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 17, 2020

9:00 AM **Call to Order**
Approval of Minutes
- **November 10, 2020**

Review Agenda
Consent Agenda

Auditor
a. Canvassing Board Appointment
Clerk
b. Agreement w/Michelle Dolven for Family Law Facilitator Services
Commissioners
c. Line Item Transfer, Fund No. 0000-101, Dept. 115
d. Line Item Transfer, Fund No. 0000-101, Dept. 115 to 109
e. Deed for Boundary Line Adjustment for a Portion of Tract A, Meadow Springs Ranch No. 2
Coroner
f. Agreement w/SightLife for Recovery Services
Facilities
g. Contract w/C&E Trenching LLC for Snow Removal

Human Resources

h. Line Item Transfer, Fund No. 0504-101, Dept. 000
i. Line Item Transfer, Fund No. 0503-101, Dept. 000

Information Technology

j. Line Item Transfer, Fund No. 0502-101, Dept. 000
k. Line Item Transfer, Fund No. 0132-101, Dept. 000
l. Purchase of Two Catalyst Port Switches From CompuNet, Inc.
m. Purchase of Three Laptops for Human Services From Dell Inc.
n. Purchase of Wireless Devices Services From Cellco Partnership; Rescinding Resolution 10-106

Juvenile

o. Amended Contract No. 3 w/NCIC Inmate Communications for Inmate Telecommunications Systems & Services
p. Agreement w/State of WA, Administrative Office of the Courts for Court Interpreter Services
q. Contract w/Lutheran Community Services Northwest for Mental Health Assessments

Office of Public Defense

r. Superior Court Public Defense Agreement w/Branden Landon
s. Superior Court Public Defense Agreement w/Justin Andrews
t. Superior Court Public Defense Agreement w/Michelle Alexander

Parks

u. Contract w/Knutzen Consulting Engineering for Engineering & Design Services for Hover Park Parking Lot

Public Safety

v. Line Item Transfer, Fund No. 0148-101, Dept. 120
w. Line Item Transfer, Fund No. 0148-101, Dept. 117
x. Line Item Transfer, Fund No. 0148-101, Dept. 115

Public Works

y. Line Item Transfer, Fund No. 0501-101, Dept. 650

Sheriff

z. Agreement w/City of Kennewick for Use of Kennewick Firearms Range Facility
aa. Agreement w/WA Traffic Safety Commission for Overtime Grant Funding; Rescinding Resolution 2020-787

Sustainable Development

bb. Line Item Transfer, Fund No. 0135-101, Dept. 000

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

Scheduled Business

Position Requests:

Auditor's Office ~ B Chilton & L Roe

- Office Assistant III
- Accounting Support Specialist

Sheriff's Office ~ Commander Caughey
- Detective in Public Safety Tax Fund
- Deputy in Public Safety Tax Fund

Animal Control ~ J MacPherson
- Canine Control Supervisor

Building Department ~ J MacPherson
- Building Manager

Other Business

Executive Session

Pending Litigation ~ R Brown & R Hay

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Tuesday, November 10, 2020, 9:00 a.m.
Meeting provided by Video Live-Broadcast and Telephonically

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

Benton County Employees Present During All or a Portion of the Meeting: Matt Rasmussen, Deputy County Administrator; Robert Heard, IT Manager; Kyle Sullivan, Human Services Manager; Niria Lucatero, Human Services; Douglas D'Hondt, County Engineer; Jennifer Bowe, Public Works CFO; Adam Fyall, Sustainable Development Manager; Linda Ivey, Finance Manager; Chief Scott Souza, Corrections; Captain Joshua Shelton, Corrections.

Approval of Minutes

The Minutes of November 3, 2020 were approved.

Agenda Review

Mr. MacPherson stated they would like to add the following items to the agenda:

- Medical RFQ – Corrections Department
- Certificate of Good Practice
- Proclamation
- Executive Session – Evaluate the Qualifications of Applicant for Public Employment
- Executive Session – Potential Litigation

Consent Agenda

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

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

None.

Amended Veterans' Relief Fund Policies & Procedures

Kyle Sullivan and Niria Lucatero presented the Amended Veterans' Relief Fund Policies & Procedures. Mr. Sullivan said they were requesting to amend the policy to include gas vouchers as an allowable expense. He said the Advisory Committee met in October, and it was a topic that came up routinely. He added that Ms. Lucatero administered the program and worked with the

vets and she researched to see what others across the state were doing. The advisory board asked that they present this for approval to the Board.

MOTION: Commissioner Delvin moved to approve the resolution and amended policies and procedures for the Veterans' Relief Fund to add gas vouchers as an allowable expenditure. Commissioner Small seconded and upon vote, the motion carried unanimously.

2021 One-Year Road Program & Equipment Purchases

Doug D'Hondt and Jennifer Bowe presented the One-Year Road Program which included expenditures for maintenance, administration, capital projects and equipment. Mr. D'Hondt said the annual program must be adopted prior to final adoption of the Benton County Budget.

MOTION: Commissioner Small moved to approve the Resolution adopting the Benton County 2021 One-Year Road Program as presented. Commissioner Delvin seconded and upon vote, the motion carried.

Center Parkway Extension Project Disbursement – City of Richland

Adam Fyall presented a disbursement agreement with the City of Richland for a new project located close to the Justice Center (Mail by the Mall was the project site). He said the plan was to demolish the building and put in a new road to connect to Tapteal Drive. He said the City requested just short of $1 million and asked for a portion of the County's allocation in the amount of $260,000. He said the committee reviewed the request and recommended approval. Mr. Fyall indicated it was like the project with the Port of Kennewick where the County used a portion of its allocation to participate with the Port of Kennewick on its project.

Commissioner Small discussed the City requesting $260,000 from the County's portion, the partnerships the county participated in, and his disappointment in that entity's demonstration of its lack of partnerships (specifically the work crew agreement). He said it appeared the partnerships were only good if the County did what the cities wanted. However, he believed this was a good project.

MOTION: Commissioner Small moved to approve the disbursement agreement with the City of Richland for the Center Parkway Extension project as presented. Commissioner Delvin seconded.

Discussion

Chairman Beaver said he agreed with the Commissioner Small that the definition of a partnership was different for the County's partners.

Upon vote, the motion carried.

Emergency Declaration for Prosser Railroad Bridge

Adam Fyall said a big wildfire took out a 100-year old railroad spur in Prosser and they were looking to rebuild. He indicated several entities, including Representative Dufault (Yakima), had requested that Benton County declare an emergency. He said it was a privately owned railroad bridge, and he wasn't sure if this would help, but requested the Board approve the emergency declaration, which was similar to what the County did for the roads after weather events.

MOTION: Commissioner Small moved to approve the Resolution declaring a state of emergency regarding railroad transportation in the western part of the County due to destruction caused by this season's wildfires. Commissioner Delvin seconded and upon vote, the motion carried.

2021-2022 Budget Update

Linda Ivey said the budget was previously approved by the Board to go to public hearing on November 17, 2020 and was to be published in the November 4 and November 11 editions of the Prosser Record Bulletin. However, the Prosser Record Bulletin failed to publish on the first date and so the public hearing date was revised to November 24 and would be published on the November 11 and November 18 editions. Also, the proposed budget had been posted on the website since October 28.

Other Business

RFQ – Medical Services – Corrections Department

Chief Souza presented a request for the Board to approve an RFQ for medical services in the Corrections Department. He said the current contract expired on March 31, 2021 but he wanted to move forward to reach as much interest as possible.

MOTION: Commissioner Delvin moved to authorize the solicitation for the Request for Qualifications for Professional Medical Services for the Benton County Corrections Department. Commissioner Small seconded and upon vote, the motion carried.

Certificate of Good Practice

Matt Rasmussen said the County Road Department is required to submit annually to the County Road Administration Board (CRAB) certification of expenditures to continue to be eligible to receive state road funding and distributions for motor fuel tax. The CRAB presented Benton County with a Certificate of Good Practice for 2019, which will be presented later to the Road Department.

Proclamation

Drea Myers presented a proclamation to the Board to honor Prosser High School student Jazlynn Guillen in her fight against cancer for her strength, courage, and faith, which has been an inspiration in the community and around the world.

MOTION: Commissioner Small moved to proclaim November 11, 2020 as "Jazzy Guillen Day" in Benton County. Chairman Beaver seconded and upon vote, the motion carried.

Election Results

Commissioner Delvin commented that it was a strange year for elections but was very disappointed the local party would not support the incumbents. He said he planned to continue the good work the County has done for the community.

Chairman Beaver said he was elated that Commissioner Delvin was re-elected so they could continue the work that has been done. Additionally, he said he would never apologize for taking over the jail from the Sheriff and thanked everyone that worked so hard to make this a better place.

Executive Session – Evaluate the Qualifications of an Application for Public Employment

Jerrod MacPherson announced at 9:36 a.m. the Board would be going into executive session for up to 15 minutes to evaluate the qualifications of an applicant for public employment. The Board briefly recessed to reconvene in the Executive Conference Room.

Present were Chairman Beaver, Commissioners Small and Delvin (via/teleconference), Jerrod MacPherson, Matt Rasmussen, and Cami McKenzie. The Board came out of executive session and briefly recessed to reconvene back in the Commissioners' Conference Room.

The Board came out at 9:47 a.m. and announced that no decisions were made in executive session.

- Note - There were technical difficulties with the audio recording.

Executive Session – Potential Litigation

Jerrod MacPherson announced at 9:47 a.m. the Board would be going into executive session for up to 10 minutes to discuss potential litigation. The Board briefly recessed to reconvene in the Executive Conference Room.

Present were Chairman Beaver, Commissioners Small and Delvin (via/teleconference), Jerrod MacPherson, Matt Rasmussen, Adam Morasch, DPA Ryan Brown and Cami McKenzie. The Board came out of executive session and briefly recessed to reconvene back in the Commissioners' Conference Room.

The Board came out at 9:53 a.m. and Mr. Brown announced the Board discussed two claims against the County, but no action was taken.

MOTION: Chairman Beaver moved to approve the Resolution entering into a final settlement agreement and release regarding claim number 2020-006 and 2020-007 between Nhung Truong and Hung Le and Benton County as presented. Commissioner Small seconded and upon vote, the motion carried.

Tort Claim

CC 2020-19: Received on November 9, 2020 from Jacob Joseph Munoz

Resolutions

2020-810: Contract w/Vista Veterinary Hospital Inc. for Spay & Neutering Services
2020-811: Contract w/Vista Veterinary Hospital Inc. for Veterinarian Medical Services
2020-812: Purchase of Office Chairs From Brutzmans Office Solutions
2020-813: Statement of Work w/ImageSoft, Inc. for OnBase Document Management System Support
2020-814: Line Item Transfer, Fund No. 0000-101, Dept. 115
2020-815: Line Item Transfer, Fund No. 0000-101, Dept. 115 to 138
2020-816: Line Item Transfer, Fund No. 0000-101, Dept. 139
2020-817: Agreement w/WA Administrative Office of the Courts for Interpreter Expenses Reimbursement
2020-818: Amending Superior Court Public Defense Agreement w/Danielle Purcell for Early Termination
2020-819: Amending Juvenile Public Defense Agreement w/Danielle Purcell for Early Termination
2020-820: Superior Court Public Defense Agreement w/Dennis Hanson
2020-821: Superior Court Public Defense Agreement w/Justin Andrews
2020-822: Superior Court Public Defense Agreement w/Karla Kane
2020-823: Superior Court Public Defense Agreement w/Megan Whitmire
2020-824: Superior Court Public Defense Agreement w/Nicholas Blount
2020-825: Superior Court Public Defense Agreement w/Shelley Ajax
2020-826: Superior Court Public Defense Agreement w/Catherine Harkins
2020-827: Contract w/Susan Drummond, PLLC, for Hearings Examiner Services
2020-828: Accepting Work Performed by Craftsman Cabinets & Flooring for Public Safety Building Countertop Replacement Project
2020-829: Approving Construction Plans for Homestead Road & Setting the Speed Limit
2020-830: Purchase of Liquid Magnesium Chloride Storage Tanks From AG Enterprise Supply
2020-831: Line Item Transfer, Fund No. 0127-101, Dept. 000
2020-832: Contract w/Chong Bak dba Columbia Cleaners for Dry Cleaning & Laundry Services
2020-833: Agreement w/State of Washington Administrative Office of the Courts for Interpreter Reimbursement Funding
2020-834: Line Item Transfer, Fund No. 0000-101, Dept. 123
2020-835: Coding Correction Within Current Expense Number 00000-101, Dept. 138 to Public Safety Tax Fund 0148-101, Dept. 138
2020-836: Rescinding Resolution 2020-751
2020-837: Amending Veterans' Relief Fund Policies & Procedures
2020-838: Approving the Benton County One Year 2021 Annual Road Program
2020-839: Rural County Capital Fund Disbursement – City of Richland
2020-840: Declaration of Emergency for Preservation of Critical Railroad Infrastructure

2020-841: Authorizing the Solicitation – RFQ – Professional Medical Services
2020-842: Proclaiming November 11, 2020 as Jazzy Guillen Day
2020-843: Final Settlement Agreement and Release – Claim 2020-006 and 2020-007

There being no further business before the Board, the meeting adjourned at approximately 9:54 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/2020
Subject:	General Election Canvassing Board Appointment
Presenter:	
Prepared By:	Amanda Hatfield
Reviewed By:	Brenda Chilton

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

Pursuant to RCW 29A.60.150, the chair of the county legislative body is a member of the canvassing board for canvassing the ballots and returns for elections. An appointment is needed in the absence of Commissioner Small for the upcoming November 3, 2020 General Election.

Fiscal Impact

None

Recommendation

Commissioner James Beaver sign the letter appointing Jerome Delvin as the member on the canvassing board in the event Commissioner Small is unable to serve.

Suggested Motion

Move to have Commissioner James Beaver, sign the canvassing board appointment designating Jerome Delvin to serve on the Benton County Canvassing Board for the Certification of the November 3, 2020 General Election in the event Commissioner Small is unable to serve.

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

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

CANVASSING BOARD APPOINTMENT

I, James Beaver, Chair of the Benton County Commissioners, hereby designate Shon Small to serve on the Benton County Canvassing Board for the November 3, 2020 General Election. In the event that Commissioner Small is unable to serve Jerome Delvin will serve on the Canvassing Board in his absence. He will serve for the timeframe November 3, 2020 to November 24, 2020.

DATED this day of November, 2020.

_____

Jim Beaver
Chair, Benton County Commissioner

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11-17-20
Subject:	Family Law Facilitator contract
Presenter:	Josie Delvin
Prepared By:	Josie Delvin
Reviewed By:	

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

It is time for our renewal of our Family Law Facilitator contract.

Fiscal Impact

No fiscal impact, this is a self funded contract

Recommendation

Pass resolution and sign contract

Suggested Motion

Move to approve contract

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PERSONAL SERVICES AGREEMENT WITH MICHELLE DOLVEN FOR FAMILY LAW FACILITATOR SERVICES.

BE IT RESOLVED, by the Board of Benton County Commissioners that this Personal Services Agreement between Michelle Dolven and the Benton County Superior Court Clerk, and signed by the Chairman of the Benton County Board, is effective from January 1, 2021 through December 31, 2022 for Family Law Facilitator, as attached.

Dated this _____ day of _____, 2020

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest:_____
Clerk of the Board

cc: Clerk (orig), Auditor

PERSONAL SERVICES AGREEMENT
PROVIDING FOR A FAMILY LAW COURTHOUSE FACILITATOR SERVICE FOR
BENTON COUNTY SUPERIOR COURT and BENTON COUNTY CLERK

THIS PERSONAL SERVICE AGREEMENT is between BENTON COUNTY, a political subdivision of the State of Washington, and MICHELLE DOLVEN (hereinafter referred to as "Contractor")

1. ***Purpose***:

Benton County Superior Court needs the services of Contractor to provide basic services to the Benton County Superior Court for pro se litigants regarding domestic matters pursuant to the Revised Code of Washington (RCW) Chapter 26.12.240, and Washington Rules of Court, General Rule (GR) 27.

2. ***Term of Agreement***:

This agreement is effective January 1, 2021 through December 31, 2022.

3. ***Scope of Services***:

The Contractor shall provide the services specified in Attachment A, Statement of Work. Contractor shall perform such services at the Benton County Justice Center from 9:00 a.m. until 3:30 p.m. on the day of the week on which Benton County Superior Court schedules its domestic docket at the Justice Center (currently on Tuesdays). For each such domestic docket day, Contractor shall bill for the actual time spent each day providing services under this agreement or FOUR HUNDRED FIFTY FIVE DOLLARS ($455.00), whichever is less. Contractor shall not bill for or provide any services at any other time or on any other day other than a domestic docket day as set forth above, unless this agreement is amended in writing.

Contractor shall use reasonable efforts to obtain a written and signed disclaimer of attorney-client relationship, attorney-client confidentiality and representation from each person utilizing the services of Contractor under this agreement. The disclaimer shall be in the format developed and approved by the Administrative Office of the Courts.

4. ***Compensation***:

Benton County shall compensate the Contractor at an hourly rate of $70.00 per hour billed, subject to the maximum amount set forth above. Based on the maximum number of hours allowed under paragraph 3 above, total monthly compensation shall be no more than ONE THOUSAND EIGHT HUNDRED TWENTY DOLLARS ($1,820.00) in any month that contains four (4) domestic dockets and TWO THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS ($2,275.00) in any month that contains five (5) domestic dockets at the Justice Center. The Contractor shall submit a monthly invoice for services rendered to the Benton County Clerk. Payment shall be made within three (3) weeks of receipt of a valid invoice.

5. ***Expenses***:

Contractor shall not charge the County for expenses incurred in providing the required services. All expenses incurred by the Contractor pursuant to this agreement shall be the sole responsibility of the Contractor, unless agreed to otherwise in writing by the parties hereto.

6. ***Compliance with Laws***:

The Contractor shall, in performing the services under this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be performed and the Contractor's status as an independent contractor.

7. ***Hold Harmless and Indemnification***:

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 whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Contract. 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, its officers, officials, employees or agents.

In any and all claims against the County, its officers, officials, employees and agents by any employee 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 is clearly understood and agreed by the parties hereto that the Contractor expressly waives any immunity the Contractor might have under such laws. By executing this agreement, 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.**

The Contractor's obligation 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. ***Insurance***:

Professional Legal Liability: The Contractor shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor's profession and shall be written subject to limits of no less than TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) per occurrence.

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 the agreement. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the agreement or within the scope of the Contractor's services as defined by this agreement including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of this agreement.

Workers Compensation: Contractor shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the Contract. 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, employer's liability, commercial liability or commercial umbrella liability insurance.

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 of 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 indemnify agreement may be deducted from any payments owed by County to Contractor for performance of this agreement.

Other Insurance Provisions: 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.

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.

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.

The insurance limits mandated for any insurance coverage required by this agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

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. If the Contractor's liability coverage is written as a claims made policy, then the Contractor must evidence the purchase of an extended reporting period or "tail" coverage for a three year period after completion of the services required under this agreement. In such case, by December 1, 2020, the Contractor must provide written evidence of the purchase of an extended reporting period or "tail" coverage for a three year period ending December 31, 2023.

Verification of Coverage and Acceptability of Insurers: The Contractor shall place insurance with insurers licensed to do business in the State of Washington and

having A.M. Best Company ratings of no less that "A:7" with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

Within ten (10) days after the effective date of the Agreement, the Contractor shall furnish the County with properly executed and unaltered accord form certificates of insurance and a signed policy endorsement which shall clearly evidence all insurance required in this section. The certificate will, at a minimum, list limits of liability and coverage. Contractor shall not cancel or allow to expire, except on forty-five (45) days prior written notice to the County. Any certificate or endorsement limiting or negating the insurer's obligation to notify the county as an additional insured of cancellation or changes shall be altered so as not to negate the intent of this provision.

