name Columbia Cleaners

Address: 1102 N Columbia Center BLVD STE A Kennewick, WA 99336

Phone Number: 509-783-4477

Email: ColumbiaCleaners@gmail.com

Bidder Name: Chong W Bak (Print Name) Title: Owner

Bidder Signature: Chong W Bak

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/2020
Subject:	Interagency Agreement between the WA State AOC & Benton County
Presenter:	
Prepared By:	Tiffany Deaton
Reviewed By:	Ryan Brown

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

Summary / Background Information

In 2008 the Superior Court joined all courts within Benton & Franklin Counties in an application to reimburse individual courts for costs related to court interpreters. The regional application was successful in its application and has once again received funding for fiscal year 2020-2021. The Superior Court is requesting Benton County to authorize entering into the 2020-2021 Interagency Agreement with the State Office of Court Administration for reimbursement of qualified costs for interpreter services consistent with the attached agreement.

Fiscal Impact

Benton County will receive up to a maximum of $44,016.00 in qualified reimbursement costs for interpreter expenses through the Superior Court during the period of July 1, 2020 – June 30, 2021.

Recommendation

I recommend that the Board of County Commissioners for Benton County approve the resolution and sign Interagency Agreement #IAA21535 between the Administrative Office of the Courts and Benton County.

Suggested Motion

N/A - Consent Agenda.

BENTON COUNTY RESOLUTION

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARD OF BENTON COUNTY COMMISSIONERS ON THE INTERAGENCY AGREEMENT #IAA21535 BETWEEN BENTON COUNTY AND THE STATE OF WASHINGTON ADMINISTRATIVE OFFICE OF THE COURTS;

WHEREAS, the Superior Court received notification on October 19, 2020, of available interpreter reimbursement funding to Benton County for the term commencing July 01, 2020 and terminating on June 30, 2021; and

WHEREAS, Tiffany Deaton, Superior Court Administrator, believes it is in the best interest of the Superior Court that the Agreement between State of Washington Administrative Office of the Courts and Benton County be approved as presented for a term commencing July 1, 2020 and terminating on June 30, 2021 for a maximum reimbursement amount of $44,016; **NOW, THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed interpreter reimbursement agreement for the term commencing July 01, 2020 and terminating on June 30, 2021 with a maximum reimbursement amount of $44,016; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners is hereby authorized to sign interagency agreement #IAA21535 between Benton County and the State of Washington Administrative Offices of the Courts on behalf of Benton County.

DATED this _____ day of _____, 2020.

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____ ATTEST:
Member

_____ _____
Member Clerk of the Board

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

Prepared by: T. Deaton

Originals (1): 1-BC Commissioners

INTERAGENCY AGREEMENT IAA21535
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
BENTON COUNTY

THIS AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and Benton County, for the purpose of distributing funds for court interpreter and language access service expenses to the Benton County Superior Court (Court).

1. DEFINITIONS

For purposes of this contract, the following definitions shall apply:

a) "Certified Interpreter" means an interpreter who is certified by the Administrative Office of the Courts, as defined in RCW 2.43.020 (4) or an interpreter certified by the Office of the Deaf and Hard of Hearing (ODHH) pursuant to WAC 388-818-500, *et. seq*. The names and contact information of AOC-certified interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/ The names and contact information of ODHH-certified interpreters are found, and incorporated herein by reference, at: https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx

b) "Registered Interpreter" means an interpreter who is registered by the Administrative Office of the Courts, as defined in RCW 2.43.020 (6). The names and contact information of registered interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/.

c) "Qualified Interpreter" means a spoken language interpreter as defined in RCW 2.43.020 (2), or sign language interpreter as defined in RCW 2.42.110 (2).

d) "Qualifying Event" means a proceeding or event for which an interpreter is appointed by an appointing officer pursuant to RCW 2.42 and/or RCW 2.43.

2. PURPOSE

The purpose of this Agreement is to partner with individual local courts in improving access to the Court for Limited English Proficient (LEP), deaf, and hard of hearing persons in accordance with RCW Chapters 2.42 and 2.43.

a) These funds are intended to address each court's following needs:

- Financial Need – i.e., the gap between the court's available financial resources and the costs to meet its need for certified, registered, and qualified interpreters, and the implementation of the Court's language access plan; and
- Need for Court Interpreters – i.e., the public's right to access the court, and the court's responsibility to provide court certified, registered, and qualified interpreters as required by RCW Chapters 2.42 and 2.43.

- Need for Language Access in General – i.e., translations for websites, translated forms, interpreting equipment, technology enabling remote interpreting, and other things that are necessary for courts to provide fair and equitable access for people who are LEP, deaf, and hard of hearing.

3. DESCRIPTION OF SERVICES TO BE PROVIDED

a) The Court will ensure that the interpreter funding is used only for language access purposes and for reimbursement of costs paid to certified, registered, and qualified interpreters for Qualifying Events pursuant to **Exhibit A**, which is incorporated herein by reference.

b) The Court agrees to track and provide interpreter cost and usage data using a form provided by the AOC Interpreter Reimbursement Program, reflecting information about the Court's interpreter and language access costs and services.

c) The Court agrees to work with the AOC Interpreter Program, the Interpreter Commission, and neighboring courts to identify and implement best and promising practices for providing language access and interpreter services.

d) The Court agrees to encourage its staff overseeing interpreter services at the court to attend trainings (in person and/or online) provided by the AOC Interpreter Commission and Interpreter Program.

e) The Court may elect to pay for interpreter services that are not in accordance with the provisions of Exhibit A as set forth; however, such payments will not be reimbursed.

f) The Court is required to have a Language Assistance Plan (LAP) to be a part of the reimbursement program.

1) Courts Currently in the Reimbursement Program must submit their current LAP for review and approval by the Interpreter Commission by November 15, 2020.

2) Courts Joining the Reimbursement Program for the First Time must submit their LAP for review and approval by the Interpreter Commission by April 1, 2021. Staff from the Washington State Supreme Court Interpreter Commission will work with the new courts to develop and implement their LAPs, and will provide technical assistance and training when needed.

4. PERIOD OF PERFORMANCE

The beginning date of performance under this Agreement is **July 1, 2020**, regardless of the date of execution and which shall end on **June 30, 2021**.

5. COMPENSATION

a) The Court shall be reimbursed a maximum of **$44,016** for interpreter and language access services costs incurred during the period of July 1, 2020 to June 30, 2021. No reimbursement shall be made under this Agreement for interpreting services provided after June 30, 2021.

b) The Court shall receive payment for its costs for interpreter and language access services as set forth in **Exhibit A**, and incorporated herein.

c) The Court shall not be reimbursed for interpreter services costs for Qualifying Events or other goods and services set forth in **Exhibit A** until properly-completed A-19

invoices, and corresponding data (*See subsection 3b*), are received and approved by AOC, pursuant to the following schedule:

1) Reflecting Qualifying and non-qualifying Events, and any goods or services purchased, occurring between July 1, 2020 and September 30, 2020, must be received by the AOC no later than December 31, 2020.
2) Reflecting Qualifying and non-qualifying Events, and any goods or services, purchased occurring between October 1, 2020 and December 31, 2020, must be received by the AOC no later than March 1, 2021.
3) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between January 1, 2021 and March 30, 2021, must be received by the AOC no later than April 30, 2021.
4) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between April 1, 2021 and June 30, 2021, must be received by the AOC no later than July 31, 2021.

d) If this agreement is terminated, the Court shall only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.

e) The Court shall submit its A-19 invoices quarterly to: ReimbursementProgram@courts.wa.gov

The Data shall be submitted electronically to the AOC as described in Section 3b, above, and in conjunction with the quarterly invoice.

f) Payment to the Court for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed invoice and the completed data report.

g) The Court shall maintain sufficient backup documentation of expenses under this Agreement.

h) The AOC, in its sole discretion and upon notice, may initiate revenue sharing and reallocate funding among courts. If it appears the Court may not expend the maximum Agreement amount, the AOC may reduce the maximum Agreement amount. AOC may increase the maximum Agreement amount if additional funds become available through these revenue sharing provisions.

6. TREATMENT OF ASSETS AND PROPERTY

The AOC shall be the owner of any and all fixed assets or personal property jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

7. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the AOC. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and video and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. In the event that any of the deliverables under this Agreement include material not included within the definition of “works for hire,” the Court hereby

assigns such rights to the AOC as consideration for this Agreement.

Data which is delivered under this Agreement, but which does not originate therefrom, shall be transferred to the AOC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the Court has a right to grant such a license. The Court shall advise the AOC, at the time of delivery of data furnished under this Agreement, 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 Agreement. The AOC shall receive prompt written notice of each notice or claim of copyright infringement received by the Court with respect to any data delivered under this Agreement. The AOC shall have the right to modify or remove any restrictive markings placed upon the data by the Court.

8. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

9. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement 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.

10. RECORDS, DOCUMENTS, AND REPORTS

The Court shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or Agreement. The Court will retain all books, records, documents, and other material relevant to this Agreement for six years after settlement, and make them available for inspection by persons authorized under this provision.

11. RIGHT OF INSPECTION

The Court shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington of the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

12. DISPUTES

Disputes arising under this Agreement shall be resolved by a panel consisting of one representative from the AOC, one representative from the Court, and a mutually agreed upon third party. The dispute panel shall thereafter decide the dispute with the majority prevailing. Neither party shall have recourse to the courts unless there is a showing of noncompliance or waiver of this section.

13. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

14. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

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

a. Applicable state and federal statutes and rules;
b. This Agreement; and
c. Any other provisions of the agreement, including materials incorporated by reference.

15. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

16. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

17. SEVERABILITY

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

18. AGREEMENT MANAGEMENT

The program managers noted below shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement:

AOC Program Manager	Court Program Manager
Michelle Bellmer PO Box 41170 Olympia, WA 98504-1170 michelle.bellmer@courts.wa.gov (360) 350-5373	**Tiffany Deaton** Court Administrator 7122 W Okanogan Pl, Bldg A Kennewick, WA 99336-2359 tiffany.deaton@co.benton.wa.us (509) 736-3071

19. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Agreement.

AGREED:

Administrative Office of the Courts	**Contractor**
Signature *Date*	*Signature* *Date*
Dawn Marie Rubio *Name*	*Name*
Administrator, AOC *Title*	*Title*

Approved as to form: Ryan Bergman DPA

EXHIBIT A

WASHINGTON STATE INTERPRETER SERVICES FUNDING

Funding Conditions and Payment Structure

The Court Interpreter Reimbursement Program funding conditions and payment structure shall be as follows:

1. General Funding Conditions

The AOC will reimburse courts under this Agreement for the cost of interpreters and other goods and services that improve language access in the courts for Limited English Proficient ("LEP"), deaf, and hard of hearing persons. This includes AOC-certified, registered, or otherwise court-qualified interpreters appointed pursuant to RCW 2.42 and RCW 2.43 under the following conditions listed under Section 2 "Qualifying Interpreter Events."

It also includes goods and services that improve language access, listed under Section 3 "Language Access Items," and services listed under Section 4 "Language Access Services".

Courts shall work with AOC staff in determining whether an expense that is not explicitly mentioned below, qualifies as a reimbursable expense under the Agreement.

2. Qualifying Interpreting Events

The AOC will reimburse courts under this Agreement for the cost of AOC-certified, registered, or otherwise court-qualified interpreters appointed pursuant to RCW 2.42 and RCW 2.43 under the following conditions which are herein referred to as "Qualifying Events":

A. Spoken Language Interpreters Qualifying Events

1) <u>Certified and Registered Language Interpreters</u>

Compensation for interpreters currently credentialed by the AOC in the certified and registered language categories shall be reimbursed for actual compensation paid pursuant to the payment structure for those interpreters as outlined in Section 5 entitled "Payment Structure".

2) <u>Non-Credentialed Interpreters in Certified and Registered Language Categories</u>

If the AOC master interpreter list for certified or registered languages does not include any interpreters credentialed by the AOC for those languages, reimbursement will be provided for actual compensation paid pursuant to the payment structure as outlined in Section 5 "Payment Structure", for those interpreters, providing that the interpreter is found otherwise qualified on the record by the Court pursuant to RCW 2.43.

3) Non-Credentialed Languages

Compensation for interpreters for languages for which neither certification nor registration is offered will be reimbursed where the interpreter has been qualified on the record pursuant to RCW 2.43.

B. Sign Language Interpreters Qualifying Events

Reimbursement for actual expenses incurred for services of American Sign Language (ASL) interpreters appointed by an appointing authority pursuant to RCW 2.42 will be authorized pursuant to the payment structure as outlined in Section 5 “Payment Structure”, when the interpreter is listed with the Department of Social and Health Services, Office of Deaf and Hard of Hearing (DSHS, ODHH) as a court-certified ASL interpreter.

C. Salaried Staff and Contract Interpreters

Reimbursement will be provided for salaried staff or contracted interpreters meeting the Qualifying Event conditions for the payment of credentialed spoken and sign language interpreters, as referenced in subsections (A) and (B) above.

D. Telephonic and Video Remote Interpreting

The AOC will reimburse local jurisdictions for using certified, registered, or otherwise qualified interpreters operating by telephone or video when providing court interpreting services for Limited English Proficiency (LEP) persons or persons who rely on sign language for in-court proceedings and for services that are provided by the Court to the public outside of the courtroom. To the extent possible, the services must meet the Qualifying Event conditions for the payment of credentialed spoken and sign language interpreters, as referenced in subsections (A) and (B) above.

3. Language Access Goods & Services

Courts can request reimbursement for the cost of goods and services that are meant to increase language access in the Court. A maximum of 50 percent of the court’s total contract amount can be spent on goods and services.

The court shall seek approval by Program staff to use a percentage above 50 percent if there is a compelling reason to do so that will directly impact increased language access in the Court. Program staff approval must be documented in writing.

Language access goods and services will be reimbursed at 100% of the total cost, with the exception of interpreter costs and portable video devices, for which only 50% will be reimbursed.

The items listed below are acceptable for reimbursement and the Court does not need prior approval to seek reimbursement for the listed items.

Items or services not listed below, must be approved by Program staff prior to purchase or they will not qualify for reimbursement under the Program.

- Interpreter Scheduling Software or Service
- Document Translations
- Portable Video Device(s) for Video Remote Interpreting (only up to 50% reimbursement)
- Equipment used for Simultaneous Interpretation
- Printed Signage for Language Assistance Purposes
- Staff Training on Language Access, Interpreting, or Bilingual Skills Improvement provided by outside entities - (ex: interpreters skills training for bilingual staff who want to become certified, training for staff who are partly bilingual to improve their skills, general training on working with language access issues. Some examples can be found here: https://www.nmcenterforlanguageaccess.org/cms/en/courts-agencies/about-language-access-basic-training).

Other items or services may qualify for reimbursement, but the Court must gain approval from Program staff prior to purchasing and seeking reimbursement.

4. Scope of Reimbursement Funding

Reimbursement payment under this Agreement will only be made to the Court when the cost is paid out of the budget (or budgets, in the case of multi-court collaborative applicants) of the Court responsible for full payment.

5. Payment Structure

A. Hourly Rate

1) Rate for Spoken Language Interpreters
AOC will reimburse the Court for 50 percent of the hourly cost and hourly minimum charges submitted to the Court by AOC-certified, registered, or otherwise court-qualified interpreters providing services under this Agreement.

2) Rate for Sign Language Interpreters
AOC will reimburse the Court for 50 percent of the hourly cost and the hourly minimum charges for certified interpreters providing services under this Agreement.

3) Salaried Interpreters
AOC will reimburse the Court for 50 percent of the cost of staff interpreters and will reimburse only for their provision of interpreter services.

4) Contracted Interpreters
The cost of contracted interpreters who are paid on an hourly basis will be reimbursed under the same conditions as in 5.A and 5.B above. The cost of contract interpreters who are paid other than on an hourly basis (e.g., on a half-day or flat rate basis) will only be reimbursed for the actual number of hours of interpreting provided for each Qualifying

Event.

5) Telephone Interpreting Rate

The AOC will reimburse local jurisdictions for up to 50 percent of the cost of using certified, registered, or otherwise qualified interpreters providing interpretation by telephone or videophone for LEP persons or persons who rely on sign language.

6) Hourly Minimum Rate Charges

Where a minimum hourly rate charge is imposed, reimbursement will be paid for half of such hourly minimum rate.

B. Travel Time and Mileage

The AOC will reimburse Courts for up to 50 percent of the cost of interpreter travel time and mileage when such charges are in accordance with this Exhibit A and reimbursed as identified below in *Interpreter Travel and Mileage Reimbursement***.** In such event, travel time and mileage charges will only be reimbursed for interpreters meeting the Qualifying Event conditions listed in Section 2 above. The AOC reserves the right to limit travel reimbursement to reasonable travel, based on known availability and location of certified, registered, or otherwise qualified interpreters.

INTERPRETER TRAVEL AND MILEAGE REIMBURSEMENT

Interpreter mileage and/or travel time will be reimbursed as follows:

1. MILEAGE

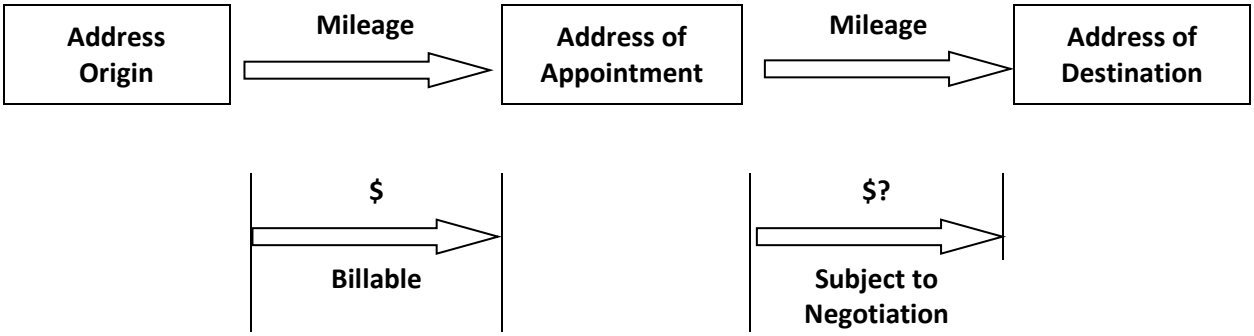
Interpreter mileage will be reimbursed in accordance with the prevailing Administrative Office of the Courts Policy. Notification will be sent prior to rate changes.

Mileage will be reimbursed on a from "address of origin"[1] to "address of appointment"[2] basis. The Court and interpreter will negotiate reimbursement for mileage traveled from the "address of appointment" to "address of destination"[3] on a case-by-case basis. (NOTE: Courts are encouraged to have a consistent policy regarding the return trip.) In Eastern Washington, due to the scarcity of interpreters and vast distance, it is recommended that the Court reimburse the interpreter for mileage on an "address of appointment" to "address of destination" or roundtrip basis[4].

Interpreter mileage related to an appointment is billable if a required party fails to appear. "Failure to appear" means a non-appearance by the LEP or deaf or hard of hearing client, attorneys, witnesses, or any necessary party to a hearing, thereby necessitating a cancellation or continuance of the hearing.

If the interpreter fails to appear, they will not be paid for mileage.