Certificates of Insurance shall show the Certificate Holder as Benton County and include "c/o" the Benton County Clerk. The address of the Certificate Holder shall be shown as the current address of the Benton County Clerk.

The County, its officers, officials, employees and agents shall be named as additional insureds with respect to the performance of services on all required insurance policies.

All written notices under this section and notice of cancellation or change of required insurance coverages shall be mailed to the County at the following address:

Risk Manager
Benton County Personnel Office
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

The Contractor or its broker shall provide a copy of any and all insurance policies specified in this agreement upon request of the Benton County Risk Manager.

10. ***Independent Contractor***:

The Contractor agrees that the Contractor is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create an employer and employee relationship between the parties. The Contractor shall not be entitled to any benefits accorded Benton County employees by performing the services required by this agreement. Benton County shall

not be responsible for withholding or otherwise deducting federal income tax or social security taxes, for contributing to the state industrial insurance program, or otherwise assuming the tax withholding duties of an employer with respect to the Contractor.

Notwithstanding, the Contractor will be allowed to use the title "Benton County Court Facilitator" on business cards and letterhead followed by the term "Michelle Dolven, Contractor".

11. ***Termination***:

Contractor or Benton County may terminate this agreement with or without cause by giving written notice of termination to the other party. Such termination shall be effective ten (10) working days from the date of delivery of the notice to terminate.

12. ***Assignment***:

The Contractor shall not assign or subcontract for the performance of any of the services covered by this agreement.

13. ***Non-Waiver***:

Waiver by Benton County of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

14. ***Integrated Agreement***:

This agreement, together with specified attachment, represents the entire integrated agreement between Benton County and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both the Chair of the Benton County Board of Commissioners, the Benton County Clerk and the Contractor.

15. ***Jurisdiction and Venue***:

This agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for Benton County.

16. ***Severability***:

If a 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 such end the provisions of this agreement are declared to be severable.

17. ***Non-Discrimination Policy***:

The Contractor agrees to adhere to the non-discrimination policy of Benton County and to execute in writing an assurance of compliance with that policy.

IN WITNESS WHEREOF, the parties have executed this agreement effective the last date set forth below.

CONTRACTOR:

Michelle Dolven
Dated: 10/28/2020

BENTON COUNTY SUPERIOR COURT

Tiffany Deaton, Court Administrator
Dated: 10/23/2020

BENTON COUNTY CLERK

Josie Delvin, Clerk
Dated: 11-4-20

BOARD OF BENTON COUNTY COMMISSIONERS

Chairman

Approved as to form:

Deputy Prosecuting Attorney
Dated: 10/22/20

Constituting the Board of County Commissioners

Attest:
Clerk of the Board

ATTACHMENT "A" – STATEMENT OF WORK
PROFESSIONAL SERVICES CONTRACT

SERVICES PROVIDED BY CONTRACTOR

Pursuant to paragraph 3 of the Contract, the Contractor, as a Family Law Court Facilitator, shall provide upon request the services authorized by GR 27 on behalf of pro se litigants in family law cases in Benton County Superior Court, which includes the following:

a) Referral to legal and social services resources, including lawyer referral and alternate dispute referral programs and resources for obtaining family law forms and instructions;
b) Information on basic court procedures and logistics including requirements for service, filing, scheduling hearings, and complying with local procedures;
c) Explanation of legal terms;
d) Assistance in selection as well as distribution of forms and standardized instructions that have been approved by the court, clerk's office or the Administrative Office of the Courts;
e) Assistance in calculating child support using standardized computer based programs based on financial information provided by the pro se litigants;
f) Review of completed forms to determine whether forms have been completely filled out ***but not as to substantive content with respect to the parties' legal rights and obligations***.

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: Dept 115 TRANSFER TO: Dept 115

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	$35,000	597.100	0007	Transfer Out to Juvenile	$ 35,000
TOTAL			$35,000	TOTAL			$35,000

Explanation:

Explanation: 2019-2020 Budget. Operating Transfer to Juvenile for Benton County's portion of Operations & Facilities

Prepared by: Linda Ivey Date: 06-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 109

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 Coroner

Dept Nbr: 115 to Department Number 109

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 109

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	$37,000	563.200	1934	On Call Pay	$ 6,000
				563.200	2102	Social Security	$ 1,000
				563.200	4118	Autopsies	$ 30,000
TOTAL			$37,000	TOTAL			$37,000

Explanation:

Explanation: 2019-2020 Budget. Transfer of funds to accurately cover the costs of Autopsies and On Call Pay due to COVID.

Prepared by: Linda Ivey

Date: 05-Nov-2020

Approved ❑

Denied ❑

Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 17, 2020
Subject:	Execute Combination Deed
Presenter:	Matt Rasmussen
Prepared By:	Matt Rasmussen
Reviewed By:	Jerrod MacPherson

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 County holds Tract A of the Meadow Springs Ranch No. 2 plat as tax title property which was declared surplus on November 3, 2020.

The Tract was declared surplus via Resolution 2020-794 and a portion was transferred to an adjoining land owner conditioned on payment in full via Resolution 2020-795. The transfer was done via Boundary Line Adjustment which requires a third instrument to be recorded along with the survey and transfer deed. The attached combination deed provides a complete legal description for the portion of the Tract remaining under County ownership after the first transfer is complete.

Additional surveys and deeds will be forthcoming as staff works with landowners to transfer the remained of the tract.

Fiscal Impact

None

Recommendation

Staff recommends that the Board execute the attached combination deed.

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING A COMBINATION DEED FOR BOUNDARY LINE ADJUSTMENT FOR A PORTION OF TRACT A, MEADOW SPRINGS RANCH NO. 2

WHEREAS, Benton County holds Tract A of the Meadow Springs Ranch No. 2 plat as tax title property which was declared surplus on November 3, 2020 per Resolution 2020-794; and

WHEREAS, a portion of Tract A was transferred to an adjoining landowner by execution of a Quit Claim Deed for Boundary Line Adjustment, conditioned on payment in full, per Resolution 2020-795; and

WHEREAS, that transfer requires a third instrument to be recorded along with the survey and transfer deed; and

WHEREAS, the attached Combination Deed for Boundary Line Adjustment provides a complete legal description for the portion of the Tract remaining under County ownership after the first transfer is complete;

NOW, THEREFORE, BE IT RESOLVED the Board of Benton County Commissioners hereby authorizes the Chairman to execute the attached Combination Deed for Boundary Line Adjustment for a Portion of Tract A, Meadow Springs Ranch No. 2 on behalf of Benton County.

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

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

Original: Commissioners
cc: M. Rasmussen

C. McKenzie

AFTER RECORDING RETURN TO:
Benton County Commissioners Office
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

COMBINATION DEED
FOR BOUNDARY LINE ADJUSTMENT

Parcel Number(s): 102884030004000
Property Owner: Benton County, a municipal corporation
Abbreviated Legal: Portion Tract A, Meadow Springs Ranch No.2
Full Legal on: Page 1

For the purposes of Boundary Line Adjustment to Parcel B, as depicted on Record of Survey _____ filed at the office of the County Auditor, Benton County Washington under Auditors File Number_____ and as a result of conveyance of property via Quit Claim Deed filed under Auditors File Number _____ the legal boundaries of the above mentioned parcel number have been adjusted to read as follows:

Tract A of Meadow Springs Ranch No.2 except the following:

Beginning at the southeast corner of lot 7, block 1 of Meadow Springs Ranch No.2, thence east, along the north right of way line of Travis Lane, south 89°28' 44" east, 10.00 feet to the southwest corner of lot 8, block 1 of Meadow Springs Ranch No.2; thence north, along the west line of said lot 8, north 00°31 '16" east, 115.82 feet to the easterly extension of the north line of lot 7, block 1 of Meadow Springs Ranch No.2; thence west, along said easterly extension, north 89°28' 44" west, 10.00 feet to the northeast corner of said lot 7; thence south, along the east line of said lot 7, south 00°31'16" west, 115.82 feet to the point of beginning.

Dated this _____ day of _____, 2020

Benton County

By: _____
James Beaver, Chairman
Board of County Commissioners

State of Washington
County of Benton

I certify that I know or have satisfactory evidence that James Beaver is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Chairman of the Board of County Commissioners to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Witness my hand and official seal this _____ day of _____, 2020.

_____
Signed

_____
Printed Name - Notary Public in and for the State of Washington

_____
Residing in

My Appointment expires: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 17, 2020
Subject:	MOU with SightLife
Presenter:	
Prepared By:	William Leach
Reviewed By:	William Leach

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

SightLife serves the state in two roles; 1) the non-profit eye procurement organization and 2) the communication center engaged in obtaining authorization and coordinating logistics for recovery of anatomical gifts meeting medical suitability criteria for two other non-profit tissue recovery agencies in Washington State; and the Coroner has certain statutory duties associated with organ donation. The coroner's building has a suitable facility in which eye tissue recovery can be accomplished and SightLife desires to use the facility for a fee of $100 per eye tissue recovery paid by SightLife to the Coroner. Allowing the recovery in the coroner's facility will save valuable time in the recovery process and will also reduce the cost per recovery to the recipients of the tissue.

Fiscal Impact

This will have a positive impact for the general fund

Recommendation

The Commissioners pass the resolution

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY:

IN THE MATTER OF THIS MEMORANDUM OF AGREEMENT BETWEEN THE BENTON COUNTY CORONER AND SIGHTLIFE

WHEREAS, SightLife serves the state in two roles; 1) the non-profit eye procurement organization and 2) the communication center engaged in obtaining authorization and coordinating logistics for recovery of anatomical gifts meeting medical suitability criteria for two other non-profit tissue recovery agencies in Washington State; and

WHEREAS, the Coroner has certain statutory duties associated with organ donation; and

WHEREAS, the Benton County Coroner and SightLife have developed a Memorandum of Agreement which allows SightLife to use the autopsy facility in the coroner's facility for the tissue recovery process; and

WHEREAS, LifeNet will reimburse Coroner a flat rate of $100.00 for each eye tissue recovery performed at the coroner's office by SightLife;

NOW THEREFORE,

BE IT RESOLVED the Board of County Commissioners, Benton County, Washington hereby agrees to enter into a Memorandum of Agreement with SightLife for use of the autopsy facility in the coroner's facility for the eye tissue recovery process, and SightLife will reimburse Coroner a flat rate of $100.00 for each eye tissue recovery performed at the coroner's office by SightLife; and

BE IT FURTHER RESOLVED the Board of County Commissioners is hereby authorized to sign the attached Memorandum of Understanding; and

BE IT FURTHER RESOLVED that this agreement shall become effective November 17, 2020 and will terminate upon notice by either party as stated in the Memorandum of Understanding.

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, Washington

By: William Leach

Memorandum of Agreement Regarding Recovery of Anatomical Gifts (RCW 68.64.190)

THIS AGREEMENT is made and entered as of 17th day of November, 2020, by and among the Benton County Coroner ("Coroner") and SightLife, a Washington nonprofit corporation ("SightLife"). This Agreement is effective as of the last date signed below ("Effective Date").

WHEREAS, SightLife serves the state in two roles; 1) the non-profit eye procurement organization and 2) the communication center engaged in obtaining authorization and coordinating logistics for recovery of anatomical gifts meeting medical suitability criteria for two other non-profit tissue recovery agencies in Washington State;

WHEREAS, SightLife and Coroner, parties who recognize the importance of every community having access to programs enabling tissue and eye donation, recognize a shared understanding of the following responsibilities to provide comprehensive services for recovery of transplantable corneas and tissues from non-heart beating donors in complying with all applicable federal and state legislation, including the Conditions of Participation of Medical and Medicaid for Organ and Tissue Donation (CoP), 42 CFR Part 482 and the Washington Uniform Anatomical Gift Act (UAGA), especially RCW 68.64.190 regarding cooperation with such procurement organizations.

WHEREAS, "Eye" shall be defined as any or all tissue from the ocular region, including but not limited to the cornea and whole globe, and "Tissue" shall be defined as skin grafts, bones, fascia lata, cartilage, tendons, ligaments, heart valves, veins, nerves, cells for transplant (e.g. stems cells, islet cells) and any other human tissue.

NOW, THEREFORE, in consideration of the mutual undertaking and the terms and conditions set forth in the Agreement, the parties agree as follows:

1.0 SightLife, shall be responsible for the following:

1.1 Receives notification of all hospital deaths and may also be notified of non-hospital deaths through direct phone calls, electronic transmissions, shared data, or programs with national, state, County or local Public Safety Answering Point (PSAP) or other notification mechanisms.

1.2 Contacts Coroner to obtain investigation information including decedent identification, medical information and next-of-kin information to determine medical suitability for eye and/or tissue donation.

1.3 Provides a toll-free number and 24-hour assistance to Coroner for communication on potential eye and tissue donation cases.

1.4 Provides 24-hour service to obtain authorization for eye and tissue donation. Appropriate authorization as defined by state UAGA can be confirmed through individual's donor designation or by authorization from legal next-of-kin.

1.5 Exercises discretion and sensitivity to the circumstances, beliefs, and desires of the families of potential donors.

1.6 Determines final suitability of donor and coordinates recovery of eyes and tissues.

1.7 If another agency requests or arranges to transport the donor to or from the County's facility and such transport is approved by the Coroner, said other agency is responsible for the costs of the transportation.

1.8 Provide all the supplies, equipment, and staff for eye tissue recovery to be performed at the Benton County Coroner facility.

1.9 Reconstruct the donor's face to restore anatomic configuration upon the completion of Eye recovery.

1.10 Notify Coroner personnel upon completion of Eye recovery unless otherwise requested by Coroner.

1.11 Maintain the confidentiality of all donor information, including information contained in the donor's medical records, in accordance with applicable law.

1.12 Be responsible for managing the recovery, processing, preservation, transportation, storage and distribution of eyes and ocular tissues recovered.

1.13 Train and maintain training and credentialing records of all recovery staff.

1.14 Provide bereavement support and follow-up information to all donor families informing them of the outcomes of the donation, as appropriate, and respond to donor families' questions following donation.

1.15 Provide Coroner with a summary of potential donors who have been referred for donation evaluation.

1.16 On request, provide Coroner ocular photos of the eye open and closed prior to recovery on eye donors in the jurisdiction of Coroner.

1.17 On request, provide Coroner vitreous sample on recovered eye donors as to which Coroner has jurisdiction.

1.18 Provide County with an adequate supply of blood tubes as needed for serology testing.

1.19 SightLife will reimburse Benton County Coroner $100 for facility use for each eye tissue recovery.

2.0 The Coroner shall:

2.1 Provide SightLife with medical information, decedent identification and next-of-kin information to assist in timely determination of medical suitability for eye and tissue donation.

2.2 Provide SightLife preliminary and final autopsy results in recovered eye and tissue donor cases.

2.3 Provide SightLife, when possible, access to authorized donor within timeline appropriate to recovery of transplantable eyes and tissues.

3.0 General Provisions:

3.1 This Agreement shall commence on the Effective Date and shall continue for a three (3) year term and shall renew automatically for additional one (1) year terms, unless terminated as provided elsewhere in the Agreement.

3.2 SightLife will maintain procedures outside of this Agreement defining its working relationship with other donation agencies.

3.3 SightLife and affiliated organizations shall remain nonprofit organizations.

3.4 The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable federal, state and local law and such law shall control in the event of any conflict with the provisions of this Agreement.

3.5 Either party may terminate this agreement with or without cause by providing thirty (30) days written notice.

3.6 The parties agree they are bound by the terms of the Agreement.

4.0 Dispute Resolution:

4.1 Any dispute, controversy, or claim arising out of this Agreement, including any questions regarding its existence, enforceability, interpretation or validity, shall be resolved if possible, by good faith discussions between the parties.

5.0 Confidentiality:

5.1 All decedent information hereunder is considered confidential, consistent with applicable federal and state law. Each party shall maintain the confidentiality of any patient information disclosed by the County's office to SightLife and shall disclose such information only as permitted by applicable federal and state law.

5.2 The parties acknowledge that SightLife is not acting as a business associate of County, as that term is defined in the Privacy Regulation promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy and Security Rules), 45 C.F.R. §160.103. SightLife will be obtaining individually identifiable health information from County that has been obtained from hospitals and other health care providers to facilitate eye and tissue donation and transplants. Sharing individually identifiable health information for the purposes described in this Agreement is permissible under the HIPAA Privacy Rule, 45 C.F.R. § 164.512(h), without authorization or a business associate agreement. The parties agree that any such information disclosed or shared between the parties shall be kept confidential and will not be disclosed except as necessary to carry out their duties under this Agreement or as permitted or required by law, regulation or the policies of American Associates of Tissue Banks, or Eye Bank Associates of America.

6.0 Indemnification:

6.1 SightLife shall hold harmless, and indemnify Benton 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 reimbursement of 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, to the extent caused in whole or in part by negligence of SightLife or its subconsultants in connection with their work under this contract. PROVIDED, that SightLife's obligation hereunder shall not extend to injury, sickness, death, or damage to the extent it is caused by or arising out of the sole negligence of Benton County or its officers, officials, employees, or agents.

6.2 Benton County shall hold harmless, indemnify and defend SightLife, its officers, officials, employees, attorneys and agents, from and against any and all third-party claims actions, suits,

liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of Benton County's acts or omissions in the performance of this Agreement. Benton County'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 Benton County, its employees, agents or subcontractors.

7.0 Insurance:

7.1 SightLife shall obtain and maintain continuously the following insurance:

7.1A Workers Compensation: SightLife shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this MOA, workers compensation coverage shall be provided for all employees of SIGHTLIFE 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 MOA. SightLife 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, SightLife waives all rights of subrogation against the CORONER for recovery of damages to the extent they are covered by workers compensation and employer's liability.

If SightLife, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and CORONER incurs fines or is required by law to provide benefits to or obtain coverage for such employees, SightLife shall indemnify the CORONER. Indemnity shall include all fines, payment of benefits to SightLife or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

7.1B Commercial General Liability and Employers Liability Insurance: Prior to the use of our Facility under this MOA, SightLife shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect SIGHTLIFE from claims for wrongful death, bodily injury, personal injury, and property damage that may arise from any actions or inactions under this MOA by SightLife or by anyone directly employed by or contracting with SightLife. The minimum commercial general liability insurance limits shall be as follows:

$2,000,000 General Aggregate
$1,000,000 Personal Injury and Advertising Injury
$1,000,000 Each Claim

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

SightLife must provide commercial general liability coverage that does not exclude activities to be performed in our building as part of this MOA and that does not exclude liability for activities performed under this agreement. SightLife'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.

SightLife 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

7.2 Other Insurance Provisions:

7.2A SightLife's commercial general liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the CORONER or its elected and appointed officers, officials, employees, or agents. SightLife's commercial general 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 CORONER shall be excess and not contributory to SightLife's insurance policies.

7.2B SightLife's liability insurance policies shall contain no special limitations on the scope of protection afforded to the CORONER as an additional insured.

7.2C Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CORONER or its officers, officials, employees, or agents.

7.2D SightLife'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.

7.2E The insurance limits mandated for any insurance coverage required by this MOA are not intended to be an indication of exposure nor are they limitations on indemnification. If SlightLife maintains higher limits than the minimums required in this MOA, Benton County shall be entitled to coverage for the higher limits maintained by SightLife.

7.2F SightLife 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 MOA shall be written on a Claims Made Policy form.

7.2G SightLife hereby agrees to waive subrogation with respect to each insurance policy maintained under this MOA. When required by an insurer, or if a policy condition does not permit SightLife to enter into a pre-loss agreement to waive subrogation without an endorsement, then SightLife 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 SightLife enter into such a waiver of subrogation on a pre-loss basis.

7.3 Verification of Coverage and Acceptability of Insurers

All insurance required under this MOA 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.

7.3A All insurance to be maintained by SightLife, other than Workers' Compensation, shall specifically include Benton 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 Benton County. Any insurance or self-insurance maintained by Benton County and its elected or appointed officials, employees, and agents shall be excess of SightLife's insurance and shall not contribute to it.

7.3B Certificates of Liability Insurance, with endorsements attached, must be provided to the CORONER's MOA Representative referenced in Section 9.

7.3C All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the CORONER's MOA Representative referenced in Section 9.

7.3D SightLife or its broker shall provide a copy of any and all insurance policies specified in this MOA 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.

8.0 Either party may terminate this Memorandum of Agreement by providing written notice of their intent to terminate. Termination is effective upon notice.

9.0 Notice as contemplated by this Agreement shall be in writing and given by personal delivery or certified mail-receipt requested and shall be effective when sent. In the alternative, the parties may agree to accept notice via e-mail correspondence sent and received by the parties' designated representatives. All written notices shall be directed to the following parties:

SightLife:	SightLife Health 1200 6th Ave. #300 Seattle, WA 98101
Coroner:	Benton County Coroner 7110 W Okanogan Pl, Bldg. "A" Kennewick, WA 99336

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement, which is executed as of the date of the final signature below.

Benton County

Signature: William Leach Signature: _____

Printed Name: William Leach Printed Name: _____

Title: Coroner Title: Chairman of the Board

Date: 11-06-2020 Date: _____

SIGHTLIFE

Signature: _____ Signature: _____

Printed Name: ~~Bernie Iliakis~~ James McCorkle Printed Name: Ryan Lukson

Title: Chief Operating Officer Deputy Prosecuting Attorney

Date: 11/3/2020 Date: 11/06/2020

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 17, 2020
Subject:	Approving 2020-2021 Snow Removal Contract w/ C&E Trenching LLC for Various Benton County Locations
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

Per Resolution 2012-677 County-Wide Procurement, Leasing, and Contract Policy, Section 4 Services ….need not advertise or follow a formal competitive bidding procedure for service contracts, 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.

The Procurement & Contracting Coordinator solicited a bid from our previous vendor C&E Trenching LLC, which has shown the capacity to perform the level of service required by the County.

Fiscal Impact

Amount: $108,815.00 plus WSST

Fund: Current Expense – Department 110

Recommendation

The Procurement & Contracts Coordinator recommends entering into a Contract with C&E Trenching for Snow Removal Services at various Benton County Locations.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING 2020-2021 SNOW REMOVAL CONTRACT WITH C&E TRENCHING LLC FOR VARIOUS BENTON COUNTY LOCATIONS

WHEREAS, Per Resolution 2012-677 County-Wide Procurement, Leasing, and Contract Policy, Section 4 Services ….need not advertise or follow a formal competitive bidding procedure for service contracts, 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 Procurement & Contracting Coordinator solicited a bid from our previous vendor C&E Trenching LLC, which has shown the capacity to perform the level of service required by the County; and

WHEREAS, the Procurement & Contracting Coordinator has put together the Contract, in the amount of $108,815.00 plus WSST, that will expire March 31, 2021; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the attached Contract, with C&E Trenching, LLC, for 2020-2021 Snow Removal at various Benton County locations in the amount not to exceed $108,815.00 plus WSST; and

BE IT FURTHER RESOLVED, the attached Contract shall expire March 31, 2021.

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

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

Orig.: File – Facilities
cc: Auditors; S.Araiza;

P. Schut

BENTON COUNTY
PUBLIC WORKS 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 C&E Trenching LLC, a corporation organized under the laws of the State of Washington with its principal offices at 3813 N Glade Rd, Pasco, WA 99301 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A - Scope of Work;
b. Exhibit B -Fees; and
c. Exhibit C - Prevailing Wage Information; and
d. Exhibit D - Background Check Form

2. DURATION OF CONTRACT

The term of this Contract shall begin upon execution by both parties and shall expire on March 31, 2021. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide snow removal and ice control services at the Benton County Justice Center, Kennewick Annex, Benton-Franklin Juvenile Justice Center, and Benton County Animal Control, Public Services Building. 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. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and

shall coordinate with COUNTY to complete the work in conjunction with the other contractor. In the event that the requested work requires, under State or local law, the issuance of a building or other permit, CONTRACTOR shall be responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.

c. Upon completion of services, CONTRACTOR shall ensure that a completed work order, detailing the work done, the time expended, and the parts used, is remitted to the COUNTY's Contract Representative, or his or her designee, prior to the CONTRACTOR leaving the work site.

d. The COUNTY does not guarantee utilization of the "As needed Service" portion this contract. The COUNTY may award contracts 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 agreed by the parties.

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 may be 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:	Curtis Wray
Address:	3813 N Glade Rd Pasco, WA 99301
Phone:	509-545-6940
Email:	curtis@candetrenching.com

b. For COUNTY:

Name:	Jeff Jones
Address:	7122 W Okanogan Place; Building A Kennewick, WA 99337
Phone:	509-736-3080
Email:	Thomas.Jones@co.benton.wa.us

5. COMPENSATION

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

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed one hundred and eight thousand and eight hundred and fifth-teen dollars ($108,815.00), excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. The CONTRACTOR shall inform the COUNTY promptly in writing if the CONTRACTOR's cumulative accounts receivable attributable to the COUNTY, pursuant to this Contract, reaches eighty percent (80%) of the maximum total amount payable so that budgeting and approval of additional amounts may be obtained (if appropriate). Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.

c. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov/ and then forward a copy of the statement to COUNTY'S Contract Representative. At the completion of all work contemplated by this Contract, or at the end of the contract term, whichever comes first, CONTRACTOR shall submit an Affidavit of Wages Paid via

https://secureaccess.wa.gov/ and then forward a copy of the affidavit to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with https://secureaccess.wa.gov/.

d. The CONTRACTOR may invoice the COUNTY for filing fees paid to the Washington State Department of Labor and Industries for filing one Statement of Intent to Pay Prevailing Wages per year and one Affidavit of Wages Paid per site visit when billable work is performed.

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

6. INVOICING

a. The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed, but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTY as required in Section 3.c. of this Contract.

b. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov and then forward a copy of the statement to the COUNTY's Contract Representative.

c. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties have executed and submitted a Statement of Intent to Pay Prevailing Wages in accordance with this section and the work has been performed to the satisfaction of the COUNTY. The COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) days after receiving the invoice.

d. For each invoiced and approved payment due to the CONTRACTOR

under this section, the COUNTY shall withhold from the earned portion of the payment (*i.e.* that portion excluding sales tax or other tax) five percent (5%) as a contract retainage, pursuant to RCW 60.28.011 and in accordance with chapter 60.28 RCW. Within ten (10) days following the execution of this Contract, the CONTRACTOR shall submit written notice to the COUNTY stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTY. If such written election is not received by the COUNTY, then the COUNTY may choose any method allowed by RCW 60.28.011(4)(a)-(c) for holding the retained moneys.

7. 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.

8. HOLD HARMLESS AND INDEMNIFICATION

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

subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.

b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee 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 8 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. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into this Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

9. 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 employers liability.

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

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, 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 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 any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 8. 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. **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 that may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

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 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.

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 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 or its elected and appointed officials, employees, or 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 9 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 at the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

10. PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to one hundred percent (100%) of the contract sum as security for the performance by the contractor of this Contract and payment of all the persons performing labor and supplying materials pursuant to this Contract. Proof of the performance and payment bonds must be received by COUNTY within ten (10) days following the execution 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 for the performance of work under this Contract by federal, state, or local law that is 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. 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.

14. CHOICE OF LAW AND JURISDICTION

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.

15. 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.

16. 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 actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit <<C>>, which is attached hereto and incorporated herein by reference, shall be paid to all employees, agents, subcontractors, and sub-subcontractors who do any work for the CONTRACTOR on this project. The CONTRACTOR shall ensure that all subcontractors or sub-subcontractors sign an agreement to pay these same wages and that the signed agreement is submitted to the COUNTY prior to subcontractor commencing any work on the project. This schedule of prevailing wages is duplicated from the Washington State Department of Labor and Industries website, it is provided for informational purposes only, and the COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies, then the CONTRACTOR is responsible for contacting the Washington State Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. 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, or the presence of any sensory, mental, or physical disability.

19. DISPUTES

Disputes over the CONTRACTOR's performance shall be promptly addressed in writing by the aggrieved party 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.

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

The CONTRACTOR shall perform the services under 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 written consent of the COUNTY.However, subcontracting is allowed for Parking Lot Cleaning, Side Walk Cleaning, and Brush Mowing Services Only.

21. 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.

22. 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 Section 4 of this Contract. Notice may also be given by e-mail, using the e-mail addresses set forth in Section 4 of this Contract, with the original to follow by regular mail. Notice shall be deemed effective 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.

23. 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.

24. 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.

25. 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 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.

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

27. 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.

28. BENTON COUNTY BACKGROUND CHECK

a. The CONTRACTOR, its employees, subcontractors, and employees who will be working onsite are required to complete in full the Security Background Check form attached hereto and referenced herein as Exhibit D. Successful completion of the background check, as determined by COUNTY, is required prior to the first day of work or entry into the jail. The completed form should be emailed to BCSORECORDS@co.benton.wa.us or faxed to 509-222-3745 attention: Bobbi Romine. The CONTRACTOR agrees to remove any of its employees, or subcontractor employees, prior to performance hereunder if in the sole discretion of the COUNTY said employees fail the Security Background Check. In addition, CONTRACTOR agrees to provide the COUNTY notice if during the performance of work hereunder any of its' employees, or subcontractors' employees, are charged with or convicted of any crime. Finally, if the CONTRACTOR, its employees, subcontractors, or their employees discover that a friend or family member is in the jail's custody they must immediately notify jail staff.

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 Board of County Commissioners

Approved as to Form:

_____

Civil Deputy ~~Prosecuting~~ Attorney

Date: 11-5-20

C&E TRENCHING, LLC

Curtis Wray

Signature

Project Manager

Title:

Curtis Wray

PRINTED NAME

Snow Removal/Ice Control:

Operational contact for Benton County will be the Facilities Manager or Assistant Facilities Manager

1. **Parking Lots:**

   a. Snow Removal - Plow parking areas and driveway areas, within the areas highlighted in attached snow removal maps after snow accumulation reaches 1.5 inches. Snow pile locations to be determined between Contractor and County.

   b. Ice Control - Noncorrosive/Plant Friendly Ice Melt shall be applied after snow removal has been completed during every snow event in the parking lot and driveway areas. Ice melt shall also be applied as directed by the Facilities Manager or Assistant Facilities Manager.

   c. The County requires priority over the Contractors other clients to ensure the snow removal and ice control operations are completed in the times specified.

   d. The Contractor shall be responsible for damage to curbs, gutters, sidewalks landscaping and other property of the County caused by the snow removal operation. The Contractor shall mark and delineate these areas to prevent damage.

2. **Sidewalks:**

   a. All sidewalks **will** be maintained by the County. The Contractor **shall not** be responsible for any snow removal or ice control on sidewalks. The contractor shall not place or pile snow onto the sidewalks during the plowing operation.

Snow Removal Locations include:

1. Benton County Justice Center, Health Building, and Administration Building campus in Kennewick, WA
2. Benton County Annex in Kennewick, WA
3. Benton-Franklin Juvenile Justice Center in Kennewick, WA.
4. Benton County Animal Control in Kennewick, WA
5. Public Services Building in Kennewick, WA

Mobilization:

This lump sum bid for mobilization is intended to cover the costs of providing bonds and insurance as well as set up and delivery of equipment and/or materials and marking curbs, landscaping and other areas the Contractor determines may be needed for the work. The lump sum bid for mobilization shall not exceed 5% of the total bid amount. Mobilization will be paid as follows; one lump sum bid for mobilization will be paid in November 2020 once the Contractor has delivered materials and equipment and marked curbing and landscape areas.

PHYSICAL ADDRESS OF PROPERTIES:

1. Benton County Justice Center, 7122 W. Okanogan Pl, Kennewick, WA 99336
2. Benton County Animal Control, 1116 N. Grant Pl, Kennewick, WA 99336
3. Benton County Kennewick Annex, 5600 W. Canal Drive, Kennewick, WA 99336

4. Benton-Franklin Juvenile Justice Center, 5606 W. Canal Drive, Kennewick, WA 99336

5. Public Services Building, 102206 Wiser Parkway, Kennewick, WA 99338

OTHER REQUIREMENTS FOR PERFORMANCE OF WORK:

1. All work must be performed to industry standards.

2. Contractor must have a primary business office in the Tri-Cities Area or in Prosser, WA and have an available, local representative that will ensure work is properly completed, and can respond to the County's representative.

3. Contractor must ensure that all of its employees performing work pursuant to the Contract are equipped with all necessary tools and properly trained to properly perform requested services.

5. Each of the Contractor's employees who will be working onsite must submit a completed Background Check Form and be approved by the County.

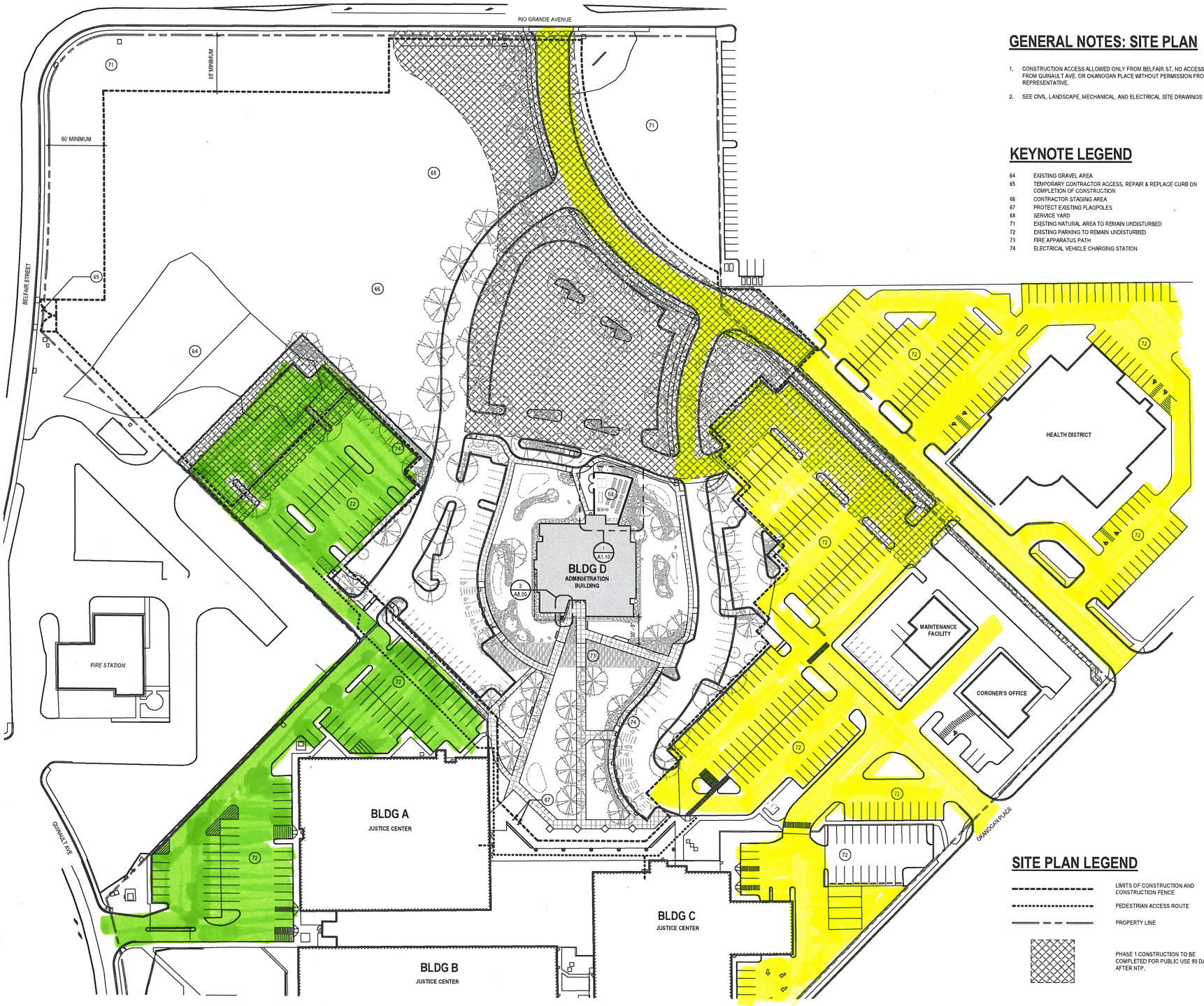
6. Contractor must have employees in its direct employment and complete a minimum of 60% of the work with its own forces. All subcontractors must be approved in writing by the County and be licensed and bonded within the State of Washington. Subcontractor employees must also pass the Benton County Background Check.

HOURS OF SERVICE:

- Snow removal and ice control work for overnight events shall be completed at all sites no later than 7:00AM each day there is a snow or ice event. Work shall be timed such that snow accumulation shall not exceed 1.5 inches by the time the County offices open for business at 8:00AM.

- Snow removal and ice control for the areas marked in red or green snow removal will occur Monday through Friday except for County holidays any time there is an event.

- Snow removal and ice control for the areas marked in yellow will occur 7 days a week including County holidays any time there is an event.



GENERAL NOTES: SITE PLAN

1. CONSTRUCTION ACCESS ALLOWED ONLY FROM BELFAIR ST. NO ACCESS WILL BE ALLOWED FROM QUINAULT AVE. OR OKANOGAN PLACE WITHOUT PERMISSION FROM THE OWNERS REPRESENTATIVE.
2. SEE CIVIL, LANDSCAPE, MECHANICAL, AND ELECTRICAL SITE DRAWINGS FOR DESIGN DETAIL.

KEYNOTE LEGEND

64 EXISTING GRAVEL AREA
65 TEMPORARY CONTRACTOR ACCESS. REPAIR & REPLACE CURB ON COMPLETION OF CONSTRUCTION
66 CONTRACTOR STAGING AREA
67 PROTECT EXISTING FLAGPOLES
68 SERVICE YARD
71 EXISTING NATURAL AREA TO REMAIN UNDISTURBED
72 EXISTING PARKING TO REMAIN UNDISTURBED
73 FIRE APPARATUS PATH
74 ELECTRICAL VEHICLE CHARGING STATION

SITE PLAN LEGEND

LIMITS OF CONSTRUCTION AND CONSTRUCTION FENCE

PEDESTRIAN ACCESS ROUTE

PROPERTY LINE

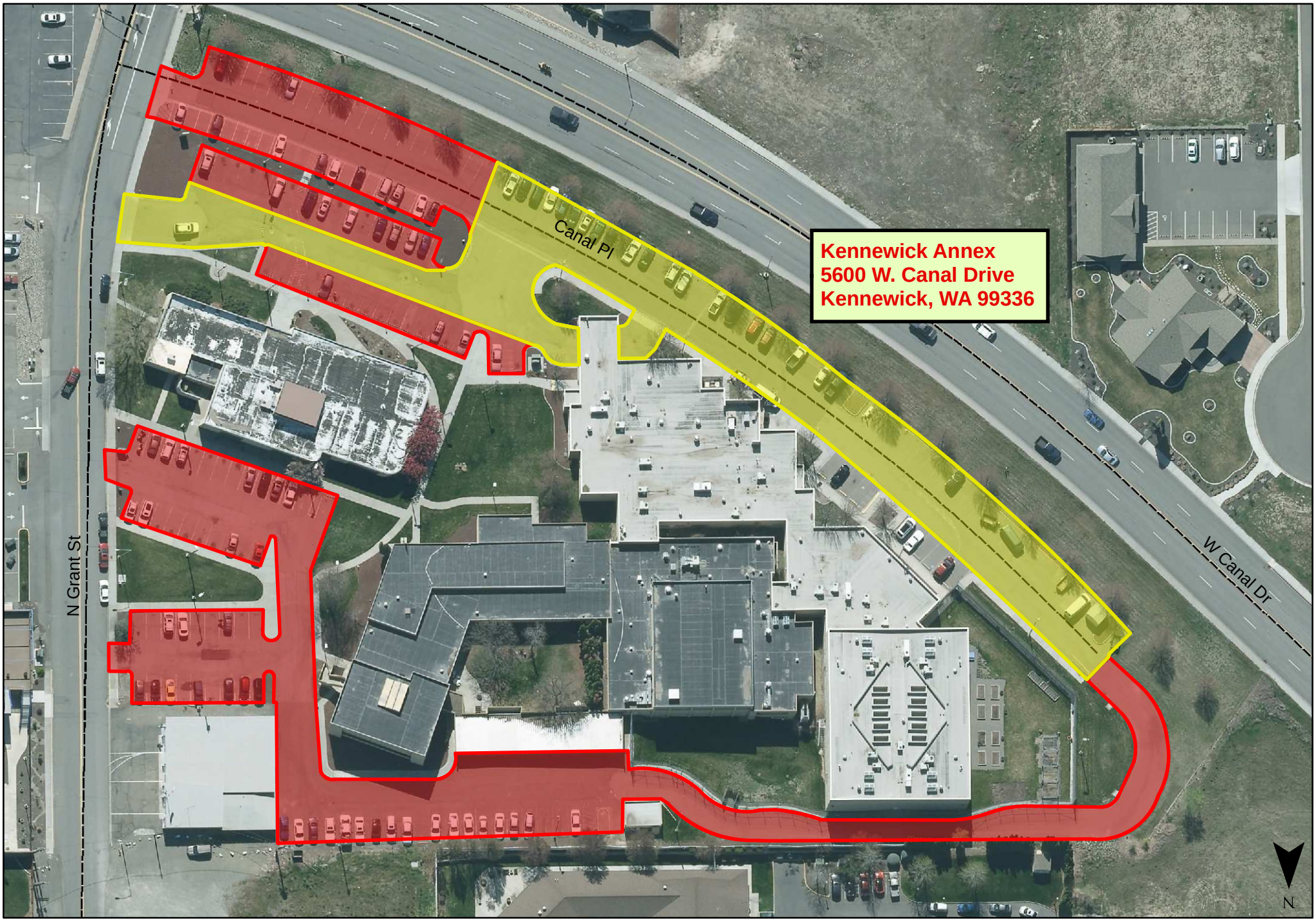
PHASE 1 CONSTRUCTION TO BE COMPLETED FOR PUBLIC USE 90 DAYS AFTER NTP.