Mileage related to appointments that have been cancelled where the interpreter has received prior notice of the cancellation is not billable.



[1] "Address of origin" means the interpreter's home, office, or immediately previous appointment meeting place.
[2] "Address of appointment" means the courthouse or other location of the interpreter assignment.
[3] "Address of destination" means the interpreter's home, office, or immediately next appointment meeting place.
[4] "Roundtrip" means from the interpreter's home/office to the appointed meeting place, followed by the interpreter's return to their home/office.

2. TRAVEL TIME

Travel time will be reimbursed on a from "address of origin" to "address of appointment" basis. The Court and interpreter will negotiate reimbursement for travel time from "the address of appointment" to "address of final destination" on a case-by-case basis at the time the appointment is requested. (NOTE: Courts are encouraged to have a consistent policy regarding the return trip.) In Eastern Washington, due to the scarcity of interpreters and vast distance for travel, it is recommended that the Court reimburse the interpreter for travel time on an "address of appointment" to "address of destination" or roundtrip basis.

Interpreters must travel for either a minimum of sixteen (16) miles or for one-half hour in order to be eligible for travel time reimbursement. Exceptions to the sixteen (16) mile minimum requirement shall be made when the use of a ferry contributes to the one-half hour or more of travel time.

Travel time will be reimbursed at a rate of one half the hourly interpreter rate for each hour of travel. Example: Interpreter traveled four hours to an appointment and the hourly rate is $50. One half of the hourly rate is $25. The calculation would be 4 x $25 = $100 for travel time.

Distance ⇨	**Reimbursable**
Origin Appointment 0 -15 Miles	Mileage Only
Origin ⇨ Appointment 16+ Miles or half-hour travel*	Mileage and Travel Time*

*****Travel Time can be claimed only when traveling time is half an hour (30 minutes) or more.

Interpreter travel time related to an appointment is billable if a required party fails to appear. "Failure to appear" means a non-appearance by the LEP or deaf or hard of hearing client, attorneys, witnesses, or any necessary party to a hearing, thereby necessitating a cancellation or continuance of the hearing.

If the interpreter fails to appear, he/she will not be paid for travel.

Travel time related to appointments that have been cancelled where the interpreter has received prior notice of the cancellation is not billable.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/2020
Subject:	Line Item Transfer – Superior Court, Current Expense
Presenter:	
Prepared By:	Tiffany Deaton
Reviewed By:	Carrie Runge, Presiding Judge

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

Summary / Background Information

Request for a line item transfer of funds to accurately cover the costs incurred consistent with the Auditor's coding.

Fiscal Impact

No fiscal impact. All funds are within the Superior Court, Current Expense 2019-2020 budget.

Recommendation

Recommend approval.

Suggested Motion

I move to approve Resolution No. _____ authorizing line item transfers in the amount of $100.00 as outlined on Exhibit "A" of the Resolution.

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 123.

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto for the 2019-2020 budget.

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: Commissioners; Auditor; File, Superior Court

Prepared by: T. Deaton

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Superior Court

Dept Nbr: 123

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM: Superior Court

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.210	4201	Postage	$100
	TOTAL		$100

TRANSFER TO: Superior Court

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.210	9802	ER&R Vehicle Maintenanc	100
	TOTAL		$100

Explanation: 2019-2020 Budget. Transfer of funds to adequately cover the costs incurred consistent with the Auditor's coding.

Prepared by: Tiffany Deaton, Superior Court Administrator

Date: 29-Oct-2020

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/2020
Subject:	Expenditure Coding Corrections
Presenter:	
Prepared By:	Tiffany Deaton
Reviewed By:	Carrie Runge, Presiding Judge

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

Summary / Background Information

An Expenditure Coding Correction was presented to the Board of County Commissioners on October 20, 2020, requesting Coding Corrections between Adult Drug Court Public Safety Tax Fund and Current Expense Fund (Resolution 2020-748). These Coding Corrections were not necessary. Therefore, an Expenditure Coding Correction is being presented to reverse the Coding Corrections outlined in Resolution 2020-748.

Fiscal Impact

No fiscal impact.

Recommendation

Recommend approval.

Suggested Motion

I move to authorize the Expenditure Coding Corrections in the amount of $25,734.90 as outlined on Exhibit "A" of the Resolution.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: CODING CORRECTION WITHIN CURRENT EXPENSE NUMBER 0000101, DEPARTMENT 138 TO PUBLIC SAFETY TAX FUND NUMBER 0148101, DEPARTMENT NUMBER 138.

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: Commissioners; Auditor; File, Superior Court

Prepared by: T. Deaton

BENTON COUNTY

EXHIBIT "A"

EXPENDITURE CODING CORRECTIONS

FUND NUMBER: 0000101 to 0148101
DEPARTMENT NUMBER: 138
FUND NAME: Current Expense - Adult Drug Court to Public Safety Tax Fund - Adult Drug Court

TRANSFER FROM: 0000101.138				**TRANSFER TO: 0148101.138**			
BASE SUB 6 digit	**LINE ITEM** 4digit	**LINE ITEM Name**	**AMOUNT**	**BASE SUB** 6 digit	**LINE ITEM** 4digit	**LINE ITEM** Name	**AMOUNT**
512.215	1536	Drug Court Coordinator	3,622.00	512.213	1536	Drug Court Coordinator	3,622.00
512.215	1496	Drug Court Case Manager	9,000.00	512.213	1496	Drug Court Case Manager	9,000.00
512.215	1542	Receptionist / Secretary	3,000.00	512.213	1542	Receptionist / Secretary	3,000.00
512.215	2102	Social Security (FICA)	1,300.00	512.213	2102	Social Security (FICA)	1,300.00
512.215	2103	Medical Insurance	4,000.00	512.213	2103	Medical Insurance	4,000.00
512.215	3501	Small Equipment	37.90	512.213	3501	Small Equipment	37.90
512.215	4102	Contract Services	2,500.00	512.213	4102	Contract Services	2,500.00
512.215	4103	Professional Services	2,275.00	512.213	4103	Professional Services	2,275.00
		TOTAL	**$ 25,734.90**			**TOTAL**	**$ 25,734.90**

Explanation: *2019-2020 Budget:* An Expenditure Coding Correction was presented to the Board of County Commissioners on October 20, 2020, requesting Coding Corrections between Adult Drug Court Public Safety Tax Fund and Current Expense Fund (Resolution 2020-748). These Coding Corrections were not necessary. Therefore, an Expenditure Coding Correction is being presented to reverse the Coding Corrections outlined in Resolution 2020-748.

Prepared by: Tiffany Deaton, Superior Court Administrator Date: 10/29/20

Approved ❑ Denied ❑ Date: _____

_____ Chairman

_____ Member

_____ Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/2020
Subject:	Rescind Resolution 2020-751
Presenter:	
Prepared By:	Tiffany Deaton
Reviewed By:	Carrie Runge, Presiding Judge

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☐ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

A LIT was scheduled before the Board of Commissioner on October 20, 2020, for Adult Drug Court Current Expense Fund Number 0000101, Department Number 138. The LIT is no longer necessary. Therefore, I wish to rescind Resolution 2020-751.

Fiscal Impact

No fiscal impact.

Recommendation

Recommend approval to rescind Resolution 2020-751.

Suggested Motion

I move to approve to rescind Resolution 2020-751.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF RESCINDING RESOLUTION 2020-751.

WHEREAS, on October 20, 2020 the Board of County Commissioners approved Line Item Transfer within Current Expense Fund Number 0000101, Department Number 138 (Resolution 2020-751); **NOW THEREFORE**,

BE IT RESOLVED the Board of Benton County Commissioners hereby rescinds Resolution 2020-751.

DATED this _____ day of _____, 2020.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest:_____ _____
Clerk of the Board Member

Constituting the Board of County Commissioners of Benton County, Washington

Prepared by: Tiffany Deaton

cc: Superior Court Admin., Auditor

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 10, 2020
Subject:	Veteran's Relief Fund discussion
Presenter:	Kyle Sullivan
Prepared By:	Kyle Sullivan
Reviewed By:	Kyle Sullivan

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:

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

Type of Action Needed: *(Multiple boxes can be checked, if necessary)*

- ☐ Discussion Only
- ☐ Decision / Direction
- ☐ Sign Letter / Document
- ☐ Pass Motion
- ☒ Pass Resolution
- ☐ Pass Ordinance
- ☐ Execute Contract

Summary / Background Information

The Department of Human Services oversees the Veteran's Relief Fund. The Veterans Relief Fund is designed to help Veterans in times of need with food vouchers, utility assistance, rental assistance, rental deposit assistance, rental application fees, motel voucher, bus passes, safety equipment for employment, childcare assistance, dental and burial assistance. The Advisory Board met on October 27th and is recommending the County add gas vouchers as an available expenditure for Benton County Veterans. Included is the amended Veterans Relief Policy adding gas vouchers.

Fiscal Impact

There is no impact to current expense. All revenues and expenditures come from Fund: 0104.101 Veteran's Relief Fund

Recommendation

Sign the amended Veteran's Relief Policy authorizing gas vouchers as an allowable expenditure.

Suggested Motion

Move to approve the resolution and amended policies and procedures adding gas vouchers as an allowable expenditure.

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTION OF AMENDING THE VETERANS RELIEF FUND POLICIES AND PROCEDURES FOR GAS VOUCHERS TO BE AN ALLOWABLE EXPENSE.

WHEREAS, The Benton County Department of Human Services currently administers the Benton County Veterans Relief Fund; and

WHEREAS, The Veterans Relief Fund is designed to help Veterans in times of need with food vouchers, utility assistance, rental assistance, rental deposit assistance, rental application fees, motel vouchers, bus passes, safety equipment for employment, childcare assistance, dental and burial assistance.