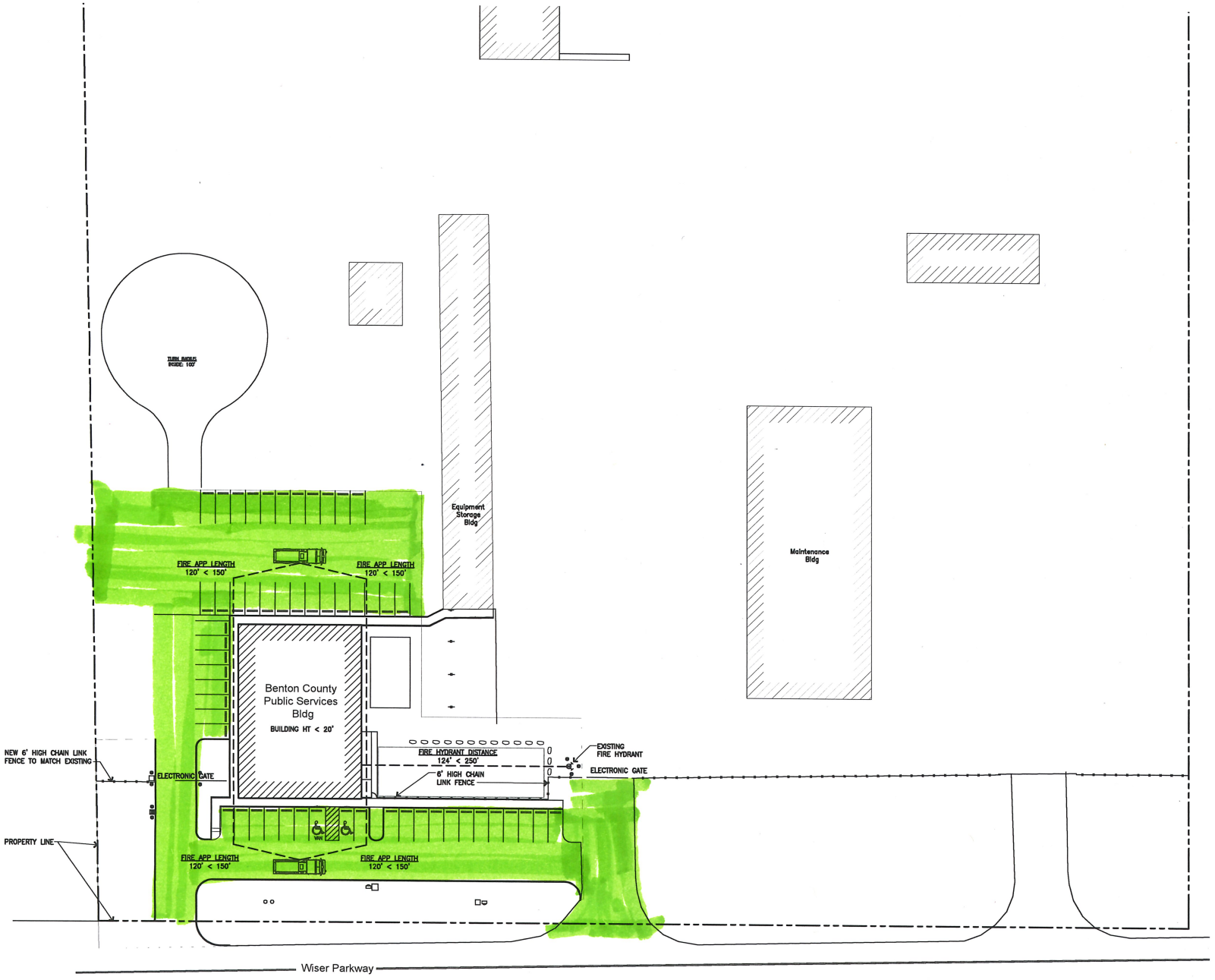
1 ARCHITECTURAL SITE PLAN
SCALE: 1" = 50'-0"

N

© 2017 Mahlum Mitchell Burnaugh & Cramer plls

Kennewick Annex & Juvenile Justice Snow Removal & Ice Control Service Area



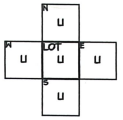


PARTIAL SITE PLAN
Zoning Review Plan
SCALE: 1" = 30'-0"

GRAPHIC SCALE 0 15' 30'

Zoning Review

ZONING CLASSIFICATION
LI – LIGHT INDUSTRIAL
ZONING OF ADJACENT LOTS: N, S, E & W



LAND USE
LIGHT INDUSTRIAL

LOT SIZE AND COVERAGE
TOTAL LOT SIZE: 10 ACRES
PERCENT OF LOT COVERED BY BUILDINGS: 12%
AREA OF LOT COVERED BY HARD SURFACE OF ANY KIND: 27%

DEVELOPMENT STANDARDS

STANDARD	REQUIREMENT	PROVIDED
MAXIMUM HEIGHT	–	18'–0" (SEE ELEVS)
MINIMUM SETBACKS:		
FROM STREET	25'	>25' (SEE SITE PLAN)
FROM SAME ZONES	0'	>85' (SEE SITE PLAN)
FROM OTHER ZONES	0'	>0' (SEE SITE PLAN)
MINIMUM FRONT LOT LINE	90'	>650' (SEE SITE PLAN)
LANDSCAPING REQUIRED?	NO	
PARKING REQUIRED?	YES	SEE BELOW

LANDSCAPED AREAS – SITE PLANTING STANDARDS
STREET FRONTAGES: N/A
OTHER PERIMETERS: N/A

SCREENING
–

DETACHED ACCESSORY STRUCTURES
EXISTING (SEE SITE PLAN)

FENCES
EXISTING
PROVIDED (SEE SITE PLAN)

PARKING SUMMARY
(SEE SHEET A1.1 SITE PLAN FOR PARKING)

KENNEWICK CODE OF ORDINANCES
18.36.060:–SPECIFIC PARKING REQUIREMENTS

TABLE 18.36–6 REQUIRED OFF STREET PARKING
OFFICE 1 PARKING STALL PER 250 GROSS SQUARE FOOT
7,833 SF / 250:
32 REQUIRED 52 PROVIDED

IBC 2015
TABLE 1106.1 ACCESSIBLE PARKING SPACES
2 REQUIRED 2 PROVIDED
(1 VAN–ACCESSIBLE)

BICYCLE PARKING:
N/A (SEE SITE PLAN)

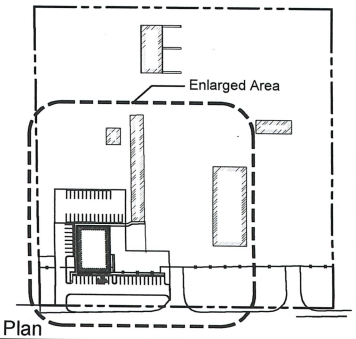
CRITICAL AREA
SITE IS NOT LOCATED ABOVE CRITICAL AQUIFER RECHARGE AREA

CRITICAL MATERIALS INVOLVED
NO, HMMP PLAN NOT REQUIRED

SEPA CHECKLIST AND CRITICAL MATERIALS

DESCRIPTION	REQ'D	PROV'D BY OWNER
SEPA CHECKLIST	YES	☑ OK

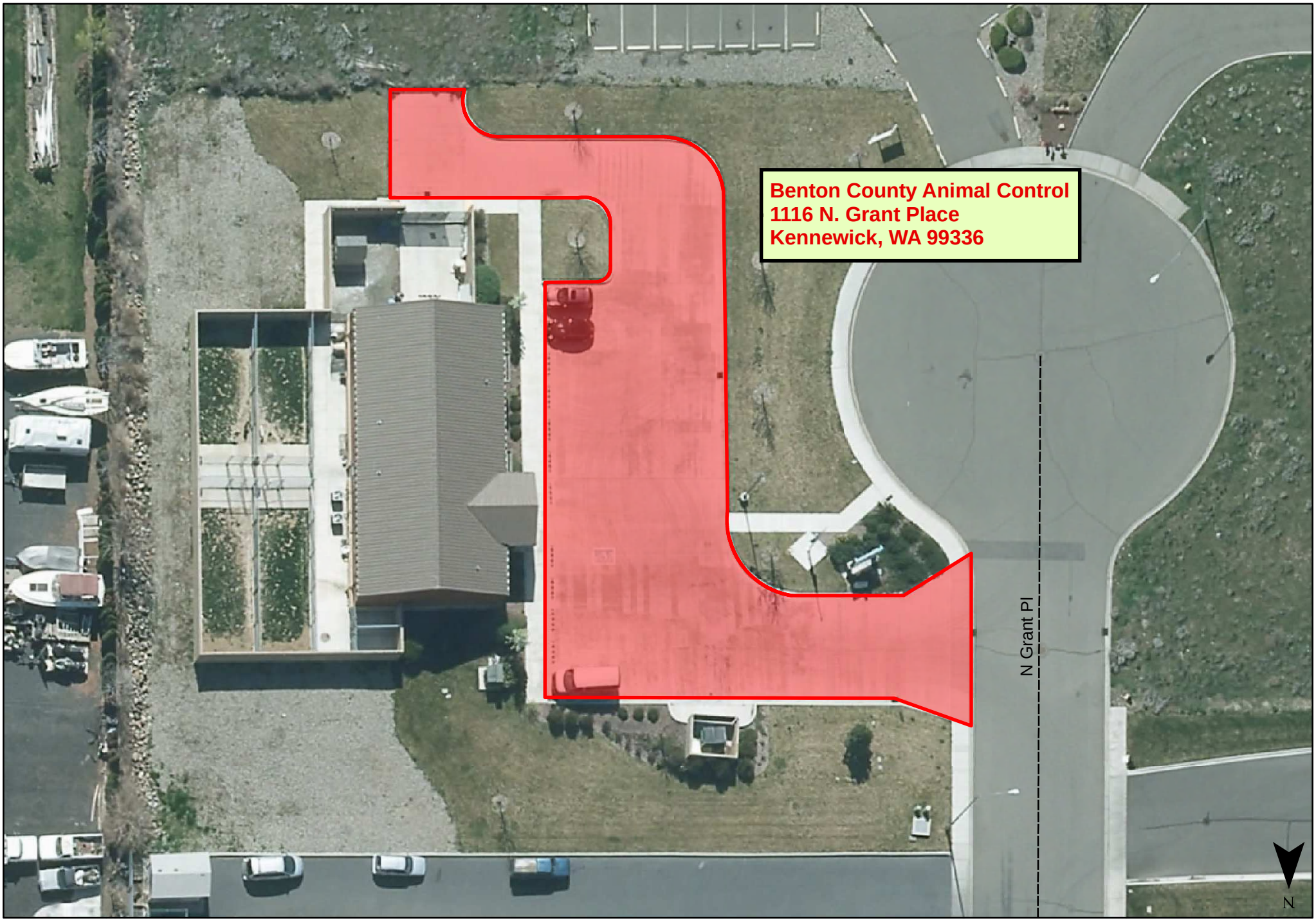
EXISTING CONSTRUCTION DISCLAIMER
ALL EXISTING FEATURES INCLUDING BURIED UTILITIES ARE SHOWN AS INDICATED ON RECORD MAPS AND DRAWINGS FURNISHED BY OTHERS. APPEARANCE ON THESE PLANS, HOWEVER, DOES NOT GUARANTEE THE ACCURACY AND COMPLETENESS OF THE LOCATION OR EXISTENCE OF THESE CONTOURS, UTILITIES AND/OR SUBSTRUCTURES.



Key Plan
SCALE: NOT TO SCALE

90% REVIEW SUBMITTAL

Animal Control Snow Removal & Ice Control Service Area



C AND E TRENCHING, LLC

• P.O. Box 3788 • Pasco, WA 99302 • 509.545.6940 OFFICE • 509.545.8671 FAX •

Date: 10/28/2020
Attention: Paul Schut
Company: Benton County Public Works
Phone/Fax/Email: (509) 737-3943, paul.schut@co.benton.wa.us
Project Name: 20-21
C&E Quote Number: C20757
Scope of Work Bid: Per Bid items
C & E Project Manager: Curtis Wray
Schematic Plans: None
Labor Rates: Prevailing Wage Rate

Proposal

We hereby submit specifications and estimates for the above referenced project. Please note that our budget pricing is based on the above referenced plans, addendums and specifications. The following proposal includes the pricing information, the proposed scope of work and a list of conditions and exclusions. Our proposal is as follows:

Proposed Scope of Work:

Description	Quan	Unit	Unit Price	Ext Price
Mobilization	1.000	LS	$5,440.78	$5,440.78
Snow Removal; Justice Center (Mon. - Fri.):	10.000	EA	$3,500.00	$35,000.00
Snow Removal; Justice Center (Weekend & Holiday):	5.000	EA	$2,200.00	$11,000.00
Ice Control; Justice Center (Mon. - Fri.):	10.000	EA	$1,600.00	$16,000.00
Ice Control; Justice Center (Weekend & Holiday):	5.000	EA	$ 700.00	$3,500.00
Snow Removal; Juvenile Justice Center & Annex (Mon	10.000	EA	$1,200.00	$12,000.00
Snow Removal; Juvenile Justice Center & Annex (Wee	5.000	EA	$ 750.00	$3,750.00
Ice Control; Juvenile Justice Center & Annex (Mon.	10.000	EA	$ 550.00	$5,500.00
Ice Control; Juvenile Justice Center & Annex (Week	5.000	EA	$ 325.00	$1,625.00
Snow Removal; Animal Control (Mon. - Fri.):	10.000	EA	$ 350.00	$3,500.00
Ice Control; Animal Control (Mon. - Fri.):	10.000	EA	$ 200.00	$2,000.00
Snow Removal; Public Services Building (Mon. -Fri.	10.000	EA	$ 600.00	$6,000.00
Ice Control; Public Services Building (Mon. -Fri.)	10.000	EA	$ 350.00	$3,500.00

Exclusions:

Pricing assumes that C&E Trenching will have unobstructed access to the work area for its equipment and personnel in order to complete the proposed scope of work in a timely manner.
Pricing may be withdrawn if not accepted within 30 days.
Pricing excludes sales tax

We look forward to the opportunity to work with you!

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined.

C AND E TRENCHING, LLC

• P.O. Box 3788 • Pasco, WA 99302 • 509.545.6940 OFFICE • 509.545.8671 FAX •

Curtis Wray

Curtis Wray **Accepted by** **Date**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. All wages are standard/no prevailing wage rates unless specifically stated in the proposal documents. Any alterations or deviations from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary or required insurances. Our workers are fully covered by Workmen's Compensation Insurance. The contractor reserves the right to substitute material due to unavailability during the contract period.

EXHIBIT C

REQUIRED CONTRACT PROVISIONS - STATE DEPARTMENT OF LABOR AND INDUSTRIES

State of Washington
Department of Labor & Industries
Prevailing Wage Section
PO Box 44540, Olympia, WA 98504-4540
360-902-5335

Public contract awarding agencies are required by RCW 39.12.030 to include a provision stating the required prevailing rate(s) of wage in the bid and contract specifications for public works. Historically, this has required inclusion of a list of such rates in the specifications. Labor & Industries looked at how to allow an additional option within the law and rule.

Bid specifications may provide the required prevailing wage rate information in this alternate format:

> The Department of Labor & Industries prevailing wage rate website is http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm

The applicable effective date for prevailing wages for this project is the bid submittal date.

> This public works project is located in Benton County.

A copy of the prevailing wage rates, the benefit code key and the supplement are available for viewing at the Benton County Facilities Department, 7122 W. Okanogan Pl Kennewick, WA, Monday through Friday, between 8:00 a.m. & noon and between 1:00 p.m. & 5:00 p.m. except holidays.

The Benton County Facilities Department will mail a hard copy of the wage rates upon request. We can be reached at (509) 783-3118 or by email at facilities@co.benton.wa.us.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN INSURANCE MANAGEMENT FUND NUMBER 0504101, 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: Dept., Auditor

Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Insurance Management | Fund Nbr: 0504101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
519.610	4103	Professional Services	$27,340
TOTAL			$27,340

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
519.610	1543	Litigation Risk Management Attorney	$11,000
519.610	1577	Risk Manager	$11,000
519.610	2102	Social Security FICA	$1,000
519.610	2104	Retirement	$3,000
519.610	2119	Paid Family Leave Act	$600
519.610	2204	GASB 68 Pension Adjustment	$740
TOTAL			$27,340

Explanation:

To appropriate funding for wages & benefits 2019-2020 budget cycle

Prepared by: Linda Ivey | Date: 04-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 WORKMEN'S COMPENSATION FUND NUMBER 0503101, 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: Dept., Auditor

Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Workmen's Compensation | Fund Nbr: 0503101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
517.670	4103	Professional Services	$17,640
TOTAL			$17,640

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
517.670	1577	Risk Manager	$11,000
517.670	2001	Compensated Absence Adjustment	$3,220
517.670	2102	Social Security FICA	$1,000
517.670	2104	Retirement	$2,000
517.670	2119	Paid Family Leave Act	$200
517.670	2204	GASB 68 Pension Adjustment	$220
TOTAL			$17,640

Explanation:

To appropriate funding for wages & benefits 2019-2020 budget cycle

Prepared by: Linda Ivey | Date: 04-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 CENTRAL SERVICES FUND NUMBER 0502101 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: B. Chilton; Auditor; File; IT

R. Heard

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Central Services | Fund Nbr: 0502101

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

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.810	4211	Telecom: service & use	$10,000	518.810	3508	Computer Replacement	$375,000
518.810	4503	Rentals-Office Equipment	$40,000	518.810	3503	Computer Software	$30,000
518.810	4805	Service/Maintenance Agreements	$150,000				
518.810	4102	Contract Services	$100,000				
518.810	3152	Non-Consum Computer Supplies	$15,000				
518.810	3501	Minor Equip and Small Tools	$30,000				
518.810	4301	Travel	$20,000				
518.810	4905	Training	$40,000				
TOTAL			$405,000	TOTAL			$405,000

Explanation:

Moving funds to purchase new hardware and computer software.

Prepared by: Robert Heard | Date: 11/17/20

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 CENTRAL SERVICES REPLACEMENT FUND NUMBER 0132101 DEPARTMENT NUMBERS 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: B. Chilton; Auditor; File; IT

R. Heard

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Central Services Replacement | Fund Nbr: 0132101

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

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.180	6408	Computer Replacement	$5,000	518.400	3508	Computer Replacement	$5,000
TOTAL			$5,000	TOTAL			$5,000

Explanation:

Moving funds from Capital Outlay Computer Replacement to Supplies Computer Replacement as equipment being replaced is under $5,000.

Prepared by: Robert Heard | Date: 11/17/20

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 17, 2020
Subject:	Approving the purchase of two Cisco Catalyst 9500 48 port switches for the Information Technology Department from CompuNet, Inc.
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	

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

Due to Superior Court and District Court Courtroom Technology Upgrades, per Resolution 2020-665, network equipment originally purchased for that project will need to be returned. Compunet, who has been contracted to purchase the network equipment needed for the Courtroom Technology Upgrade project has replaced the network equipment with Cisco Catalyst switches instead of Meraki switches. Information Technology has recommended that two of the Cisco Catalyst 9500 switches include 48 ports instead of 24 ports. A 48 port Catalyst 9500 switch will help future proof the County's network and possibly reduce future spending. The total cost of adding 24 more ports to both Cisco Catalyst 9500 switches will cost a total of $8,000 excluding WSST.

CompuNet is a State approved vendor, WA, NASPO AR233(14-19) 01114. Resolution 2019-753 requires that all non-budgeted devices purchased over $500 be coded to the department's 3508 expenditure code and be approved by the Board of Benton County Commissioners.

Fiscal Impact

Amount: **$8,000 excluding WSST.**

Fund: **Information Technology's approved 2019-2020 budget.**

Recommendation

Information Technology recommends that the Board approves the purchase of two Cisco Catalyst 9500 48 port switches for the Information Technology Department from CompuNet, Inc. in an amount not to exceed $8,000 excluding WSST.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF TWO CATALYST 9500 48 PORT SWITCHES FOR THE INFORMATION TECHNOLOGY DEPARTMENT FROM COMPUNET, INC.

WHEREAS, due to Superior Court and District Court Courtroom Technology Upgrade Project, per Resolution 2020-665, network equipment originally purchased will need to be returned; and

WHEREAS, Compunet, Inc. who is contracted to purchase network equipment needed for the Courtroom Technology Project will replace Cisco Meraki switches with Cisco Catalyst switches; and

WHEREAS, Information Technology has asked CompuNet to increase the number of ports on two Cisco Catalyst 9500 switches from 24 to 48 ports which will help future proof the County's network and possibly reduce forthcoming costs; and

WHEREAS, the total cost to purchase two 48 port Cisco Catalyst switches will cost Information Technology $8,000 excluding WSST; and

WHEREAS, CompuNet, Inc. is a State approved vendor, WA NASPO AR233(14-19) 01114; and

WHEREAS, Section 2.6 of the Computer Replacement Policy requires all new computer equipment over $500 receive approval by the Board of Benton County Commissioners before purchasing; NOW THEREFORE,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves the purchase of two Cisco Catalyst 9500 48 port switches for the Information Technology Department from CompuNet, Inc. in an amount not to exceed $8,000 including Washington State Sales Tax to be paid for using Information Technology approved 2019-2020 department funds; and

BE IT FURTHER RESOLVED, purchased items from CompuNet, Inc. will be enrolled into Central Services Replacement Fund (0132-101).

Dated this 17 day of November , 2020

Chairman of the Board

Member

Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Information Technology
cc: Auditor

Prepared by: R. Heard

CompuNet, Inc.

Cisco Catalyst 9500 48Port

Contract Information:
WA, NASPO, AR233(14-19) 01114

Remit to:
Compunet, Inc.
PO Box 410802
Salt Lake City, UT 84141

Bill To:
Benton County
P.O. Box 608
Prosser, WA 99350

Ship To:
Benton County
620 Market Street
Prosser, WA 99350

Quote Information:
Quote #: MF154153
Version: 1
Delivery Date: 10/28/2020
Expiration Date: 11/27/2020

Prepared by:
Mark Friedman
509-795-8276
mfriedman@compunet.biz

Prepared for:
Robert Heard
(509) 737-3529
Robert.Heard@co.benton.wa.us

Cisco

Description		List Price	Price	Qty	Ext. Price
C9500-48Y4C-A	Catalyst 9500 48-port x 1/10/25G + 4-port 40/100G, Advantage	$23,582.25	$538.56	2	$1,077.12
CON-SNT-C9504YA4	SNTC-8X5XNBD Catalyst 9500 48-port 25/100G only, Adva	$8,460.00	$438.52	2	$877.04
C9500-NW-A	C9500 Network Stack, Advantage	$0.00	$0.00	2	$0.00
SC9500HUK9-173	Cisco Catalyst 9500H XE.17.3 UNIVERSAL	$0.00	$0.00	2	$0.00
C9K-PWR-650WAC-R	650W AC Config 4 Power Supply front to back cooling	$0.00	$0.00	2	$0.00
C9K-PWR-650WAC-R/2	650W AC Config 4 Power Supply front to back cooling	$2,107.35	$595.01	2	$1,190.02
CAB-N5K6A-NA	Power Cord, 200/240V 6A North America	$0.00	$0.00	4	$0.00
C9K-F1-SSD-BLANK	Cisco pluggable SSD storage	$0.00	$0.00	2	$0.00
C9K-T1-FANTRAY	Catalyst 9500 Type 4 front to back cooling Fan	$0.00	$0.00	4	$0.00
C9500-DNA-48Y4C-P	C9500 DNA Premier, 48Y4C Port , Term License	$0.00	$0.00	2	$0.00
C9500-DNA-P-3Y	C9500 DNA Premier 40X/24Q/48Y4C/32C/32QC ,3Year Term License	$12,995.33	$1,654.55	2	$3,309.10
ISE-BASE-T	ISE BASE Term License	$0.00	$0.00	100	$0.00
ISE-BASE-TRK-3Y	ISE BASE Tracker Term 3Y	$0.00	$0.00	100	$0.00
ISE-PLS-T	ISE PLS Term License	$0.00	$0.00	100	$0.00
ISE-PLS-TRK-3Y	ISE PLS Tracker Term 3Y	$0.00	$0.00	100	$0.00

Cisco

Description		List Price	Price	Qty	Ext. Price
SWATCH-T	StealthWatch 1 FPS Term License	$0.00	$0.00	200	$0.00
SWATCH-TRK-3Y	ISE BASE Tracker Term 3Y	$0.00	$0.00	200	$0.00
PI-LFAS-T	Prime Infrastructure Lifecycle & Assurance Term - Smart Lic	$0.00	$0.00	6	$0.00
PI-LFAS-AP-T-3Y	PI Dev Lic for Lifecycle & Assurance Term 3Y	$0.00	$0.00	6	$0.00
NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment	$0.00	$0.00	2	$0.00
			Subtotal:		$6,453.28

Shipping

Description		Qty
Shipping	Ground Shipping To Be Determined, Billed As Actual	1

Quote Summary

Description	Amount
Cisco	$6,453.28
Subtotal:	$6,453.28
Estimated Tax:	$554.98
Total:	$7,008.26

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors. Your electronic signature, per the Electronic Signature Act, is considered equivalent to your signed and faxed signature, and allows you to accept and place your order. A copy of this acceptance and the attached proposal document will be sent to your email address to complete your order acceptance. You are NOT required to electronically sign your order, you may fax or email your signed proposal to your Account Manager.

Benton County

Signature: _____

Name: _____

Date: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 17, 2020
Subject:	Approving the purchase of three Dell Mobile Precision 3551 or Comparable Model Laptops for the Human Services Department from Dell, Inc
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	

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

Due to the County's response to COVID-19 pandemic and keeping a social and physical distance of six feet, Information Technology has been working with Human Services to purchase new Dell laptops for employees to use remotely. These Dell laptops would be used to provide secure remote access to county network resources for both administrative and public services. Resolution 2019-753 requires that all non-budgeted devices purchased over $500 be coded to the department's 3508 expenditure code and be approved by the Board of Benton County Commissioners.

Dell is an authorized Washington State vendor under NASPO ValuePoint's Computer Equipment Contract, Dell Marketing, L.P. Contract #05815-003.

Fiscal Impact

Amount: **$7,000 excluding WSST.**

Fund: **Human Services approved 2019-2020 budget. Purchase may be CARES funding eligible.**

Recommendation

Information Technology recommends that the Board approves the purchase of three Dell Mobile Precision 3551 or comparable model laptops in an amount not to exceed $7,000 excluding WSST from Dell Inc. All equipment purchased will be added to Central Services Replacement Fund (0132-101).

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF THREE DELL MOBILE PRECISION 3551 OR COMPARABLE MODEL LAPTOPS FOR THE HUMAN SERVICES DEPARTMENT FROM DELL INC.

WHEREAS, due to the County's response to COVID-19 pandemic and keeping a social and physical distance of six feet, Information Technology has been working with the Human Service's Department to purchase new Dell laptops for employees to use remotely; and

WHEREAS, these Dell laptops would provide secure remote access to county network resource for both administrative and public services; and

WHEREAS, Dell is an authorized Washington State vendor under NASPO ValuePoint's Computer Equipment Contract, Dell Marketing, L.P. Contract #05815-003; and

WHEREAS, Section 2.6 of the Computer Replacement Policy requires all new computer equipment over $500 receive approval by the Board of Benton County Commissioners before purchasing; NOW THEREFORE,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves the purchase of three Dell Mobile Precision 3551 or comparable model laptops for Human Services in an amount not to exceed $7,000 excluding Washington State Sales Tax to be paid for using Human Services approved 2019-2020 department funds or if applicable, CARES funds; and

BE IT FURTHER RESOLVED, purchased items from Dell, Inc. will be enrolled into Central Services Replacement Fund (0132-101).

Dated this 17 day of November , 2020

Chairman of the Board

Member

Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Information Technology
cc: Auditor, Human Services

Prepared by: R. Heard

A quote for your consideration.

Based on your business needs, we put the following quote together to help with your purchase decision. Below is a detailed summary of the quote we've created to help you with your purchase decision.

To proceed with this quote, you may respond to this email, order online through your **Premier page**, or, if you do not have Premier, use this **Quote to Order**.

Quote No.	**3000072291720.1**	Sales Rep	Charles Anglin
Total	**$6,076.43**	Phone	(800) 456-3355, 6180469
Customer #	1710002	Email	Charles_Anglin@Dell.com
Quoted On	Nov. 04, 2020	**Billing To**	ACCOUNTS PAYABLE BENTON COUNTY CENTRAL SERVICES PO BOX 608 PROSSER, WA 99350-0608
Expires by	Dec. 04, 2020		
Deal ID	19472910		

Message from your Sales Rep

Please contact your Dell sales representative if you have any questions or when you're ready to place an order. Thank you for shopping with Dell!

Regards,
Charles Anglin

Shipping Group

Shipping To

Receiving dept
BENTON COUNTY INFORMATION TECHNOLOGY
620 Market Street
Prosser, WA 99350
(509) 786-5603

Shipping Method

Standard Delivery

Product	Unit Price	Qty	Subtotal
Mobile Precision 3551	**$1,865.08**	**3**	**$5,595.24**

Dell Marketing LP. U.S. only. Dell Marketing LP. is located at One Dell Way, Mail Stop 8129, Round Rock, TX 78682

Subtotal:	**$5,595.24**
Shipping:	**$0.00**
Estimated Tax:	**$481.19**
Total:	**$6,076.43**

Special lease pricing may be available for qualified customers. Please contact your DFS Sales Representative for details.

Dell Marketing LP. U.S. only. Dell Marketing LP. is located at One Dell Way, Mail Stop 8129, Round Rock, TX 78682

Shipping Group Details

Shipping To

Receiving dept
BENTON COUNTY INFORMATION TECHNOLOGY
620 Market Street
Prosser, WA 99350
(509) 786-5603

Shipping Method

Standard Delivery

		Qty	Subtotal
Mobile Precision 3551	**$1,865.08**	**3**	**$5,595.24**

Estimated delivery if purchased today:
Jan. 06, 2021
Contract # C000000010849
Customer Agreement # 05815-003

Description	SKU	Unit Price	Qty	Subtotal
Intel Core Processor i7-10850H (6 Core, 12MB Cache, 2.70 GHz to 5.10 GHz, 35W, vPro)	379-BDXB	-	3	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	3	-
No Microsoft Office License Included – 30 day Trial Offer Only	658-BCSB	-	3	-
16GB, 1X16GB, DDR4 2933Mhz Non-ECC Memory	370-AFFB	-	3	-
Nvidia Quadro P620 w/ 4GB GDDR5	490-BFBH	-	3	-
M.2 256GB PCIe NVMe Class 40 Solid State Drive	400-BDWT	-	3	-
Bracket for M.2 PCIe NVMe 2280 SSD	575-BBYI	-	3	-
No Additional Hard Drive	401-AAGM	-	3	-
Intel WiFi6 AX201 Wireless Card for WW	555-BFNV	-	3	-
Intel vPro Technology Enabled	631-ACLE	-	3	-
Dual Pointing Backlit US English Keyboard with 10 Key Numeric Keypad	583-BGWN	-	3	-
No ENERGY STAR Qualified	387-BBCE	-	3	-
Not EPEAT Registered	389-DVNR	-	3	-
Intel AX201 2x2 + Bluetooth 5.1 Driver	555-BFNX	-	3	-
E5 US Power Cord	450-AAEJ	-	3	-
Quick Setup Guide for Mobile Precision 3551	340-COUO	-	3	-
No UPC Label	389-BCGW	-	3	-
Mix Model Packaging	340-CRFV	-	3	-
Regulatory Label included	389-BEYY	-	3	-
FCC Label	389-DPPX	-	3	-
Intel Core i7 vPro Processor Label	340-CPOZ	-	3	-
System Driver for Mobile Precision 3551	631-ACLD	-	3	-
Dell Optimizer for Precision	640-BBSC	-	3	-
Waves Maxx Audio	658-BBRB	-	3	-
Dell Power Manager	658-BDVK	-	3	-
Dell SupportAssist OS Recovery Tool	658-BEOK	-	3	-
Custom Configuration	817-BBBB	-	3	-

Dell Marketing LP. U.S. only. Dell Marketing LP. is located at One Dell Way, Mail Stop 8129, Round Rock, TX 78682

Dell Mobile Precision Workstation 3551 CTO	210-AVJY	-	3	-
Intel Core Processor i7-10850H with Nvidia Quadro P620 Graphics, Thunderbolt	329-BETI	-	3	-
Bottom door	354-BBCD	-	3	-
No Mobile Broadband Card	556-BBCD	-	3	-
DP Palmrest, FIPS Touch Fingerprint Reader, FIPS Contacted SC Reader, Thunderbolt 3	346-BFZI	-	3	-
OS-Windows Media Not Included	620-AALW	-	3	-
6 Cell 97Whr ExpressCharge Capable Battery	451-BCJI	-	3	-
Cable for 6 cell battery	470-ADOZ	-	3	-
WWAN Support	320-BDRS	-	3	-
Bezel, IR Camera & Mic	325-BDRQ	-	3	-
15.6" FHD 1920x1080, Anti-Glare Non-Touch, 45% color gamut	391-BEYZ	-	3	-
Resource Media not Included	430-XYGV	-	3	-
130W E5 Type C Power Adapter (EPEAT)	492-BCWZ	-	3	-
No HD/SSD Filler	750-ABLD	-	3	-
No Anti-Virus Software	650-AAAM	-	3	-
Onsite/In-Home Service After Remote Diagnosis 4 Years	997-1079	-	3	-
Dell Limited Hardware Warranty Plus Service	997-1129	-	3	-
Extended Battery Service for Years 2 and 3 of System Life	988-5552	-	3	-
BTO Standard Shipment (S)	800-BBGT	-	3	-

Subtotal:	**$5,595.24**
Shipping:	**$0.00**
Estimated Tax:	**$481.19**
Total:	**$6,076.43**

Dell Marketing LP. U.S. only. Dell Marketing LP. is located at One Dell Way, Mail Stop 8129, Round Rock, TX 78682

Important Notes

Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All product, pricing and other information is based on the latest information available and is subject to change. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to Tax_Department@dell.com or ARSalesTax@emc.com, as applicable.

Governing Terms: This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier´s affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at www.dell.com/terms or www.dell.com/oemterms), or for cloud/as-a-Service offerings, the applicable cloud terms of service (identified on the Offer Specific Terms referenced below); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

Supplier Software Licenses and Services Descriptions : Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on www.Dell.com/eula. Descriptions and terms for Supplier-branded standard services are stated at www.dell.com/servicecontracts/global or for certain infrastructure products at www.dellemc.com/en-us/customer-services/product-warranty-and-service-descriptions.htm

Offer-Specific, Third Party and Program Specific Terms: Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on www.dell.com/offeringspecificterms ("Offer Specific Terms").

In case of Resale only: Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

In case of Financing only: If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

Electronically linked terms and descriptions are available in hard copy upon request.

^Dell Business Credit (DBC):
OFFER VARIES BY CREDITWORTHINESS AS DETERMINED BY LENDER. Offered by WebBank to Small and Medium Business customers with approved credit. Taxes, shipping and other charges are extra and vary. Minimum monthly payments are the greater of $15 or 3% of account balance. Dell Business Credit is not offered to government or public entities, or business entities located and organized outside of the United States.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 17, 2020
Subject:	Executing a new Purchasing Entity Agreement with CELLCO Partnership, D/B/A Verizon Wireless, Rescinding Resolution 10-106 for County Owned Wireless Device Services.
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	

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

On February 22, 2010, the Board approved Resolution 10-106 executing a Verizon Wireless contract through Western States Contracting Alliance (WSCA) for wireless phone services. On June 30, 2020, the State terminated the Verizon Wireless WSCA contract and replaced it with Verizon Wireless NASPO ValuePoint Wireless Data, Voice, and Accessories Vendor Number W40588, Washington State Master Contract 04718. Verizon is the County's recommended wireless service provider with 369 county owned devices being used across county departments. Wireless services have become an essential part of providing county services to the public. Verizon's new agreement through NASPO will provide the County with costs savings and improved reliability.

Fiscal Impact

Amount:

Fund: **Budgeted in 2021-2022 IT Department Assessments.**

Recommendation

Information Technology recommends that the Board execute a new Purchasing Entity Agreement with CELLCO Parnership, D/B/A Verizon Wireless, rescinding Resolution10-106 for County Owned Wireless Devices Services.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING A NEW PURCHASING ENTITY AGREEMENT WITH CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS, RESCINDING RESOLUTION 10-106 FOR COUNTY OWNED WIRELESS DEVICE SERVICES

WHEREAS, on February 22, 2010, the Board approved Resolution 2010-106 executing a Verizon Wireless contract through Western States Contracting Alliance (WSCA); and

WHEREAS, on January 30, 2020, the State terminated the Verizon Wireless WSCA contract and replaced it with Verizon Wireless NASPO ValuePoint Wireless Data, Voice, and Accessories Vendor Number W40588, Washington State Master Contract 04718; and

WHEREAS, Information Technology is currently managing 369 county owned wireless devices across all county departments; and

WHEREAS, access to cellular wireless services have become an essential part of providing county services to the public; and

WHEREAS, Verizon's NASPO agreement will provide the County with costs savings and improved reliability; and

WHEREAS, pursuant to provisions of RCW 39.34, Benton County may enter into intergovernmental cooperative purchasing agreements with other public agencies in order to allow the parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under contract and to utilize each other's contracts, as needs arise; and

WHEREAS, the departmental Deputy Prosecuting Attorney has reviewed and approved as to form and it is recommended by the Information Technology Manager that Benton County execute a new Purchasing Entity Agreement with CELLCO PARTNERSHIP, D/B/A Verizon Wireless; NOW, THEREFORE,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and the Chairman of County Commissioners is hereby authorized and directed to execute said Agreement with CELLCO Partnership, D/B/A Verizon Wireless.