WHEREAS, The Advisory Board met on October 27, 2020 and is recommending the County add gas vouchers as an available expenditure for Benton County Veterans.

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed amended policies and procedures;

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign, on behalf of Benton County, the proposed amended policies and procedures, effective November 10, 2020.

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

_____
Chair

_____
Member

_____
Member
Constituting the Board of County Commissioners,

Benton County, Washington

Attest:

_____
Clerk of the Board

cc. Human Services

K. Sullivan

BENTON COUNTY

VETERANS RELIEF FUND

POLICIES AND PROCEDURES

Prepared by Benton County
Department of Human Services

Effective:
November 10, 2020

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BENTON COUNTY
VETERANS RELIEF FUND
POLICIES AND PROCEDURES

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SECTION I

POLICY

SECTION I. POLICY

1.1 PURPOSE

The purpose of the Benton County Veterans Relief Fund ("Veterans' Relief Fund" or "Fund") is to provide assistance to eligible indigent veterans, their families, and the families of deceased indigent veterans pursuant to Chapter 73.08 RCW.

1.2 SOURCE OF FUNDS

The Benton County Board of Commissioners ("Board of Commissioners") shall bi-annually adopt a revenue and expenditure budget for the Veterans' Relief Fund. Fund revenues shall be generated from a property tax levy authorized by RCW 73.08.080. The levy rate shall be established by the Board of Commissioners based on the estimated demands of the Fund and the statutory limitations for the levy. Current year funding not expended is carried forward to be used in subsequent years.

There is no automatic entitlement to assistance and the provision of assistance is subject to the availability of funds, among other limitations.

1.3 POLICY

The Veterans' Relief Fund is administered by the Benton County Department of Human Services. ("Human Services"). In administering the Fund, Human Services intends to provide policies and procedures for determining eligibility, processing claims, and issuing checks. In addition to limiting organizational and personal conflict of interest and providing assistance to the maximum extent possible, fair and equitable treatment will be given to all applicants applying for assistance. For contracted services any expenditures denied by Human Services, due to non-conformance with this policy, shall become an obligation of the Service Organization submitting the claim.

1.4 VETERANS' ADVISORY BOARD

The Benton County Veterans' Advisory Board ("Advisory Board") consists of representatives of local chapters, camps, post, or branches of nationally recognized Veterans' Service Organizations and Veterans from the community at large, who are appointed to the Advisory Board by the Board of Commissioners in a manner consistent with Benton County Resolution

Number 2018 593 and RCW 73.08.035.

The purpose of the Advisory Board is to advise the Board of Commissioners and the Department of Human Services on the needs of local indigent veterans, the resources available to local indigent veterans, and programs that could benefit the needs of local indigent veterans and their families. Individual applications for Veterans' Relief Fund services are not processed or reviewed by the Advisory Board. Individual Service Officers may be consulted concerning applications for assistance, in their capacity as Service Officers.

The Veterans Advisory Board may use electronic voting when necessary. All voting will be majority rules. The board will conduct their meetings with basic meeting agendas and minutes. The board can elect a chairman, co-chair, treasurer and secretary. The board will consist of no more than 11 Veterans. If a Veteran wants to become a board member, they must submit a copy of their DD214 and a Veterans Advisory Board Application to the Department of Human Services for review and a determination of eligibility. The current board will hold a vote, with majority rules, to determine whether the applicant will be selected as a board member.

SECTION II

SERVICE PROVIDERS

SECTION II. SERVICE PROVIDERS

2.1 DEFINITION OF A SERVICE ORGANIZATION

A Service Organization is any chapters, camps, post, or branch of a national organization of veterans chartered by an act of Congress that shall undertake the relief of indigent veterans and their families.

2.2 VETERANS ORGANIZATION PARTICIPATION

In order for a Service Organization, specifically a chapter, camp, post or branch, to participate in the Veterans' Relief Fund, it must register with Human Services by sending a Letter of Intent to Participate. The letter of intent must include the printed names and signatures of the authorized Service Officers that will screen and approve Veterans and their families for assistance through this fund. This letter must be updated annually or anytime a change in participate through the Service Organization, specifically a post or branch, has been made.

As authorized by RCW 73.04.080, nationally recognized veterans' Service Organizations, specifically a post or branch, located in Benton County, which have a current registration in effect with Human Services and assist veterans applying for assistance from the Fund, may be reimbursed up to $360.00 annually for their current year's regular meeting place rent.

Service Organizations, specifically a chapter, camp, post or branch, in Benton County that are registered with Human Services may appoint representatives from their organization to assist veterans or eligible family members in applying for assistance from the Veterans' Relief Fund.

The representatives of the Service Organizations, specifically a chapter, camp, post or branch, shall assist veterans and qualifying family members in completing applications for assistance, in compiling required documentation, and, as needed, by providing information regarding veteran' benefits and services, regardless of whether the individual seeking assistance meets the requirements for assistance from the Veterans' Relief Fund.

2.3 USE OF FUNDS FOR ASSISTANCE

The Fund is intended to aid eligible indigent veterans, their families and the families of deceased indigent veterans by providing the following direct

services. This is not an exclusive list and more services may be added to the policies and procedures by recommendation of the Veterans Advisory Board:

- Rental Assistance
- Deposit Assistance- Application Fees for housing/Background Checks for housing or pre-employment screening
- Up to 1 week of motel voucher assistance for homeless Vets
- Gas Vouchers/Bus Passes through the Ben Franklin Transit
- Utility Assistance
- Food Assistance
- Burial Expenses not to exceed $1,000.00
- Necessary safety equipment required by employer to gain employment
- Dental Assistance - once in a lifetime assistance capped at no more than $2,000.00
- Childcare Assistance

SECTION III

ADMINISTRATIVE POLICY

SECTION III. ADMINISTRATIVE POLICY

3.1 RELIEF FOR INDIVIDUALS WHO ADMINISTER FUND

Any service officer of a Service Organization may apply for assistance from the Fund, but the Application Form must be authorized by a Service Organization other than the one the service officer represents and approved by Human Services as appropriate.

3.2 EQUAL OPPORTUNITY

This policy is to assure fair treatment of all applicants in aspects of personnel administration.

Any applicant who thinks he or she is being treated unfairly because of race, sex, marital status, color, creed or religion, national origin, age, the presence of any sensory, mental or physical disability, or sexual orientation may follow the procedure set forth in Section 3.6.

3.3 TECHNICAL ASSISTANCE

Human Services is available to provide technical assistance to Service Organizations on the proper completion of forms and appropriate procedures for the approval and distribution of funds.

3.4 ADMINISTRATIVE COSTS

Pursuant to RCW 73.08.080, the direct and indirect costs incurred in administering the Veterans' Assistance Fund will be computed annually in January for the preceding calendar year based on a time and effort log with itemized explanations maintained by Human Services. The Fund will then be billed for these computed costs up to an amount not exceeding eight percent (8%) of the Veterans' Relief Fund budget for the year.

3.5 FISCAL POLICY

Human Services shall be responsible for ensuring that Fund expenditures do not exceed the balance in the Fund, conducting a cash flow analysis, reconciling the account for preparation of the biennial budget, and making any recommendations within the limits established by law. Administrative costs will be identified as a separate line item, justified in the biennial

budget proposal, and deducted from the Fund in accordance with RCW 73.08.080.

Allowable administrative costs may be charged to the Fund based on the current Cost Allocation Plan for Human Services.

The limits of disbursement of funds are as follows:

(1) Up to $1,200.00 per applicant in a twelve-month period for an applicant with no dependents residing in the veteran's household. Up to $1,500.00 per applicant in a twelve-month period for an applicant with one dependent residing in the veteran's household, and an additional $200.00 per applicant in a twelve-month period for each additional dependent residing in the veteran's household. In extreme cases of hardship, the Board of Commissioners may exceed the applicable limit of disbursement for an applicant based on a Waiver Request. The length of each Waiver will be dependent on the specific circumstances and will be determined on a case-by-case basis.

If the County declares a State of Emergency or there is an overwhelming financial crisis, The Board of County Commissioners can temporarily increase benefit amount by way of Resolution.

(2) Pursuant to RCW 73.08.070, burial expenses may be provided for deceased indigent veterans and their family members (as defined in Section 4.4) who die without leaving means to defray funeral expenses. Funds will be disbursed upon proof of death, when such proof is requested by the Service Organization, for burial expenses that are supported by documentation of actual expenses incurred. The amount of payment from the Veterans' Relief Fund for any single burial shall not exceed $1,000.00.

(3) Up to $2,000.00 per applicant in a lifetime, may receive dental assistance through the fund. Once they have utilized this assistance, they cannot use it again. An eligible applicant can receive this assistance in addition to (1) above.

3.6 FRAUD AND ABUSE

If Human Services or a registered Service Organization suspect fraud,

criminal activity, or abuse of the system, the matter may be referred to the appropriate law enforcement agency.

If found guilty of fraud or criminal activity associated with services or an application for services with the Veterans' Relief Fund, the applicant will be refused services under the Fund.

Individuals who misuse financial assistance provided by the Fund, including, but not limited to, using financial assistance for purposes other than those specified in a voucher or other grant, may be required to repay the Fund. In addition, misuse of financial assistance or failure to repay the Fund for misused financial assistance may result in the individual being refused further services from the Veterans' Relief Fund.

3.7 COMPLAINT PROCESS

Applicants who have been denied assistance may file a written complaint with Human Services. When a complaint is received, the applicant's information is verified, and the claim is approved or disapproved by Human Services. Human Services will have 15 days to respond to the complainant in writing. If disapproved, a written explanation will be provided.

If an applicant is not satisfied with a written explanation from Human Services disapproving a complaint, the applicant may appeal the disapproval in writing to the Board of Commissioners within 15 days from the date Human Services sent the applicant its written explanation. After receiving the appeal, the Board of Commissioners will issue a decision. At its discretion, the Board of Commissioners may: (1) issue its decision based on the information already before the Board; or (2) request additional information from the applicant and/or Human Services and either issue its decision after conducting a quasi-judicial hearing on the matter, or issue its decision without a hearing.

SECTION IV

ELIGIBILITY UNDER STATE LAW

SECTION IV. ELIGIBILITY UNDER STATE LAW

4.1 STATUS AS A VETERAN

An applicant for assistance from the Veterans Relief Fund must be a veteran who qualifies as a veteran under the definition set forth in RCW 73.08.005(5).

4.2 DOCUMENTATION OF SERVICE

Applicants must provide documentation of service deemed acceptable by Human Services. Such documentation typically includes a veteran's DD-214, VA Statement of Service, or if discharged prior to 1950, a certificate of discharge. Documentation must include a statement of the character of service. Examples of documentation can include: a HINQ print out, a letter from a HUD VASH case worker stating the veteran's discharge or other correspondence with the VA stating the character of discharge.

Any documents that appear to have been altered or that are deemed questionable may be refused by Human Services. Human Services may, at its discretion, require certified copies of documents in question, and may choose to require additional documentation to determine eligibility for services.

4.3 FAMILY MEMBERS ENTITLED TO APPLY

Family members entitled to apply for assistance are those family members who meet the definition provided in RCW 73.08.005(2). This definition includes the spouse, domestic partner, surviving spouse, surviving domestic partner, and dependent children of a living or deceased veteran or a service member who was killed in the line of duty regardless of the number of days served.

4.4 DOCUMENTATION FOR FAMILY MEMBERS

If the applicant is a minor child, a birth certificate must be provided. If the applicant is a widow or widower, marriage and death certificates must be provided.

SECTION V

ELIGIBILITY POLICY

FOR VETERANS

SECTION V. ELIGIBILITY POLICY FOR VETERANS

5.1 FREQUENCY OF APPLICATIONS

Veterans must reapply for the grant each time they seek assistance to the grant during the twelve-month period of time. Also, applicants may receive the maximum allotment of assistance at any time within a twelve-month period.

5.2 RESIDENCY

Applicants must have been residents of Benton County for at least 90 days. Applicants must present proof of residency. An exception can be made if the Veteran has been discharged from military service in the last 90 days and has moved to Benton County during that 90-day period.

5.3 INCOME REQUIREMENTS

An applicant must be indigent to be eligible. Indigence is defined as income at or below 150% of Federal Poverty Guidelines or is food stamp eligible. The Department of Human Services can look up the Veterans food stamp eligibility with the Veterans consent. An indigent applicant needs assistance when he and his family have exhausted their resources and other sources of assistance are necessary for their relief. Such other sources include, but are not limited to, unemployment compensation, veterans' administration grants and pensions, public assistance, private insurance coverage, or other available sources of income. If a Veteran is homeless and has a HUD VASH housing voucher, the income can be waived one time only without having to apply for a waiver. Proof of homelessness and HUD VASH assistance is required.

5.4 WAIVERS

In extraordinary circumstances, Human Services may request the Board of Commissioners to waive the income guidelines or the limit of disbursement. This will only be done when there are specific circumstances that warrant such a waiver. The Waiver Request Form shall be completed by the applicant or service officer and then submitted to the Board of Commissioners for a decision. If granted, the waiver is good for one year.

5.5 REPORTING

Human Services will provide participating Service Organizations with a list of all the applicants who receive assistance. This will be done regularly for verification and tracking purposes.

SECTION VI

APPLICATION PROCEDURES

SECTION VI. APPLICATION PROCEDURES

6.1 PROCESSING BY SERVICE OFFICERS

Applicants can go to a Veterans Service Organization that works with Human Services. All voucher requests will be forwarded to Human Services with the appropriate required forms and documentation needed for review and payment. Food vouchers will be given directly to applicants after the Service Organization reviews and verifies that the applicant is eligible. Applicants may choose to go to Human Services directly for assistance.

6.2 APPROVAL BY HUMAN SERVICES

After a Veterans Service Organization forwards voucher requests to Human Services, Human Services will review and make sure the applicant is eligible and then process the voucher. Human Services will enter all vouchers paid in the Veterans Relief Fund spreadsheet for tracking purposes.
If Human Service's staff are unable to make a determination on eligibility, the attorney for the Veterans' Relief Fund will be consulted and will give his/her opinion on eligibility.

If proper documentation is provided, relief will be available based on need and policy as defined previously. If proper documentation is not provided, the applicant will be required to obtain the missing information prior to disbursement of funds.

6.3 REFERRAL TO OTHER RESOURCES

When appropriate, eligible and ineligible applicants will be referred to other community resources for services.

6.4 REFUSAL OF SERVICE

Service officers and employees of Human Services will refuse service to disorderly or abusive individuals. Services may also be refused to individuals under the influence of alcohol or other drugs.

SECTION VII

VOUCHER PROCESS

SECTION VII. VOUCHER PROCESS

7.1 VERIFICATION WITH HUMAN SERVICES

Before a voucher is issued, the service officers shall verify that the applicant has not reached the maximum amount available for a twelve-month period by referring to the tracking spreadsheet provided by Human Services. If no verification is made and Human Services determines that the applicant is not eligible, the Service Organization submitting the claim becomes responsible for the payment.

7.2 COMPLETING THE VOUCHER

The initial voucher request will be signed by the Veteran and the Veterans Service Organization or Human Services. Human Services will submit proper documentation to the auditor's office for payment and file both the voucher and application in the clients file. Vouchers cannot be made out to the applicant.

The voucher consists of the vendor's name and address, the applicant's name, the date of the invoice, and the amount it is being issued for.

Human Services will sign off on all voucher requests and forward to the Auditors office for payment. Food vouchers will be given directly to the applicants either from the Veterans Service Organization or Human Services. The Grocery stores will send statements with itemized receipts to Human Services for payment.

7.3 VOUCHER DOCUMENTATION

Claims against the Veterans' Relief Fund are submitted by completing a voucher and providing proper backup documentation. At a minimum, documentation supporting each claim shall consist of the following:

1) Rental/Deposit/Application Fees Assistance - A completed Rental Assistance Form, a lease agreement, and an eviction notice (if applicable).
2) Background Checks - Letter or statement from employer is needed or a housing application.
3) Hotel/Motel Voucher for homeless Veterans - A homeless status verification from a third party is required for assistance. Voucher will only pay up to 1 week at selected hotel/motel of the

Department of Human Services. This assistance is one time only. Once a Veteran has used this service, they cannot use it again.

4) Transportation Assistance – Bus Passes from Ben Franklin Transit are available for eligible applicants that do not have other means for transportation.
5) Utility Assistance - A monthly statement for water, sewer, electrical, or gas used. Human Services can call the utility company to verify the amount owed.
6) Food Assistance - A food voucher will be given directly to the applicant requesting it. The applicant will then submit the voucher to the authorized grocery vendor upon purchase. A receipt detailing purchases, and a billing invoice will be sent to Human Services by the grocery vendor for payment. Section 3(k) of the Food and Nutrition Act of 2008 (the Act) and SNAP regulations at 7 CFR § 271.2 define eligible foods. Any food items that food stamps (SNAP) can cover, the Veterans Relief Fund can pay for.

Food vouchers cannot be used to buy:
- Alcoholic beverages;
- Tobacco or cigarettes;
- Household supplies, soaps, or paper products;
- Medicine or vitamins;
- Any other nonfood item;
- Pet foods or supplies

Food vouchers can be used to buy:
- Foods for human consumption; and
- Seeds and plants which produce food

7) Burial Expense. The veteran's or acceptable family member's death certificate and a receipt from the funeral home with details of the balance owed. Not to exceed $1,000.00.

8) Safety Equipment. A letter or statement from the employer will be required.

9) Dental Assistance. This is a once in a lifetime assistance. Once the applicant has used this service, they cannot use it again. The applicant will sign a declaration of understanding acknowledging they know they cannot utilize this service again. The amount of assistance is capped no more than $2,000.00 per applicant will be

given. This assistance can be given on top of the regular amount of assistance stated in section 3.5 (1).

11) Childcare Assistance. A W-9 is needed from the childcare provider to pay the provider. Human Services will verify with the childcare provider the amount owed.

By their signatures below, Benton County acknowledges the Policies and Procedures for the Benton County Veterans Assistant Fund.

Dated this _____ day of _____, 2020

_____
Chair
Benton County Commissioners

Attest:

_____
Clerk of the Board, Benton County

Approved as Content:

_____
B/F Counties Dept. of Human Services

Approved as to Form:

_____
Benton County Prosecuting Attorney's Office

Kyle Sullivan

From: Niria Lucatero
Sent: Tuesday, October 27, 2020 2:05 PM
To: Kyle Sullivan
Cc: Tammy McKeirnan
Subject: FW: Policy Amendment BC Vets Policy Procedure

FYI

Niria Lucatero
Veterans Relief Fund Program Specialist/Housing Navigator
Benton County Dept. of Human Services
Office: 509-737-3987
Fax: 509-783-5981

From: Eric Andrews <Eric.Andrews@co.benton.wa.us>
Sent: Tuesday, October 27, 2020 2:00 PM
To: Niria Lucatero <Niria.Lucatero@co.benton.wa.us>
Cc: Kyle Sullivan <Kyle.Sullivan@co.benton.wa.us>; Tammy McKeirnan <Tammy.McKeirnan@co.benton.wa.us>
Subject: RE: Policy Amendment BC Vets Policy Procedure

I approve as to form. Thank you for highlighting the change 😊
R/

Eric T. Andrews
Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

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From: Niria Lucatero <Niria.Lucatero@co.benton.wa.us>
Sent: Wednesday, October 21, 2020 3:48 PM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>
Cc: Kyle Sullivan <Kyle.Sullivan@co.benton.wa.us>; Tammy McKeirnan <Tammy.McKeirnan@co.benton.wa.us>
Subject: Policy Amendment BC Vets Policy Procedure

Good Afternoon Eric,

Could you please review the attached amendment to the Benton County Veterans Relief Fund P&P (page 9, highlighted portion). The Advisory Board met today and voted to add Gas Vouchers as an available expenditure for our Benton County Veterans.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/10/20
Subject:	2021 1-Yr Road Program & Equipment Purchases
Presenter:	Douglas D'Hondt
Prepared By:	Jennifer Bowe
Reviewed By:	Douglas D'Hondt

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

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

Summary / Background Information

WAC 136-16-010 requires that the County Engineer annually submit to the Board a 1- year outlook for the County Road fund which includes expenditures of maintenance, administration, capital projects and equipment purchases.