Dated this 17 day of November , 2020

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Information Technology
cc: Auditor

Prepared by: R. Heard

Robert Heard

From: Eric Andrews
Sent: Monday, November 2, 2020 8:06 AM
To: Robert Heard
Cc: Alex Garcia
Subject: RE: Verizon moving to NASPO's State of Utah Agreement - WA Participating

I saw the email you sent this weekend showing the term expiring in December. I approve the new contract as to form.

Eric T. Andrews
Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

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

From: Robert Heard <Robert.Heard@co.benton.wa.us>
Sent: Monday, November 2, 2020 7:58 AM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>
Cc: Alex Garcia <Alex.Garcia@co.benton.wa.us>
Subject: Verizon moving to NASPO's State of Utah Agreement - WA Participating

Eric,
Attached is the latest information about our current contract. Our current contract ends when the State of Washington starts a new contract with Verizon Jan 1. There are some cost benefits. One, for another $5 per phone, we get unlimited data, talk and text. This is a huge cost savings for the County especially knowing that data boomed during COVID-19 adding between $1,500-$2,500 to our monthly Verizon bill.

See attached. It is my recommendation that we sign the new agreement. I would like to get it on the agenda for November 17.

Thanks,

Robert

---

verizon

NASPO ValuePoint

NASPO ValuePoint
PURCHASING ENTITY AGREEMENT
WIRELESS, DATA, VOICE AND ACCESSORIES
Led by the state of Utah

Master Agreement#: MA152
Contractor: **CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS**
Purchasing Entity: BENTON COUNTY CENTRAL SERVICES

1. **Scope:** Verizon Wireless ("Contractor") and the State of Utah, for itself and on behalf of NASPO ValuePoint ("NASPO ValuePoint" and/or "Customer"), have entered into a Master Agreement #MA152 with an effective date of August 12, 2019 (together with any amendments and addenda the "Master Agreement"). The State of Washington ("Participating State") has entered into a Participating Addendum ("PA") with Contractor pursuant to the Master Agreement, allowing certain state agencies, political subdivisions, and other eligible entities to make purchases under the PA. This Purchasing Entity Agreement applies to the purchase and use of Products (e.g. wireless service, software and other services) by the Purchasing Entity under the PA. Contractor reserves the right to terminate this Agreement if at any time it is determined that Purchasing Entity is not eligible to purchase under the PA. All capitalized terms not defined in this Purchasing Entity Agreement will have the same meaning provided in the Master Agreement, as modified by the PA.
2. **Participation:** By executing this Purchasing Entity Agreement, the Purchasing Entity certifies that it has all approvals required by law, regulation or otherwise to complete purchases under the PA, and further represents and agrees as follows:
   2.1. It is eligible to complete purchases under the PA, will provide documentation substantiating its eligibility as may be requested by Contractor from time to time, and will immediately notify Contractor of any change in its eligibility to purchase under the PA;
   2.2. All purchases are governed by the terms of the Master Agreement and PA, and Purchasing Entity specifically agrees to these terms. To the extent the Purchasing Entity purchases any Verizon's Smart Communities products, services and solutions, those purchases are governed by the supplemental terms set forth at: https://enterprise.verizon.com/solutions/public-sector/state-local/contracts/naspo/;
   2.3. It consents to the release of its account information to NASPO ValuePoint and the Participating State for the purpose of Contractor meeting its contractual reporting requirements, as further described in the Master Agreement and the PA;
   2.4. It will ensure that this Purchasing Entity Agreement will only be used in support of government, not for profit and private education business; and
   2.5. The contact person listed below ("Authorized Contact") is authorized to act on behalf of, and otherwise bind Purchasing Entity, on account matters, including purchase equipment, add and cancel lines of service.
3. The undersigned represents and warrants that he or she is fully authorized to execute this Purchasing Entity Agreement on behalf of the Purchasing Entity, and that the delivery and execution of this Purchasing Entity Agreement has been approved by all required organizational action.

Street Address:	620 Market Street
City, State & Zip	Prosser, WA 99350
Authorized Contact Phone number:	509-786-5603
Authorized Contact Email address:	central.services@co.benton.wa.us

Authorized Signature:	
Print Name:	James Beaver
Title:	Chairman, Board of Benton County Commissioners
Date:	November 17, 2020

Washington State Department of Enterprise Services

Contract Summary

NASPO ValuePoint Wireless Data, Voice, and Accessories

Contract #: 04718
Replaces: 06012
Contract Type: COOPERATIVE

This Master Contract was established through NASPO ValuePoint with Utah as the lead state. Washington State participates in this contract through participating addendums. Currently, Washington State has the following Participating Addendums.

1) DiscountCell - Effective July 1, 2019 who offers accessories and cellular equipment.
2) T-Mobile - Effective January 1, 2020 who offers cellular service plans and devices.
3)Verizon - Effective July 1, 2020 who offers cellular service plans and devices.
4) AT&T - Effective July 1, 2020 who offers cellular service plans and devices.
5) Sprint - Effective July 1, 2020 who offers cellular service plans and devices.

Previous Master Contract 06012 expires June 30, 2020 and will no longer be available for purchases. This page is currently being updated over the next few days to include all newly established participating addendums and pricing pages.

- Awarded Vendors include: AT&T, DiscountCell, Sprint, T-Mobile and Verizon.
- Mobile phone options and service plans to fit the needs of your organization.
- Phone accessories, such as chargers, signal boosters, antennas, batteries and phone cases.
- Tablets with mobile data service plans.
- Voice over IP options and a variety of headsets.
- IoT Turnkey solitions are included.
- Includes EPEAT rating criteria of mobile phones that address the life cycle of the products.

Ordering Steps:

1. View Pricing & Ordering to learn more about available services.
2. View EPEAT registration criteria to learn more about EPEAT and the database of all registered products that are provided under this contract. This contract required to have mobile phones achieve a Bronze rating or higher in the EPEAT system.
3. Use the contact information in the Pricing and Ordering document to get more information or place an order with your preferred vendor.
4. Reference Washington State Master Contract No. 04718 to ensure you get contract pricing.
5. Frequently Asked Questions

Effective Date: 07-01-2019

Est. Annual Worth: $0
Current Term Ends On: 06-30-2024
Final Term Ends On: 06-30-2029
Commodity Code(s):
Diversity: 0% WBE 0% MBE
# of Bids Received:

Contact Info:
Marci Disken
(360) 407-9405
marci.disken@des.wa.gov

Secondary Contact Info:
Neva Peckham
(360) 407-9411
neva.peckham@des.wa.gov

Who Can Use This Contract?

- Organizations with Master Contract Usage Agreements
- MCUA Customer Communication Profile

- Pricing & Ordering
- AT&T MA
- AT&T PA
- DiscountCell MA
- DiscountCell PA
- Sprint MA
- Sprint PA
- T-Mobile MA
- T-Mobile PA
- Verizon MA
- Verizon PA

- Original Solicitation Documents

- FAQ

Showing 1 to 5 of 5 Vendors

All Vendors Per Page.

Search Vendors:

1

Vendor	Vendor #	Authorized Fulfillment Partners	OMWBE	Veteran	Small Business
DISCOUNTCELL INC	W14727				
T-MOBILE USA, INC	w17255				

Vendor	Vendor #	Authorized Fulfillment Partners	OMWBE	Veteran	Small Business
SPRINT SOLUTIONS, INC.	w32766				
VERIZON WIRELESS	W40588				
AT&T MOBILITY	w40590				

M = OMWBE Certified Minority Owned | W = OMWBE Certified Women Owned | MW = OMWBE Certified Minority Women Owned

= Veteran Owned
= Small Business

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COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 11/03/20 BC 11/17/20
Subject:	Signature on Personal Service Contract Amendment No. 3 with NCIC Inmate Communications
Presenter:	N/A
Prepared By:	Rosa Garcia
Reviewed By:	Darryl Banks

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

NCIC Inmate Communications continues to provide an inmate telecommunication system, telecommunications and maintenance services to the Detention Unit of the Benton-Franklin Counties Juvenile Justice Center. Detention Unit agrees to this Personal Service Contract Amendment No. 3. The purpose of this Amendment No. 3 is to revise Section 2 "Duration and Renewal of Contract" to extend the contract for an additional twelve (12) month period, from January 1, 2021 to December 31, 2021.

Fiscal Impact

There is no fiscal impact for either county. A 0% commission percentage on gross revenues is returned to the Counties in order to reduce communication barriers between youth and parents.

Recommendation

We recommend that the Board of County Commissioners of Benton County and the Board of Commissioners of Franklin County approve the Personal Service Contract Amendment No. 3 between the Benton-Franklin Counties Juvenile Justice Center and NCIC Inmate Communications as written.

Suggested Motion

I move that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners are hereby authorized to sign, on behalf of their respective county, the Personal Service Contract Amendment No. 3 between NCIC Inmate Communications and the Benton-Franklin Counties Juvenile Justice Center.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT AMENDMENT NO. 3 BETWEEN THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND NCIC INMATE COMMUNICATIONS, APPROVED BY BENTON COUNTY RES. NO 2017 057 AND FRANKLIN COUNTY RES. NO. 2017 12

WHEREAS, the Benton-Franklin Counties Juvenile Justice Center currently contracts with NCIC Inmate Communications for the inmate telecommunications system and services; and

WHEREAS, NCIC Inmate Communications continues to provide telephone services to the Benton-Franklin Counties Juvenile Justice Center, Detention Unit; and

WHEREAS, the purpose of this Personal Service Contract Amendment No. 3 is to revise Section 2 "Duration and Renewal of Contract" to extend the Contract for an additional twelve (12) month period, from January 1, 2021 to December 31, 2021; **NOW, THEREFORE**

BE IT RESOLVED, that the Chairs are authorized to sign the attached NCIC Inmate Communications Personal Services Contract Amendment No. 3 in which there is no financial obligation to the Benton-Franklin Counties Juvenile Justice Center, and a 0% commission percentage on gross revenues is returned to the Counties in order to reduce communication barriers between youth and parents; and

BE IT FURTHER RESOLVED, the term of the Personal Services Contract Amendment No. 3 shall commence on January 1, 2021 and shall expire on December 31, 2021.

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

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

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

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-NCIC, 1-BFJJC

R. Garcia

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

DARRYL BANKS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

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

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

PERSONAL SERVICE CONTRACT AMENDMENT No. 3

NCIC INMATE COMMUNICATIONS

This Contract Amendment is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place Ste 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and NCIC Inmate Communications with its principal office at 607 E Whaley St, Longview, TX 75601 (hereinafter referred to as "Contractor").

In consideration of the mutual benefits and covenants contained herein and in the parties' contract, numbered as Benton County Resolution No. 2017 057 and executed on January 24, 2017, and Franklin County Resolution No. 2017 12 and executed on January 11, 2017 (the "Contract"), the parties agree to amend the Contract as follows:

1. In accordance with Section 2 of the Contract ("Duration and Renewal of Contract"), the parties agree to extend the Contract for an additional twelve (12) month period, from **January 1, 2021**, to **December 31, 2021**.

Except as expressly provided in this Contract Amendment No. 3, all other terms and conditions of the original Contract and subsequent written contract amendments thereto remain in full force and effect.

This Amendment shall be effective January 1, 2021 and shall expire December 31, 2021.

NCIC Inmate Communications	Benton Franklin Counties Juvenile Justice Center
Mark Edgecombe 10/13/2020	Darryl Banks 10-20-22
Mark Edgecombe **Date** **West Coast Sales**	**Darryl Banks** **Date** **Juvenile Court Administrator**
BENTON COUNTY APPROVAL Approved as to Form: Stephen Hallstrom, Deputy Prosecuting Attorney Date By: Name: Title: Date: Attest: Clerk of the Board:	**FRANKLIN COUNTY APPROVAL** Approved as to Form: 10/13/2020 Jennifer Johnson Civil Deputy Prosecuting Attorney Date By: Name: Title: Date: Attest: Clerk of the Board:

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 11/03/20 BC 11/17/20
Subject:	Interagency Agreement IAA21536 with Administrative Office of the Courts for Court Interpreter Funding
Presenter:	N/A
Prepared By:	Rosa Garcia
Reviewed By:	Darryl Banks

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 State of Washington, Administrative Office of the Courts (AOC) is providing funds to the Benton-Franklin Counties Juvenile Justice Center (BFJJC) to improve the quality and availability of court interpreter services for Limited English Proficient (LEP), deaf and hard of hearing persons in accordance with RCW 2.242 and 2.43. The interpreter funding is targeted to reimburse Certified, Registered and Qualified Interpreters for interpreter services in accordance with the Interpreter Services Funding Requirements.

The period of performance for this agreement is from July 1, 2020 through June 30, 2021. The Interagency Agreement IAA21536 is backdated to July 1, 2020 so that services are not interrupted, and the Juvenile Justice Center can maximize the use of available funds effective on July 1, 2020. The contract was not received until October 20, 2020.

Fiscal Impact

The reimbursed compensation from the Administrative Office of the Courts (AOC) is a maximum of $22,313.00.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Interagency Agreement No. IAA21536 between the Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

Suggested Motion

I move that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners are hereby authorized to sign, on behalf of their respective county, the AOC Agreement No. IAA21536 between Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING THE INTERAGENCY AGREEMENT IAA21536 BETWEEN THE JUVENILE JUSTICE CENTER AND STATE OF WASHINGTON, ADMINISTRATIVE OFFICE OF THE COURTS

WHEREAS, Darryl Banks, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Interagency Agreement IAA21536 between the State of Washington, Administrative Office of the Courts, and Benton-Franklin Counties Juvenile Justice Center be approved as presented; and

WHEREAS, the new agreement was not received until October 20, 2020 and is backdated to July 1, 2020 so that services are not disrupted and so that the Juvenile Justice Center can maximize the use of available funds effective July 1, 2020; and

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington, that the boards herby concur with the Administrator and approve the Interagency Agreement IAA21536 between the Juvenile Justice Center and the State of Washington, Administrative Office of the Courts; and

BE IT FURTHER RESOLVED, the Juvenile Justice Center will be reimbursed a maximum of $22,313.00 for costs incurred during the period of performance; and

BE IT FURTHER RESOLVED, that the chairs are authorized to sign the attached Interagency Agreement; and

BE IT FURTHER RESOLVED, the agreement is effective July 1, 2020 and expires on June 30, 2021.

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

_____
Chair of the Board

_____
Chair Pro Tem

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

ATTEST:

_____
Clerk of the Board

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

_____
Chair of the Board

_____
Chair Pro Tem

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

ATTEST:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-AOC Interpreter, 1-BFJJC

R. Garcia

INTERAGENCY AGREEMENT IAA21536
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
BENTON/FRANKLIN

THIS AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and Benton/Franklin, for the purpose of distributing funds for court interpreter and language access service expenses to the Benton/Franklin Counties Juvenile 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 **$22,313** 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	**Darryl Banks** Administrator 5606 W Canal Pl, Ste 106 Kennewick, WA 99336-1300 darryl.banks@co.benton.wa.us (509) 783-2151

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**
_____	See attached signature page
Signature *Date*	*Signature* *Date*
Dawn Marie Rubio	_____
Name	*Name*
Administrator, AOC	_____
Title	*Title*

NAMES AND TITLES OF AUTHORIZED OFFICER (PERSON WITH LEGAL AUTHORITY: COUNTY COMMISSIONERS' CHAIR OF THE BOARD, MAYOR, CITY/TOWN MANAGER, AGENCY DIRECTOR)

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

Darryl Banks 10-20-2020

Darryl Banks, Juvenile Court Administrator — Date

BENTON COUNTY APPROVAL

Approved as to Form:

Deputy Prosecuting Attorney — Date

By: _____

Name: _____

Title: Chair, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Civil Deputy Prosecuting Attorney — 10/20/2020 Date

By: _____

Name: _____

Title: Chair, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

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 then 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 2.A and 2.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

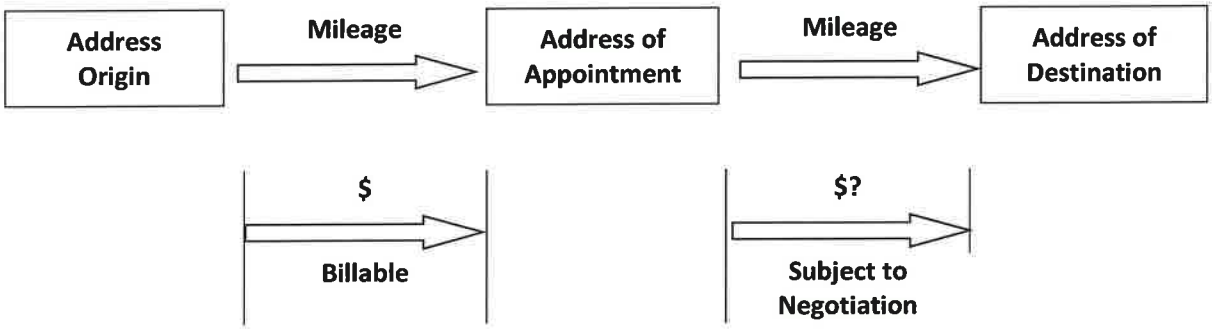
Interpreter mileage will be reimbursed in accordance with the prevailing Administrative Office of the Courts Policy. Notification will be sent prior to rate changes.

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:	FC 11/03/20 BC 11/17/20
Subject:	Professional Services Contract with Lutheran Community Services Northwest
Presenter:	N/A
Prepared By:	Rosa Garcia
Reviewed By:	Darryl Banks

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

Lutheran Community Services Northwest has agreed to provide a Master's level licensed mental health clinician to provide mental health assessments, crisis management, case planning, coordination of services, and transitional coordination of care to youth in detention.

The attached Professional Services Contract shall begin January 1, 2021 and expires on December 31, 2022.

Fiscal Impact

Amount not to exceed $300,000.00 to be paid out of Public Safety Tax Fund 171 Juvenile Operation. No supplement needed.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Professional Services Contract between Lutheran Community Services Northwest and the Benton-Franklin Counties Juvenile Justice Center for services.

Suggested Motion

I move that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners are hereby authorized to sign the Professional Services Contract between Lutheran Community Services Northwest and Benton-Franklin Counties Juvenile Justice Center.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING LUTHERAN COMMUNITY SERVICES NORTHWEST A PROFESSIONAL SERVICES CONTRACT TO PROVIDE MENTAL HEALTH ASSESSMENTS, CRISIS MANAGEMENT, CASE PLANNING, COORDINATION OF SERVICES AND TRANSITIONAL COORDINATION OF CARE TO YOUTH IN DETENTION

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

WHEREAS, the Juvenile Administrator recommends entering into a new Professional Services Contract with Lutheran Community Services Northwest; **NOW, THEREFORE**

BE IT RESOLVED that the Board of Benton County Commissioners, Benton County, Washington; and the Board of Franklin County Commissioners, Franklin County, Washington, the Boards concur with the Juvenile Administrator's recommendation and hereby awards the Professional Services Contract to Lutheran Community Services Northwest in an amount not to exceed $300,000.00; and

BE IT FURTHER RESOLVED, that the Chairs are authorized to sign the attached Professional Services Contract; and

BE IT FURTHER RESOLVED, the term of the attached contract commences January 1, 2021 and expires on December 31, 2022.

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

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

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

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-Lutheran, 1-BFJJC

R. Garcia

BENTON and FRANKLIN COUNTIES
PROFESSIONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 and **FRANKLIN COUNTY**, a political subdivision with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the **Benton-Franklin Counties Juvenile Justice Center**, a bi-county agency located at 5606 West Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Lutheran Community Services Northwest** with its principal offices at 4040 South 188th Street, Suite 300, SeaTac, WA 98188 (hereinafter "CONTRACTOR").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin on **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.

2. SERVICES PROVIDED

a. CONTRACTOR shall provide CDDA Mental Health Disposition Alternative Assessment as required by R.C.W. 13.40.165.

b. A full-time mental health clinician, masters level with MHP and licensed preferred but not required. The mental health clinician will be housed in detention. The clinician is directly responsible for the screening and evaluation of youth entering the detention center as well as establishing a treatment plan for the youth and providing daily individual and/or group therapy sessions as needed. It is anticipated the clinician will coordinate their daily schedule to meet the needs of the youth and staff in detention. The clinician will also provide brief training on mental health related topics to Detention Staff during shift change meetings.

c. Access to a team of approximately 2-3 identified Behavioral Interventionists, who are specifically trained to work at the

detention facility. The team of Behavioral Interventionist would be available up to a collective 20 hours per week to work with individual youth on specifically identified coping skills set forth by the clinician. It is anticipated that they will have access to the various settings to conduct interventions with youth. Some settings identified are the library, classroom, gym, task room or interview room.

d. A quarter time, approximately 10 hours a week, Mental Health Supervisor. The Supervisor will be a master's level, with MHP and will be licensed. The supervisor will be responsible for the overall coordination of programming to include overseeing the actions of the Clinician and Behavioral Interventionists, re-entry and transition planning, crisis planning, detention staff training and the collection of data and outcome measures. It is anticipated the supervisor will call team meetings as needed to discuss any program related topics and offer support to staff when experiencing any challenges. The supervisor will be responsible for overseeing time keeping for staff associated with the detention mental health team and will fill in as needed, when possible, if staff are not available.

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

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

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

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

3. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Sharon Gentry
Address:	3321 W. Kennewick Ave., Suite 150 Kennewick, WA 99336
Phone:	(509) 735-6446
Email:	sgentry@lcsnw.org

b. For COUNTIES:

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

4. COMPENSATION

a. The CONTRACTOR will be paid at the rate of $250.00 for each CDDA Mental Health Disposition Alternative Assessment up to four hours. Assessments over four hours will be paid at the agreed upon hourly rate of $60.00 for each additional hour. Assessments taking in excess of four hours will need prior approval of the Probation Manager or Juvenile Court Administrator.

b. The Mental Health Clinician will be paid at a rate of $50.00 per hour not to exceed 40 hours per week.

c. The Behavioral Interventionists will be paid at a rate of $35.00 per hour not to exceed 20 hours per week.

d. The Mental Health Supervisor will be paid at a rate of $60.00 per hour not to exceed 10 hours per week.

e. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed three hundred thousand dollars ($300,000.00).

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

g. The CONTRACTOR may, submit invoices to the COUNTIES not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall

cover the time CONTRACTOR performed work for the COUNTIES during the billing period. The COUNTIES shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

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

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

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

5. AMENDMENTS AND CHANGES IN WORK

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

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

6. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the

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

b. In any and all claims against the COUNTIES and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 6 shall survive termination and expiration of this Contract.**

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

7. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the

following insurance:

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

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

b. **Workers Compensation:** CONTRACTOR 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 COUNTIES for recovery of damages to the extent they are covered by workers compensation and employers liability.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTIES incurs fines or is

required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTIES. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTIES by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTIES to CONTRACTOR for performance of this Contract.

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

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

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 6. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability

Insurance coverage with minimum limits as follows:

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

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

e. **Other Insurance Provisions:**

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

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

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

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

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

requirements stated herein.

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

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

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

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

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

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington that have an A.M. Best's rating of at

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

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

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

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' 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 and Franklin County Risk Manager at the following addresses: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336; Franklin County Risk Manager, 1016 N. 4th Ave., Pasco, WA 99301.

8. TERMINATION

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

accordance with the Compensation Section of this Contract.

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

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

9. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

10. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of

this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

11. INDEPENDENT CONTRACTOR

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

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 4 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTIES benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTIES employees.

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

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

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

12. COMPLIANCE WITH LAWS

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

13. OTHER PROVISIONS

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

a. Background Check/Criminal History

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

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

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

b. Sexual Misconduct

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

2. The CONTRACTOR shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

14. INSPECTION OF BOOKS AND RECORDS

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

expiration.

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTIES, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTIES at the earliest possible time in order that such

matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTIES' Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTIES' Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

the particular provision held to be invalid.

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

In the event the COUNTIES learn of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to

"hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

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

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on **January 1, 2021.**

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

Lutheran Community Services Northwest	**Benton Franklin Counties Juvenile Justice Center**
10/15/2020	10-20-2020
David Duea **Date** **President & CEO**	**Darryl Banks** **Date** **Juvenile Court Administrator**
BENTON COUNTY APPROVAL	**FRANKLIN COUNTY APPROVAL**
Approved as to Form:	Approved as to Form:
Stephen Hallstrom, Deputy Prosecuting Attorney Date	10/16/2020 Jennifer Johnson, Civil Deputy Prosecuting Attorney Date
By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____	By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____
Attest:	Attest:
Clerk of the Board: _____	Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 17, 2020
Subject:	Awarding public defense contract for Superior Court criminal cases to Branden Landon
Presenter:	n/a
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 attorney be awarded a Benton County Superior Court public defense contract for the 2021-2022 contract cycle. *This contract is part of the same group of contracts that was proposed for signature on November 10, 2020. However, to coordinate with the attorney's schedule, this contract was placed on this agenda instead.*

a) Branden Landon

A proposed resolution and professional services agreement is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolution as proposed, execute proposed professional services agreement with attorney listed above.

Suggested Motion

NA – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH BRANDEN LANDON 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 Branden Landon for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Branden Landon, designated BCSC2122BDL001, 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, 2021, with an option for a one-year renewal, 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, Branden Landon
Copy – Auditor, S Godinez

E. Hsu

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

BCSC2122BDL001

CONTRACT SUMMARY			
Contract Type	Conflict/Overflow Monthly		
Contract Number	BCSC2122BDL001	**Contract Holder**	Branden D. Landon
WSBA #	55433	**Effective Dates**	Jan 1, 2021 – Dec 31, 2021
Caseload Cap	**90**	**Compensation**	**$700 per case**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation paid to:	Betancourt Law, PLLC		
Contract Slot Identifier	**SCC-1**		

THIS AGREEMENT is entered into by and between **Branden Landon,** attorney at law, Washington State Bar Association #55433 ("Attorney"), dba Betancourt 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, 2021**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. *Attorney may, by written notice prior to the expiration (December 31, 2021) elect to extend this Agreement upon its existing terms (unless more favorable compensation terms have been granted to other Superior Court contract public defenders, in which case the Agreement will be amended to provide for such terms) for a period of one additional year, to expire on December*

31, 2022). Upon final expiration of this Agreement (i.e. on December 31, 2021, if Attorney does not elect to renew, or on December 31, 2022 if Attorney does elect to renew for an additional one-year term), 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 1355 Columbia Park Trail, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 317-8184 and (509) 293-4057, respectively; and Attorney's current office/work e-mail address is landon.branden@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 (or suitable combination of experience of an equivalent nature); meets the minimum standards for Superior Court felony public defense (for non-violent Class B and Class C 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 **90 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 $5,250, based on Attorney's selected caseload.

Compensation shall be made payable to ***Betancourt Law, PLLC since Attorney is employed by that 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 $75 per hour, up to an initial maximum

of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

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

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts

relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

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

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

indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

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

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

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

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

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

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

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

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

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

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

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

19. **TERMINATION.**

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

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

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

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

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is

terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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 (Nov 2, 2020 11:59 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 2, 2020

Branden Landon (Nov 2, 2020 12:03 PST)

Branden Landon, WSBA 55433
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

SIGNING AUTHORITY FOR FIRM (required if attorney is an associate with a law firm)

Angel Betancourt

Angel Betancourt, WSBA 49091
I am a principal with signing authority for Betancourt Law, PLLC. I acknowledge and understand that the above-referenced Attorney, who is an associate with my firm, is about to enter into a public defense agreement with Benton County. I consent to this agreement and represent that my firm has sufficient resources to assist Attorney in faithfully carrying out his/her obligations pursuant to this Agreement and in complying with Washington State public defense laws, rules, and standards.

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:

Branden Landon (Nov 2, 2020 12:03 PST)

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:	11/17/20
Subject:	Superior Court Overflow/Conflict Contract with Justin Andrews
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

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 caseload in Benton County Superior Court is significantly higher than historic levels and higher than expected. As such, it is necessary to contract with additional attorneys to ensure that Supreme Court-mandated caseload standards are not breached. Attorney Justin Andrews has agreed to provide additional public defense coverage in Benton County Superior Court to assist in this regard and the proposed agreement effectuates the coverage.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute the agreement as proposed. Approve Resolution

Suggested Motion

NA – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A SUPERIOR COURT CONFLICT & OVERFLOW PUBLIC DEFENSE CONTRACT TO ATTORNEY JUSTIN ANDREWS

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

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

WHEREAS, there is a group of attorneys under contract to provide public defense services in Benton County Superior Court ("Panel Attorneys") with each Panel Attorney being limited to a certain annual caseload cap ("Case Limit") by contract and Supreme Court rule; and

WHEREAS, the caseload in Benton County Superior Court for 2020 has been higher than anticipated (and has reached a record high for recent years) such that the caseload has exceeded the aggregate Case Limit of Panel Attorneys and it is necessary to contract with additional attorneys on a "conflict and overflow" basis to provide sufficient public defense coverage in Benton County Superior Court for October 1 through December 31, 2020; and

WHEREAS, attorney Justin Andrews ("Attorney") has agreed to provide conflict and overflow coverage in Benton County Superior Court from October 1 through December 31, 2020, on the reasonable terms and conditions contained in the proposed Agreement, **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Justin Andrews, for public defense services in Benton County Superior Court, starting October 1, 2020 and expiring December 31, 2020, with maximum compensation in the amount of $2,000 per case, plus other allowable expenses, fees, and reimbursements, be executed as presented.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

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

E. Hsu

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

BCSC2020JJA001L

CONTRACT SUMMARY			
Contract Type	Conflict & Overflow		
Contract Number	BCSC2020JJA001L	**Contract Holder**	Justin J Andrews
WSBA #	48718	**Effective Dates**	10/1/2020 – 12/31/2020
Caseload Cap	**35 cases for period**	**Compensation**	**$1,200 Class B/C $2,000 Class A**

THIS AGREEMENT is entered into by and between **Justin J Andrews,** attorney at law, dba Law Office of Justin J Andrews, PLLC, Washington State Bar Association #48718 ("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.

C. While there is a regular panel of contract and staff public defense attorneys who routinely represent persons charged with felony criminal offenses in Benton County Superior Court, from time to time there is a need to assign cases to attorneys outside said regular panel because of conflict or overflow situations.

D. Due to the unexpected departure of two contract public defenders assigned to Benton County Superior Court, there is the need for additional attorneys to accept cases on an "overflow" basis.

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 **October 1, 2020** and shall continue thereafter through and including **December 31, 2020**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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 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 jandrewslawr@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 B and Class C 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.

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. *Provided, however, that Attorney shall not be assigned any cases that are classified as Class A felonies, without Attorney's prior written consent.*

- 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).

6. **CONTINUED REPRESENTATION.**

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

Attorney acknowledges that she is being paid a flat fee for each case assigned to her, at the outset of the case, and that said fee is intended to compensate her for all of the work done on the case (with the exception of the trial per diem payable if a case is tried to a jury or to the bench). Therefore, Attorney shall be responsible for fully completing cases assigned by and through this Agreement, even after the expiration of this Agreement pursuant to its terms and shall not be entitled to any further compensation for such continued representation after the expiration of this Agreement with the exception of trial per diems or allowable reimbursements for out-of-pocket expenses. Provided, however, that if a case is assigned to Attorney pursuant to this Agreement and, during the pendency of the case, the defendant fails to appear for schedule court appearances and therefore is on warrant status for a period of six months or more, then Attorney may request that the case be reassigned and, if the Superior Court allows the reassignment, then it shall be reassigned and Attorney shall, thereafter, have no further obligations on said case pursuant to this Agreement.

7. **NUMBER OF APPOINTMENTS.** During the effective term of this Agreement, Attorney may be appointed **up to 35 cases.**

8. **CASE EQUIVALENTS.** Reserved.

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. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

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 **$1,200 for each Class B, Class C and unclassified felony; $2,000 for each Class A felony**. Attorney is eligible to receive compensation for any given case upon conflict check and filing of a Claim for Compensation.

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. As a precondition to Attorney receiving payment of the compensation specified under paragraphs 12.a. and/or 12.b. above, 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. If requested by Attorney, compensation may be made to him by and through his law firm, Law Offices of Justin J. Andrews, PLLC provided that appropriate steps are taken to properly set up said law firm as a vendor with Benton County including providing a current, signed W-9 and completing any other documentation required. However, even if compensation is paid to attorney's law firm, Attorney acknowledges and

recognizes that this is a professional services agreement for which he is personally and professionally responsible.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** Reserved.

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. and 21.b. 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.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate,

implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

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

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

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and

policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 9, 2020

_____
Justin J. Andrews, WSBA 48718
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date Oct 9, 2020

_____
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:	11/17/20
Subject:	Superior Court Overflow/Conflict Contract with Michelle Alexander
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

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 caseload in Benton County Superior Court is significantly higher than historic levels and higher than expected. As such, it is necessary to contract with additional attorneys to ensure that Supreme Court-mandated caseload standards are not breached. Attorney Michelle Alexander has agreed to provide additional public defense coverage in Benton County Superior Court to assist in this regard and the proposed agreement effectuates the coverage.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute the agreement as proposed. Approve Resolution

Suggested Motion

NA – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A SUPERIOR COURT CONFLICT & OVERFLOW PUBLIC DEFENSE CONTRACT TO ATTORNEY MICHELLE ALEXANDER

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

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

WHEREAS, there is a group of attorneys under contract to provide public defense services in Benton County Superior Court ("Panel Attorneys") with each Panel Attorney being limited to a certain annual caseload cap ("Case Limit") by contract and Supreme Court rule; and

WHEREAS, the caseload in Benton County Superior Court for 2020 has been higher than anticipated (and has reached a record high for recent years) such that the caseload has exceeded the aggregate Case Limit of Panel Attorneys and it is necessary to contract with additional attorneys on a "conflict and overflow" basis to provide sufficient public defense coverage in Benton County Superior Court from October 1 through December 31, 2020; and

WHEREAS, attorney Michelle Alexander ("Attorney") has agreed to provide conflict and overflow coverage in Benton County Superior Court from October 1 through December 31, 2020, on the reasonable terms and conditions contained in the proposed Agreement, **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Michelle Alexander, for public defense services in Benton County Superior Court, starting October 1, 2020 and expiring December 31, 2020, with maximum compensation in the amount of $2,000 per case, plus other allowable expenses, fees, and reimbursements, be executed as presented.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Michelle Alexander
Copy – Auditor, Superior Court, S. Godinez

E. Hsu

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

BCSC2020MMA001L

CONTRACT SUMMARY			
Contract Type	Conflict & Overflow		
Contract Number	BCSC2020MMA001L	**Contract Holder**	Michelle Alexander
WSBA #	29291	**Effective Dates**	10/1/2020 – 12/31/2020
Caseload Cap	**35 cases for period**	**Compensation**	**$1,200 Class B/C $2,000 Class A**

THIS AGREEMENT is entered into by and between **Michelle Alexander,** attorney at law, Washington State Bar Association #29291 ("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.

C. While there is a regular panel of contract and staff public defense attorneys who routinely represent persons charged with felony criminal offenses in Benton County Superior Court, from time to time there is a need to assign cases to attorneys outside said regular panel because of conflict or overflow situations.

D. Due to the unexpected departure of two contract public defenders assigned to Benton County Superior Court, there is the need for additional attorneys to accept cases on an "overflow" basis.

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 **October 1, 2020** and shall continue thereafter through and including **December 31, 2020**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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 7135 Hood Pl, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 491-3941 and (888) 857-9487, respectively; and Attorney's current office/work e-mail address is mdralexander@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 B and Class C 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.

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. *Provided, however, that Attorney shall not be assigned any cases involving charges from RCW Chapter 9A.44 (including attempts thereof).*

- 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).

6. **CONTINUED REPRESENTATION.**

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

Attorney acknowledges that she is being paid a flat fee for each case assigned to her, at the outset of the case, and that said fee is intended to compensate her for all of the work done on the case (with the exception of the trial per diem payable if a case is tried to a jury or to the bench). Therefore, Attorney shall be responsible for fully completing cases assigned by and through this Agreement, even after the expiration of this Agreement pursuant to its terms and shall not be entitled to any further compensation for such continued representation after the expiration of this Agreement with the exception of trial per diems or allowable reimbursements for out-of-pocket expenses. Provided, however, that if a case is assigned to Attorney pursuant to this Agreement and, during the pendency of the case, the defendant fails to appear for schedule court appearances and therefore is on warrant status for a period of six months or more, then Attorney may request that the case be reassigned and, if the Superior Court allows the reassignment, then it shall be reassigned and Attorney shall, thereafter, have no further obligations on said case pursuant to this Agreement.

7. **NUMBER OF APPOINTMENTS.** During the effective term of this Agreement, Attorney may be appointed **up to 35 cases.**

8. **CASE EQUIVALENTS.** Reserved.

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. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

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 **$1,200 for each Class B, Class C and unclassified felony; $2,000 for each Class A felony**. Attorney is eligible to receive compensation for any given case upon conflict check and filing of a Claim for Compensation.

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. As a precondition to Attorney receiving payment of the compensation specified under paragraphs 12.a. and/or 12.b. above, 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.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** Reserved.

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. and 21.b. 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.

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

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and

obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

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

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

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

34. **PUBLIC DEFENSE MANAGER.** Attorney acknowledges that the County has employed the above-referenced PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though

the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his designees), and to promptly comply with reasonable requests from the PDM (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date 10/8/20

_____
Michelle M. Alexander, WSBA 29291
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 17, 2020
Subject:	Contract w/ Knutzen Consulting Engineering, PLLC. for the Design of the new Parking Lot at Hover Park
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	R. Blain

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

Qualifications were solicited to provide engineering & design services for the new parking lot at Hover Park.

After review of qualifications submitted, it was determined that Knutzen Consulting Engineering, PLLC., Kennewick, Washington, would best be able to provide the services needed.

A Professional Services Contract has been prepared, reviewed and approved as to form by our departmental deputy prosecuting attorney, and signed by Knutzen Consulting Engineering, PLLC.

Fiscal Impact

Amount: $31,400

Fund: Park Development Fund (Fund # 0110-102)

Recommendation

Approve the Contract with Knutzen Consulting Engineering, PLLC. for the design of the new parking lot at Hover Park.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICES CONTRACT WITH KNUTZEN CONSULTING ENGINEERING, PLLC. FOR PROVIDING ENGINEERING & DESIGN SERVICES FOR THE NEW PARKING LOT AT HOVER PARK

WHEREAS, qualifications were solicited to provide engineering & design services for the new parking lot at Hover Park; and

WHEREAS, after review of qualifications submitted, it was determined that Knutzen Consulting Engineering, PLLC., Kennewick, Washington, would best be able to provide the services needed; and

WHEREAS, a Professional Services Contract has been prepared, reviewed and approved as to form by our departmental deputy prosecuting attorney, and signed by Knutzen Consulting Engineering, PLLC.; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby approves the Professional Services Contract with Knutzen Consulting Engineering, PLLC. of Kennewick, Washington to provide professional engineering & design services for the new Hover Park parking lot with a maximum total amount payable not to exceed $31,400.00, including Washington State Sales Tax, unless agreed to by amendment by both parties; and

BE IT FURTHER RESOLVED the term of this contract commences on this date and terminates on December 31, 2021.