The County Engineer has prepared such a report and is submitting it to the Board for their review and approval. The annual program must be adopted prior to the final adoption of the County's biennial budget which is anticipated to occur on November 17, 2020.

Fiscal Impact

Amount: Refer to attached reports that show anticipated expenditures for the Road Fund. All expenditures are included in the biennial budget.

Fund: **0101101.500**

Recommendation

Staff recommends the Board adopt the 1-year road program as presented.

Suggested Motion

I move to approve the Resolution approving the Benton County 2021 Annual Road Program.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE BENTON COUNTY 2021 ANNUAL ROAD PROGRAM

WHEREAS, the Board adopted the 2021-2026 Comprehensive Six-Year Road Program on August 4, 2020 per Resolution 2020-528; and

WHEREAS, Washington Administrative Code (WAC) 136-16-018 requires that the County adopt an annual Road Program prior to the adoption of the budget; and

WHEREAS, the Benton County Engineer recommends adoption of the One-Year Road Program for 2021, it appearing to be in the best public interest; **NOW, THEREFORE,**

BE IT RESOLVED, by the Board of Benton County Commissioners, that the 2021 Annual Road Program, a copy of which is attached, is hereby adopted.

Dated this 10th day of November 2020.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works J. Bowe

2021 Benton County Road Program

Approved by the

Board of County Commissioners

on

November 10, 2020

Jerome Delvin
Shon Small
James Beaver

2021 Road Program
Estimated Revenues

B.A.R.S.#		COUNTY	STATE	FEDERAL	OTHER	TOTAL
291.74.0001	Beginning Road Fund Balance	6,000,000	-	-	-	6,000,000
311.10.0000	Road Levy	6,257,571	-	-	-	6,257,571
317.20.0001	Leasehold	-	130,000	-	-	130,000
321.90.0501	Franchise Fee	5,000		-	-	5,000
322.90.0002	Trail Access Permits	-	-	-	-	-
336.00.7500	Multimodal Transportation - Counties	-	152,345	-	-	152,345
336.00.8901	Gas Tax (County Apportionment)	-	3,570,554	-	-	3,570,554
341.43.0005	Personnel Admin Services by Co Road	12,000	-	-	-	12,000
341.82.0001	Road & Engineering Services	-	-	-	7,500	7,500
344.10.9000	Road Maintenance Services	7,500	-	-	-	7,500
344.10.9002	Road Construction & Engr Services	-	-	-	10,000	10,000
344.10.0501	Various Road Repairs	13,000	-	-	-	13,000
344.19.0501-2	Plat Road/Access Road/Encroachment Review	27,500	-	-	-	27,500
344.19.0503-4	Road Vacations / Affidavits of Correction	500	-	-	-	500
344.27.0502	Road Signs	1,000	-	-	-	1,000
344.27.0504	Tourist Information Signs	1,000	-	-	-	1,000
361.11.0001	Interest	120,000	-	-	-	120,000
362.50.0001	Other Rents	5,903	-	-	-	5,903
367.00.0001	Contributions / Donations	-	-	-	-	-
367.00.0006	Traffic Mitigation Fee	308,000	-	-	-	308,000
369.10.0501	Sale of Salvage - Road	-	-	-	-	-
369.40.0501	Judgements and Settlements	-	-	-	-	-
369.91.0001	Miscellaneous Other	2,500	-	-	-	2,500
369.91.0502	Miscellaneous Revenues (REA Capital Payment)	200	-	-	-	200
389.30.0001	Sales Tax Collection	1,700	-	-	-	1,700
395.10.0501	Sale of Fixed Assets - Road	-	-	-	-	-
	Subtotal Road Fund	12,763,374	3,852,899	-	17,500	16,633,773
397.10.0000	Operating Transfers-In to Road Fund	-	-	-	-	-
397.10.0103	Flood Control	-	-	-	1,000	1,000
397.10.0114	Paths & Trails Reserve Fund	-	-	-	125,000	125,000
397.10.0144	Rural County Capital Fund	-	-	-	180,000	180,000
397.10.1102	CRIMP Fund	-	-	-	2,165,585	2,165,585
	Subtotal Operating Transfers	-	-	-	2,471,585	2,471,585
	GRANT / MATCHING FUNDS					
333.20.2052	HSIP	-	-	1,492,200	-	1,492,200
333.20.2057	STP/E Enhancement (TEP)(TAP)			2,350,000		2,350,000
334.03.7100	CRAB (Rural Arterial Program)					-
334.03.7200	CAPP (Arterial Preservation)	-	428,154	-	-	428,154
	Subtotal Grant/ Matching Funds	-	428,154	3,842,200	-	4,270,354
	GRAND TOTAL ROAD REVENUES	12,763,374	4,281,053	3,842,200	2,489,085	23,375,712

2021 Road Program
Estimated Expenditures

		COUNTY ROAD FUND	STATE	FEDERAL	OTHER	TOTAL
	Traffic Law Enforcement (Diversion of County Road Funds)	626,957	-	-	-	626,957
542.00	Maintenance	11,386,085		-	-	11,386,085
543.00	Administration	1,464,961	-	-	-	1,464,961
544.00	Operations	1,135,715	-	-	-	1,135,715
586.00	Agency Disbursements to WS Dept of Revenue	1,700	-	-	-	1,700
591.950.7800	Redemption of Long-Term Debt (PWTF Loan SR397)	197,750	-	-	-	197,750
592.950.8300	Interest and Other Debt Service Costs (PWTF Loan SR397)	3,955	-	-	-	3,955
594.420.6400	Equipment	200,000				200,000
594.420.6430	Capital Software	-				-
	Subtotal	15,017,123	-	-	-	15,017,123
Fund Source	**595.00 Construction**					
						-
STBG/TAP	Dallas Road Bike Path			500,000		500,000
Road/STPR	Plymouth Road Pavement Overlay	184,096		1,492,200		1,676,296
Road	Crosby Road - Phase II	200,000				200,000
Road/CRIMP	Badger Road - I82 Roundabouts & Pathways	490,000		1,775,000		2,265,000
Road	Badger Road Pathway	75,000				75,000
Road	Obsolete Bridge Removal Project				300,000	300,000
RCCF	Adair Road	75,000				75,000
RCCF	Belmont Road Extension	105,000				105,000
Road	Paths and Trails	20,000				20,000
Road	Railroad Crossing	20,000				20,000
Road	Emergent Projects	234,000	-	-	-	234,000
	Subtotal	1,403,096	-	3,767,200	300,000	5,470,296
	518.62 Jobbing and Contract Work					
518.62	County	6,000	-	-	-	6,000
518.62	City	120,000	-	-	-	120,000
	Subtotal	126,000	-	-	-	126,000
	GRAND TOTAL ROAD EXPENDITURES	16,546,219	-	3,767,200	300,000	20,613,419

2021 Road Equipment Purchases

QTY		COST	REPLACEMENT YES/NO	FUND
N/A	Miscellaneous Minor Equipment	$25,000	Yes/No	Road
	Grand Total Equipment Expenditures	**$25,000**		

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	10 November 2020
Subject:	Rural County Capital Fund – New Disbursement Agreement with City of Richland
Presenter:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	AJF

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☒ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary

For commissioner consideration, staff will present a recommended Rural County Capital Fund (RCCF) award to the City of Richland for the "Center Parkway Extension" project.

Background

Staff will give a brief general update of the RCCF program.

Staff will then briefly present the City's project for Center Parkway Extension. The staff review committee (Rasmussen, Blain, Fyall) has reviewed the project and recommends it for funding. The Prosecutor has approved the disbursement agreement for form, and the City will have signed it after their meeting of November 3.

The agreement calls for the disbursement of $980,000 from the City's allocation, plus an additional $260,000 from the County's own allocation. The original City request was in the amount of $2,275,000, but there is not sufficient funds available in the City's allocation to cover this amount. The City has indicated that they will come back sometime in 2021 when the project is about half completed and request to apply any additional funds that have accrued in their RCCF allocation to apply toward this project in an amendment/new agreement. This is similar to the Swift Boulevard project from 2018/2019.

Fiscal Impact

Total expenditure from the Rural County Capital Fund will be $1,240,000, split between two allocations:

City or Richland	$ 980,000
Benton County:	$ 260,000

Recommendation

Staff recommends funding the project.

Suggested Motion

"I move for the disbursement of Rural County Capital Funds for the Center Parkway Extension project in the amount of $1,240,000, and for signing of the agreement by the Chair that will put this expenditure into force."

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE RURAL COUNTY CAPITAL FUND, DISBURSEMENT TO THE CITY OF RICHLAND FOR THE "CENTER PARKWAY EXTENSION" PROJECT

WHEREAS, RCW 82.14.370, adopted by the Washington State Legislature in 1997, authorizes certain qualified counties like Benton County to impose a "sales and use tax for public facilities", the revenue from which is intended to support "economic development activities" through the construction of "public facilities" by the cities, ports, and the County itself for the purposes of job creation and tax revenue generation; and,

WHEREAS, Benton County has established the "Rural County Capital Fund" for said economic development activities, and has reserved a portion of the Fund for discretionary disbursement to cities and ports within the County who request County participation with qualified capital development projects that are compliant with both State law and County policy; and,

WHEREAS, the City of Richland submitted an application for disbursement of funds to be used toward certain improvements located with the city referenced herein as the "Center Parkway Extension", which calls for the extension of Center Parkway from its current terminus at a traffic circle intersection with Gage Boulevard, northward and down a hillside to a new intersection with Tapteal Drive, for the purposes of facilitating more and better private sector development throughout the Tapteal Drive corridor; and,

WHEREAS, the County and the City have mutually agreed to terms on a *Disbursement Agreement for use of Rural County Capital Funds*; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of County Commissioners that the Chairman is hereby authorized to sign the *Disbursement Agreement for use of Rural County Capital Funds* with the City of Richland for the disbursement of up to $1,240,000.00 toward completion of the "City Hall Demolition" project, which includes $980,000.00 from the City's own allocation of Rural County Capital Funds and $260,000.00 from the County's allocation of Rural County Capital Funds, as stipulated in the *Disbursement Agreement*.

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

orig: Sustainable Development
cc: City of Richland, Auditor

Prepared by: A.J. Fyall

DISBURSEMENT AGREEMENT

FOR USE OF RURAL COUNTY CAPITAL FUNDS

This Agreement, between Benton County (hereinafter "County") and the City of Richland (hereinafter "City") shall be effective upon execution by both parties.

WHEREAS, the County has previously agreed to distribute certain funds received from the State of Washington that it has deposited in its Rural County Capital Fund (hereinafter "Fund") after April 1, 2016 for the financing of certain "public facilities [projects] serving economic development purposes" as contemplated by State statute (RCW 82.14.370) and in conformance with County policy (Resolution 2017-103, adopted January 31, 2017); and,

WHEREAS, the County and the City are authorized, including under Chapter 39.34 of the Revised Code of Washington, to contract with each other and other public agencies in order to effectively and efficiently operate, administer, and carry out their programs and public projects; and,

WHEREAS, the purpose of this Agreement is to fund the extension of Center Parkway from Gage Boulevard to Tapteal Drive to improve access into and circulation throughout the Tapteal Business Park, which currently has 33 acres of undeveloped, high-visibility, commercially-zoned property, by extending Center Parkway from the traffic circle at Gage Boulevard across the railroad tracks and down the hill to a new connection at Tapteal Drive, thereby providing a missing north-south link to the undeveloped Tapteal Drive properties from the Columbia Center Mall area. This work will consist of: acquisition of property rights to establish the street right of way, engineering design, demolition of existing improvements, construction of water and sewer mains, conduit for other utilities, relocation of existing overhead utility lines, an at-grade railroad crossing system, street improvements consisting of curb, gutter, and sidewalk, subgrade preparation, crushed rock base, asphalt pavement, pavement markings and signs, street lights, and stormwater management facilities (hereinafter, the "Project"); and,

WHEREAS, the purpose of the Project is to facilitate commercial site development and redevelopment near the new street segment in both Richland and Kennewick; and,

WHEREAS, upon completion the new street connectivity is predicted to support development of 33 acres of commercially zoned property with high visibility from SR240 and close proximity to the vibrant Columbia Center area. The Project is predicted to draw more than $200 million in private capital investment and lead to more than 900 new jobs. In addition a number of presently vacant properties near the new street segment are likely to be redeveloped or reoccupied adding additional investment and employment; and,

WHEREAS, the City has requested $2,275,000 for the Project from the Fund; and,

WHEREAS, the City's current available allocation from the Fund is $980,000; and,

WHEREAS, the City has requested and the County has agreed to provide up to $260,000 from the County's own allocation of the Fund in addition to the City's $980,000 allocation from the Fund; and,

WHEREAS, the County's evaluation of the Project confirms funding eligibility, and,

WHEREAS, because the City's current available balance in the Fund is only $980,000, the City is limited to receiving that amount plus the agreed amount of up to $260,000 from the County's allocation, for a total funding amount under this Agreement of $1,240,000.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the County and the City mutually agree to the following:

1. Based on the City's request for reimbursement from the Fund, the County agrees to reimburse the City for up to $1,240,000 of qualified direct costs incurred by the City for the Project *after* the execution of this Agreement from a combination of the City's allocation ($980,000) and the County's allocation ($260,000); contingent upon: (i) the City having $980,000 in its Fund allocation at the time of execution of this Agreement and that amount shall be disbursed prior to any disbursement from the County's allocation of the Fund; and (ii) that each reimbursement is consistent with the County's Rural County Capital Fund Disbursement Policy.

2. The City represents that the use of revenues from the Fund for the Project is consistent with RCW 82.14.370.

3. The City agrees to use all funds allocated by this Agreement solely for the purpose of financing the Project and warrants that all expenditures by the City for which it seeks reimbursement will comply with RCW 82.14.370.

4. The estimated Project schedule and a disbursement schedule are attached hereto as Exhibit A. The parties agree that funds will be disbursed only as reimbursement for actual, direct costs incurred by the City in connection with the Project. The City will keep the County informed of changes to the schedule as the Project progresses.

5. The City shall invoice the County every ninety (90) days after the effective date of this Agreement, identifying all Project costs incurred by the City during the prior quarter that are eligible for and for which reimbursement is sought. All invoices shall be mailed to the County at the following address:

   Benton County Commissioners Office
   ATTN: Sustainable Development Manager
   7122 West Okanogan Place
   Kennewick, Washington 99336

6. All approved reimbursement payments will be made via check mailed directly to the City at:

   Richland City Hall
   625 Swift Boulevard
   Richland, Washington 99352

7. The City shall not hold the County liable for any delay in disbursements, but the County agrees to use its best efforts to make appropriate disbursement payments to the City in a reasonably timely fashion.

8. The City shall be responsible for establishing policies for implementing this Agreement, monitoring progress of the Project, and monitoring the fulfillment of the Parties' responsibilities under the Agreement. In addition to other responsibilities set forth in this Agreement, the City is responsible for following applicable bid and prevailing wage law policies and procedures when awarding bids for the Project contemplated by this Agreement.

9. The City agrees to provide the County with a quarterly report along with each invoice outlining the status of the Project, including a spreadsheet detailing all costs being reimbursed by the County.

10. If Rural County Capital Funds are applied by the City toward non-eligible expenditures, the County may cease all disbursements and the City shall repay to the County all monies inappropriately expended.

11. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by the parties during the term of this Agreement and for three years after its termination. This Agreement shall be filed by the City with the Benton County Auditor.

12. It is not the intention that a separate legal entity be established with respect to the Project, nor is the joint acquisition, holding, or disposing of real or personal property anticipated.

13. The City agrees to indemnify the County from and against any claims, actions, losses, costs, penalties, damages, attorneys' fees, and all other liabilities and costs of defense of any nature arising out of the County's agreement to disburse funds under this Agreement.

14. The City shall not have the right to assign the rights under this Agreement nor to terminate its obligations hereunder without first securing the written consent of the County.

15. This Agreement shall terminate and the County's obligation to disburse funds under this Agreement shall cease at any time that any aspect of the Project falls thirty-six (36) months or more behind the schedule set forth in Exhibit A. In such case, the County's rights under this Agreement shall continue, but the County may use the funds previously allocated under this Agreement for any purpose allowable under state law. The County will make a good faith effort to notify the City whenever it believes any aspect of the Project is thirty (30) months or more behind schedule; provided that maintaining the Project on schedule is the Port's responsibility and the City shall have no recourse against the County if such notice is not provided.

16. This Agreement contains the entire, complete, and integrated statement of each and every term agreed-to by and between the City and the County, and this Agreement supersedes any and all prior written and unwritten agreements and understandings pertaining to the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed below.

BENTON COUNTY

_____
Jim Beaver, Commission Chairman

Date: _____

ATTEST:

_____
Cami McKenzie, Clerk to the Board

APPROVED AS TO FORM:

Ryan K Brown
_____
Chief Deputy Prosecuting Attorney

CITY OF RICHLAND

_____
Cindy Reents, City Manager

Date: _____

ATTEST:

_____
Jennifer Rogers, City Clerk

APPROVED AS TO FORM:

_____
Heather Kintzley, City Attorney

EXHIBIT A

ESTIMATED PROJECT COMPLETION AND FUND DISBURSEMENT SCHEDULE

Projected schedule and expenses, in dollars. Disbursement schedule is depicted quarterly, with Sales Taxes and Contingencies included. Work on the Project is expected to begin in November 2020, and is projected to be completed in October, 2022, contingent upon funding, property acquisition process, weather, construction delays, or other unexpected events.

Project Items	2020	2021				2022		TOTALS
	10/1 –12/31	1/1 – 3/31	4/1 – 6/30	7/1 – 9/30	10/1 – 12/31	1/1 – 3/31	4/1 – 6/30	
Appraisals	$16,000							$16,000
Negotiations		$16,000						$16,000
Acquisitions			$300,000	$300,000				$600,000
Relocations				$170,000	$170,000			$340,000
Engineering Design				$25,000	$25,000			$50,000
Mobilization						$75,000		$75,000
Demolition						$70,000		$70,000
Water						$32,000		$32,000
Sewer						$15,000		$15,000
Other Utilities						$1,000		$1,000
Construction Management fees to Third Party						$20,000	$5,000	$25,000
TOTALS	**$16,000**	**$16,000**	**$300,000**	**$495,000**	**$195,000**	**$213,000**	**$5,000**	**$1,240,000**

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	10 November 2020
Subject:	Emergency Declaration – Prosser Railroad Bridge
Presenter:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	J MacPherson & M Rasmussen

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☒ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary

Staff will bring forward a recommendation for an emergency declaration in western Benton County for Commissioner consideration. This possible action is the direct result of a wildfire destroying the shortline railroad spur near Prosser.

Background

Staff will recap the destruction caused by the September 7 wildfire, which rendered the railroad trestle near Prosser permanently unusable. The bridge was heavily used by the agriculture industry.

An emergency declaration by the County may help the bridge owners access funding and other resources necessary to rebuild the trestle more easily. Because the bridge is privately owned, it is not eligible for many forms of public relief, but there may still be advantages to having the declaration in place.

The County has been specifically asked by several entities to declare an emergency. Request letters are attached from:

- State Representative Jeremie Dufault
- Yakima County Development Association
- Port of Grandview
- Port of Sunnyside

Fiscal Impact

None.

Recommendation

Staff recommends adopting the emergency declaration resolution.

Suggested Motion

"I move for the County to declare a state of emergency in regards to railroad transportation in the western part of the county due to destruction caused by this seaon's wildfires."

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF CRITICAL INFRASTRUCTURE, RE: DECLARATION OF EMERGENCY FOR PRESERVATION OF CRITICAL RAILROAD INFRASTRUCTURE DUE TO DAMAGE BY ATYPICAL WILDFIRE EVENT

WHEREAS, during the summer of 2020, Benton County experienced a devasting wildfire in the western part of the county that, among other things, destroyed and rendered completely unusable a railroad bridge across the Yakima River that had been in service for over 100 years; and,

WHEREAS, the complete loss of use of this railroad spur appears to meet the criteria for an emergency situation under RCW 38.52; and,

WHEREAS, the railroad shortline spur, including the lost bridge, handled the equivalent of 3,600 rail cars worth of cargo in an average year in support of many growing, processing, and shipping aspects of the area's agriculture; and,

WHEREAS, without the bridge, greater expense will be added to the production of these goods, in addition to increased truck traffic on rural roads and road surface impacts from the increased loads; and,

WHEREAS, the declaration of an emergency can in many cases facilitate access to emergency funds, regulatory relief, bureaucratic assistance, or other resources that would help to make the rebuilding process easier and more efficient; and,

WHEREAS, the Board of Benton County Commissioners finds that the condition of the railroad transportation system within the County due of the wildfire of September 7, 2020 warrants declaration of an emergency, **NOW, THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby declares the shortline operated by Central Washington Railroad near Prosser to be in a state of emergency, pursuant to RCW 38.52; and,

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners hereby authorizes, where applicable, the exercise of emergency powers granted to executive heads of political subdivisions, including but not limited to those regarding purchasing and the request for reimbursement for emergency response activities.

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

orig: Commissioners

Prepared by: A.J. Fyall

STATE REPRESENTATIVE
15th LEGISLATIVE DISTRICT

JEREMIE DUFAULT

State of Washington House of Representatives

CIVIL RIGHTS & JUDICIARY

CONSUMER PROTECTION & BUSINESS

TRANSPORTATION

Benton County Commission
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

10/19/2020

RE: Critical infrastructure destroyed by wildfire

Dear Benton County Commissioners,

I am writing to request your assistance regarding a critical rail trestle & bridge which crosses over the Yakima River in Benton County near Prosser that was destroyed by a wildfire in September (https://www.yaktrinews.com/train-bridge-over-yakima-river-between-prosser-benton-city-blaze/).

This rail trestle/bridge is used to haul all kinds of freight from/to Yakima and Benton Counties, and impacts many shippers in three Port Districts (Port of Sunnyside, Port of Grandview and Port of Benton), several central WA communities (Prosser, Grandview, Sunnyside, Granger, etc.) and about 3,600 rail carloads (~14,500 truckload equivalents) of shipments annually. Products and cargo that are shipped over this trestle/bridge serve many industries in the area, including the dairy industry, the hop industry, the grape industry, feed for many livestock operations, as well many other agricultural and food growing, processing and/or shipping operations.

As a result, I would strongly urge your support of an emergency declaration and/or infrastructure funding to help rebuild this trestle/bridge with durable materials such as concrete and steel as soon as possible.

Thank you for your consideration concerning this matter.

Sincerely,

State Rep. Jeremie Dufault

LEGISLATIVE OFFICE: 122E LEGISLATIVE BUILDING • PO BOX 40600 • OLYMPIA, WA 98504-0600 • 360-786-7874 E-MAIL: Jeremie.Dufault@leg.wa.gov
TOLL-FREE LEGISLATIVE HOTLINE: 1-800-562-6000 • TTY: 1-800-833-6388 • www.leg.wa.gov

PRINTED ON RECYCLED PAPER

Yakima County Development Association
CHOOSE YAKIMA VALLEY

October 16, 2020

Benton County Commission
7122 W. Okanogan Place, Bldg A
Kennewick, WA 99336

Dear Commissioners,

I am writing to request your assistance regarding a critical rail trestle & bridge that crosses the Yakima River in Benton County near Prosser. A wildfire destroyed the bridge in September, making it inoperable. (https://www.yaktrinews.com/train-bridge-over-yakima-river-between-prosser-benton-city-blaze/).

This rail trestle/bridge is used to haul all kinds of freight to and from Yakima and Benton Counties. About 3,600 rail carloads (~14,500 truckload equivalents) cross this bridge annually. The loss of the bridge has impacted many shippers in three Port Districts; the Port of Sunnyside, the Port of Grandview, and the Port of Benton. Some of the cities affected include Prosser, Grandview, Sunnyside, Granger.

Many businesses in Prosser, Grandview, Sunnyside, and Granger rely on products and cargo that are shipped over this trestle/bridge. Those most impacted include the dairy industry, hop industry, grape industry, feed for many livestock operations, as well as many other agricultural and food growing, processing, and/or shipping operations.

The quickest path to rebuilding this important trestle/bridge to concrete and steel is to issue an emergency declaration that will allow access to emergency funding and/or infrastructure funding that would otherwise be unavailable.

The Yakima County Development Association is working with our Counterpart in the Tri-Cities to find a quick resolution to this, and thank you for your consideration concerning this matter.

Sincerely,

Jonathan Smith, CEcD
Executive Director

Port of GRANDVIEW
washington
economic development | agriculture | food processing

October 20, 2020

www.portofgrandview.com

Jerome Delvin
Benton County Commissioner
7122 W. Okanogan Place, Bldg. A
Kennewick WA 99336

RE: Requesting your assistance regarding a Critical Rail Trestle & Bridge recently destroyed by a wildfire near Prosser, WA

Dear Commissioner Delvin:

We are writing to request your assistance regarding a critical rail trestle & bridge which crosses over the Yakima River in Benton County near Prosser that was destroyed by a wildfire in September (https://www.yaktrinews.com/train-bridge-over-yakima-river-between-prosser-benton-city-blaze/).

This rail trestle/bridge is used to haul all kinds of freight from/to Yakima and Benton Counties, and impacts many shippers in three Port Districts (Port of Sunnyside, Port of Grandview and Port of Benton), several central Washington communities (Prosser, Grandview, Sunnyside, Granger, etc.) and about 3,600 rail carloads (~14,500 truckload equivalents) of shipments annually. Products and cargo that are shipped over this trestle/bridge serve many industries in the area, including the dairy industry, the hop industry, the grape industry, feed for many livestock operations, as well many other agricultural and food growing, processing and/or shipping operations.

We understand that Governor Inslee briefly referenced this rail trestle/bridge in an October 8th letter to President Trump.

As a result, we would urge your support of an emergency declaration and/or emergency funding or infrastructure funding to help rebuild this important trestle/bridge (to concrete and steel) as soon as possible.

Thank you for your consideration concerning this matter.

Sincerely,

Jim Sewell, Commissioner
President, Port of Grandview Board of Commissioners

cc: Governor Jay Inslee
Representative Dan Newhouse
Port of Benton Commissioners
Port of Sunnyside Commissioners

PORT OF SUNNYSIDE

October 16, 2020

Benton County Commission
7122 W. Okanogan Place, Bldg A
Kennewick, WA 99336
Email: commissioners@co.benton.wa.us

RE: Requesting your assistance regarding a Critical Rail Trestle & Bridge recently destroyed by a wildfire near Prosser, WA

Dear Benton County Commissioners,

We are writing to request your assistance regarding a critical rail trestle & bridge which crosses over the Yakima River in Benton County near Prosser that was destroyed by a wildfire in September (https://www.yaktrinews.com/train-bridge-over-yakima-river-between-prosser-benton-city-blaze/).

This rail trestle/bridge is used to haul all kinds of freight from/to Yakima and Benton Counties, and impacts many shippers in three Port Districts (Port of Sunnyside, Port of Grandview and Port of Benton), several central WA communities (Prosser, Grandview, Sunnyside, Granger, etc.) and about 3,600 rail carloads (~14,500 truckload equivalents) of shipments annually. Products and cargo that are shipped over this trestle/bridge serve many industries in the area, including the dairy industry, the hop industry, the grape industry, feed for many livestock operations, as well many other agricultural and food growing, processing and/or shipping operations.

As a result, we would strongly urge your support of an emergency declaration and/or emergency funding or infrastructure funding to help rebuild this important trestle/bridge (to concrete and steel) as soon as possible.

Thank you for your consideration concerning this matter.

Sincerely,

Jay Hester
Executive Director
Port of Sunnyside

2640 E. Edison Avenue, Suite 1 • Sunnyside, WA 98944 • Phone (509)839-7678 • Fax (509)839-7462