Dated this 17h 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.: Commissioners P. Schut
c: Auditor, CM

BENTON COUNTY
ARCHITECTURAL/ENGINEERING
PROFESSIONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **KNUTZEN CONSULTING ENGINEERING, PLLC** , a corporation organized under the laws of the State of Washington with its principal offices at 5401 Ridgeline Dr., STE 160, Kennewick, WA 99338 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A - Scope of Services; and

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on December 31, 2021. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The COUNTY requires and the CONTRACTOR agrees to perform the following services:

a. Provide Engineering & Design Services for the new Hover Park Parking Lot all in accordance with Exhibit A attached hereto; subject to the following requirements and limitations:

i. The CONTRACTOR agrees to provide its own labor and materials as included costs in the fees payable consistent with Exhibit A and Section 5 below. Unless otherwise provided

for in a work order, no materials, labor, or facilities will be furnished by the COUNTY.

ii. The COUNTY shall furnish the CONTRACTOR with a proposed work order for each project under this Contract, and the CONTRACTOR shall in return provide the COUNTY with a detailed breakdown proposal including the scope of work and fees consistent with the Exhibit A for services to be performed. All proposals from the Architect must be approved by the Board of Benton County Commissioners via resolution prior to commencement of any work.

iii. The CONTRACTOR shall review the COUNTY's scope of work, budget and schedule and reach an understanding with the COUNTY of the project requirements. Based on the approved project requirements, the CONTRACTOR shall develop a design. Upon COUNTY's approval of the design, CONTRACTOR shall prepare construction documents indicating requirements for construction of the project and shall coordinate its services with any consulting services the COUNTY provides. The Contractor shall assist the COUNTY in filing documents required for the approval of government authorities in obtaining proposals and in awarding contracts for construction. During the construction phase, CONTRACTOR shall act as the COUNTY's representative to the extent set forth in this Contract. CONTRACTOR will visit the construction site at intervals appropriate the stage of construction to become generally familiar with the progress and quality of the work. CONTRACTOR will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work. Based on the CONTRACTOR's observations and evaluations of the construction, CONTRACTOR shall certify amount the amounts due to the construction contractor. CONTRACTOR shall promptly review and approve or take appropriate action upon construction contractor's submittals for the limited purpose of checking with the conformance of information given and the design concept expressed in the contract documents. CONTRACTOR shall be responsible for producing all contract documents and correspondence related to construction or improvement projects for which CONTRACTOR is responsible. CONTRACTOR shall oversee, manage and direct all facets of project in a manner consistent with the standards expected of similarly situated architects on construction or improvement projects within the State of Washington. CONTRACTOR shall

generate all necessary documentation and contracts associated with construction or improvement projects for which CONTRACTOR is responsible subject, when appropriate, to review by COUNTY's legal counsel, and shall amend or modify such documents and contracts at the direction of COUNTY's legal counsel or COUNTY's representative. These documents and contracts include, but are not limited to: request for proposals/request for competitive bids to include posting the legal advertisements; Notices to Proceed; AIA standard form contracts; Change Orders; approval of all Progress Payments; Letter of Substantial Completion. The CONTRACTOR shall forward all original documents to the COUNTY at COUNTY's request, and shall retain all records related to any given project for the appropriate Washington State Retention Schedule as promulgated by the Washington State Archivist.

iv. The CONTRACTOR shall perform the work consistent with the industry standards in the A&E Profession. Specifically, in instances where project contracts call for the architect to exercise independent discretion in making a decision or resolving a dispute, CONTRACTOR shall do so in an independent fashion.

v. The CONTRACTOR shall complete each task assigned in a timely manner according to the schedule agreed to by the parties.

b. Information and Reports: The CONTRACTOR'S representative shall meet with the COUNTY'S representative as specified in each work order, and if not stated, no less than one time per week while a work order is in progress. The CONTRACTOR shall prepare and present status reports and other required information as specified in each work order, or as otherwise requested in writing by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Paul Knutzen
Address:	5401 Ridgeline Dr.; STE 160 Kennewick, WA 99338
Phone:	509-222-0959

Email: Paul@Knutzenengineering.com

b. For COUNTY:

Name: Robert Blain
Address: 7122 W Okanogan Place; Bldg. A
Kennewick, WA 99336
Phone: 509-727-2704
Email: Robert.Blain@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Thirty-one Thousand Four Hundred Dollars and Zero Cents ($31,400.00), including W.S.S.T., in accordance with Exhibit A, "Scope of Services", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Thirty-one Thousand Four Hundred Dollars and Zero Cents ($31,400.00), 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 Exhibit A, 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. In the event of

the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

must be provided by an insurance carrier with a Best's Rating of not less than A-VII.

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

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

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

performance of this Contract.

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

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

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

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

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

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

d. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance

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

e. **Other Insurance Provisions:**

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

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

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

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

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

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

shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.

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

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

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

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

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

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

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

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving 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 paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the

effective date, no charges incurred under this Contract shall be allowed.

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. 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 its obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status,

disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

b. All design work done by the CONTRACTOR shall be done on AutoCAD Civil 3D 2015 or higher, or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the expiration of the Contract. Should a construction project result from the work of the CONTRACTOR, the record drawings from the CONTRACTOR shall be transposed onto the electronic design drawings and submitted to the COUNTY.

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance

and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein

whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

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

- This section left blank intentionally -

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

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 11/4/2020

FOR: KNUTZEN CONSULTING ENGINEERING, PLLC

Paul Knutzen
Signature

President
Title:

Paul Knutzen
Print Name

KNUTZEN ENGINEERING

SCOPE OF SERVICES

PROJECT: HOVER PARK – PARKING LOT

Knutzen Engineering (Knutzen) is pleased to provide this proposal for complete design of a new parking lot located in Hover Park. The Benton County APN# is 106711000002002. The overall site contains approximately 170 acres, the area requiring improvements is approximately 3.5 acres.

The primary scope of services provided under this Contract will be to design a complete gravel parking lot, driveway, and access gate. The parking lot will be considerate of trucks towing trailers for horse enthusiasts. Vehicular access will be restricted for locations OUTSIDE of the parking lot by either strategic boulder placement or some other type of deterrent, such as berms or ditches. There are no proposed utility or storm drainage improvements with the parking lot project.

PROJECT ASSUMPTIONS:
In preparing this proposal, Knutzen has made the following assumptions based on information provided by the Client:

1. An engineering hydrology report will not be required since no impervious surface is being proposed.
2. It is assumed all plans will be prepared on Knutzen Engineering border, using Knutzen's AutoCAD line types.
3. All plans will be stamped by a licensed engineer in the State of Washington.
4. Army Corp of Engineers will require a permit for this work within their jurisdiction but that the County will permit with them directly.
5. All specifications will be addressed on the plans and will not include a standalone spec book.
6. A SEPA will not be required.

TOPOGRAPHIC & BOUNDARY SURVEY SCOPE:
Knutzen will hire a survey firm to provide the following services as a part of this Contract.

1. Call in for a public utility locate service (Dig-Alert).
2. Perform a topographic survey for design on the affected portions of the parcel to delineate 1' contour intervals. Provide spot elevations of hard surfaces, provide locations of existing utility structures and underground utilities from public and private locate services. Locate existing fencing, flat work, parking, property boundaries, and other pertinent features.
3. Prepare topographic survey in AutoCAD Civil 3D and PDF.

CIVIL DESIGN SCOPE:
Knutzen will provide the following services as a part of this Contract.

1. Coordinate with Client to prepare preliminary concepts showing circulation and parking for trucks with trailers (assumed 3 concepts).
2. Once a concept is agreed to by Client Staff, we can assist in sharing the design to the Parks Board (assumed virtual meeting during COVID) and take comment/feedback from the Commissioners.

3. Upon receipt of all comments from all stakeholders, then provide a civil site plan which shows the horizontal layout of the new gravel parking lot with potential parking stalls, truck & trailer stalls, and site circulation.
4. Prepare an erosion control plan to satisfy Ecology requirements for storm water permitting. It is assumed that a General Construction Storm Water Permit (CGSWP) is not required for this Project since the disturbed area is less than 5 acres. However, an Erosivity Waiver should be completed with the State to satisfy their requirements, otherwise a CGSWP and SWPPP will be required. We will assist the Client in preparation of this form which will require signature of the Site Contractor once this work is awarded.
5. Provide a grading plan for the Project to establish the proper drainage of the parking lot which includes contours and spot shot elevations. We will attempt to balance the site as much as possible, limiting earthwork import or export, particularly limiting cut. Some cut will be required.
6. Attend a meeting with the Parks Board, if required.
7. Provide all copies necessary for submittal to the City for review and obtain engineering plan approval. It is assumed the approval will take no more than one (1) review, with one (1) re-issue to the City for approval.
8. The following sheets will be included in Knutzen's work:
    a. C001 General notes, legend, and vicinity map.
    b. C050 Erosion and sediment control plan.
    c. C101 Site plan with geometric layout of parking lot, driveways, surface features, and include dimensions.
    d. C111 Grading plan with grading contours and spot shot elevations.
    e. C501 Project specific details.

OPTIONAL - GEOTECHNICAL INVESTIGATION:
Knutzen highly suggests hiring a geotechnical engineer to provide these following services as a part of this Contract.

1. Call in for a public utility locate service (Dig-Alert).
2. Dig test pits at up to two locations which are the most likely candidates for drainage improvements.
3. Provide recommendations for earthwork, gravel parking lot section, and infiltration in a complete geotechnical engineering report. Without recommendations we will assume a 6" gravel parking lot section.

CONSTRUCTION ADMINISTRATION SCOPE:
Knutzen will provide the following services as a part of this Contract.

1. Upon construction commencing we will provide construction support, answering RFI's, reviewing submittals, assisting in resolving unknown issues which could not have been addressed in the plans. Preparing as-builts if desired at the conclusion of the Project.

EXCLUSIONS:
The following list of items has been excluded from this proposal. Knutzen can perform and/or coordinate some of these items for an additional fee.

a. Construction staking, as-built survey, and easement descriptions or preparation.

b. Archaeological of Cultural Resources study of the site.
c. Bidding services or advertising of this project. It is assumed the County will obtain bids for this work through the MRSC Roster or public bidding.
d. Architectural, landscaping, structural, mechanical, electrical, traffic engineering of any kind.
e. Payment of any agency applications, permits, and/or plan check fees.

All services not specifically outlined in the scope of work above shall be considered additional services and shall be subject to a commensurate adjustment to the agreed compensation, which shall be determined by way of a written addendum, signed by the parties, prior to proceeding with the additional work.

COMPENSATION:
Knutzen will perform these services for a firm fixed fee as follows:

Topographic & Boundary Survey	$7,500
Civil Design	$14,200
OPTIONAL-Geotechnical Engineering	$6,800
Construction Administration	$2,900
TOTAL (WITH OPTIONAL)	**$31,400**

SCHEDULE:
Once a signed contract is received by Knutzen we will order the survey. This first part of the process will take approximately 4 weeks' time. Once the survey is complete, we will begin our civil design and submit to the Client for concept review within 2 weeks' time. Then once final concept is approved after Parks Board, final documents will take 2 more weeks' time. We estimate the whole design will take approximately 8 weeks' time.

OTHER TERMS AND CONDITIONS:
Thank you for the opportunity to submit this agreement. We look forward to working with you on this Project. If the scope of work above does not adequately reflect your expectations, please let us know. It is our goal to meet your needs and budget on this Project. If you have any questions, please feel free to contact the undersigned directly at 509.222.0959. The return of a signed copy of this agreement will authorize Knutzen to proceed with this work.

APPROVED BY:

Benton County	Knutzen Engineering
	Paul Knutzen
Signature	Signature
	Paul Knutzen
Print	Print
	8/4/20
Date	Date

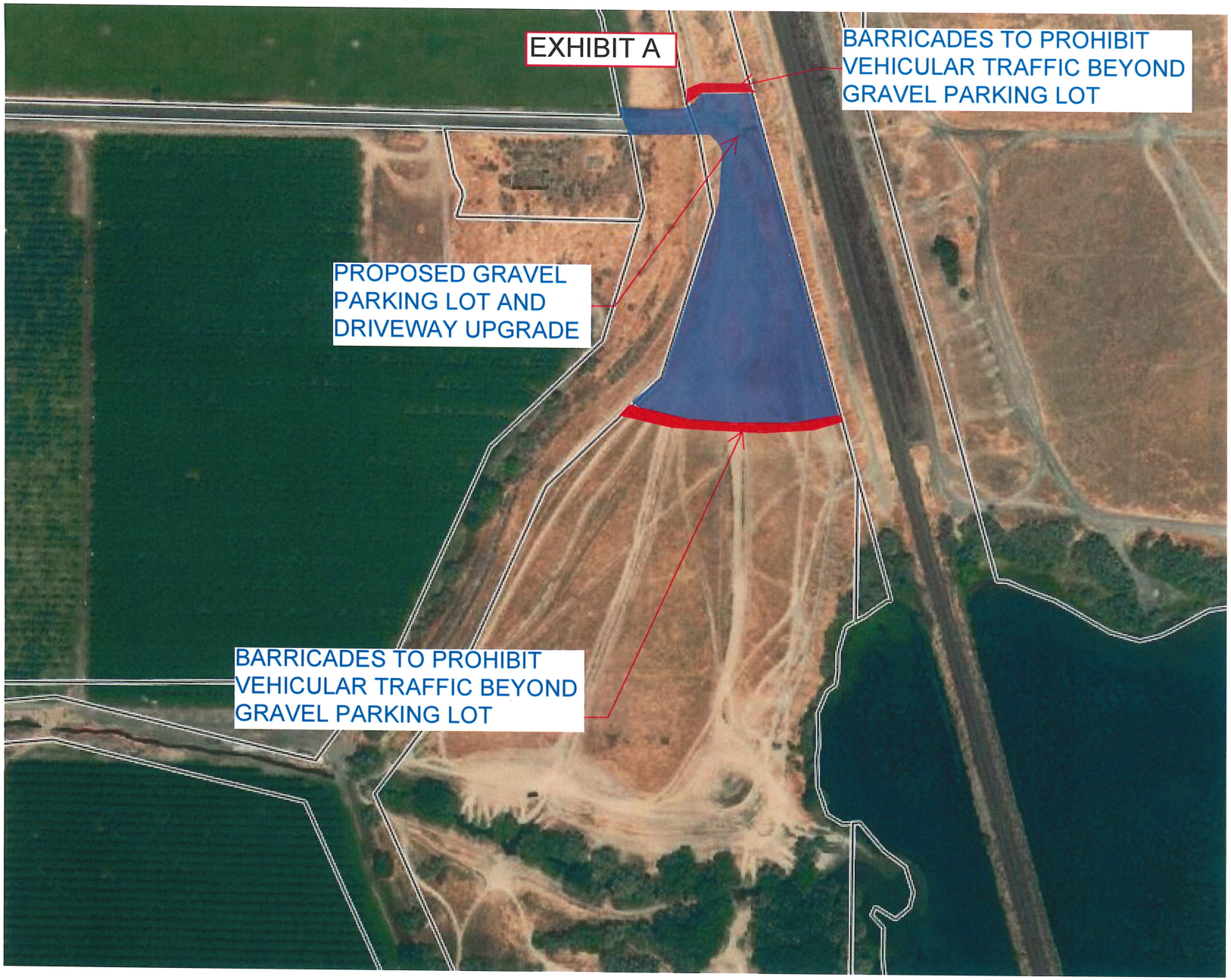
EXHIBIT A
BARRICADES TO PROHIBIT VEHICULAR TRAFFIC BEYOND GRAVEL PARKING LOT
PROPOSED GRAVEL PARKING LOT AND DRIVEWAY UPGRADE
BARRICADES TO PROHIBIT VEHICULAR TRAFFIC BEYOND GRAVEL PARKING LOT

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PUBLIC SAFETY TAX FUND NUMBER 0148101, DEPARTMENT NUMBER 120.

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

Cindi Kane

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Corrections

Dept Nbr: 120

Fund Name: Public Safety Tax

Fund Nbr: 0148101

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
523.620	4103	Professional Services	$1,000	594.230	6401	Capital Outlay	$1,000
TOTAL			$1,000	TOTAL			$1,000

Explanation:

Line item transfer to purchases the necessary polygraph equipment used as part of the background investigation process. WSST was not included.

Prepared by: Cindi Kane

Date: 05-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 PUBLIC SAFETY TAX FUND NUMBER 0148101, DEPARTMENT NUMBER 117

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:
Ginny Baddley

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Prosecuting Attorney Dept Nbr: 117

Fund Name: Public Safety Tax Fund Nbr: 0148101

TRANSFER FROM: Dept 117 TRANSFER TO: Dept 117

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
515.300	1905	Temp Help	$5,061	515.300	1198	Deputy Prosecuting Attorney	$5,061
515.300	3101	Supplies	$1,900	515.300	1365	Deputy Prosecuting Attorney	$2,000
515.300	3501	Minor Equip and small tools	$2,300	515.701	1683	Victim Witness Coordinator	$3,500
515.300	4905	Training	$1,300				
TOTAL			$10,561	TOTAL			$10,561

Explanation:

Line item transfer is needed to cover salary shortfall.

Prepared by: Ginny Baddley Date: 09-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 PUBLIC SAFETY TAX FUND FUND NUMBER 0148101, DEPARTMENT NUMBER 115

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto; 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: Public Safety Tax Fund Fund Nbr: 0148101

TRANSFER FROM: Dept 115 TRANSFER TO: Dept 115

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.303	4102	Contract Services	$400,000	594.210	6401	Capital Outlay	$ 400,000
TOTAL			$400,000	TOTAL			$400,000

Explanation:

Explanation: 2019-2020 Budget. To appropriate funding for the Sheriff Swat Armored Vehicle purchase, Resolution 2019-705.

Prepared by: Linda Ivey Date: 09-Nov-2020

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS, RE: TRANSFER OF FUNDS WITHIN EQUIPMENT RENTAL AND REVOLVING FUND 0501-101, DEPARTMENT NUMBER 650

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

Dated this 17th 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.

D Calhoun

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Equipment Rental and Revolving

Dept Nbr: 650

Fund Name: Equipment Rental and Revolving

Fund Nbr: 0501101

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
588.100	4900	Miscellaneous	20,000	588.100	0080	Prior Period Adjustments	20,000
TOTAL			$20,000	TOTAL			$20,000

Explanation:

Change of coding requested by Auditor's office.

Prepared by: Debbie Calhoun

Date: 04-Nov-2020

Approved ❑

Denied ❑

Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/2020
Subject:	License/Hold Harmless Agreement w/City of Kennewick
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

The City of Kennewick and the Benton County by and for the Benton County Sheriff's Office has a current License and Hold Harmless Agreement for the purpose of establishing the terms and conditions of use for the Kennewick Firearms Range Facility, with an expiration date of December 31, 2020.

Both parties would like to enter into another License and Hold Harmless Agreement for calendar years 2021 & 2022.

Fiscal Impact

No Fiscal Impact – There are no fees associated with this agreement.

Recommendation

Approve the attached Resolution and License and Hold Harmless Agreement between the City of Kennewick and Benton County by and for the Benton County Sheriff's Office.

Suggested Motion

Approve as part of Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A LICENSE AND HOLD HARMLESS AGREEMENT BETWEEN THE CITY OF KENNEWICK AND BENTON COUNTY BY AND FOR THE BENTON COUNTY SHERIFF'S OFFICE FOR THE PURPOSE OF USE FOR THE KENNEWICK FIREARMS RANGE FACILITY

WHEREAS, the City of Kennewick and Benton County, by and for the Benton County Sheriff's Office, has a current License and Hold Harmless Agreement for the purpose of establishing the terms and conditions of use for the Kennewick Firearms Range Facility, which is set to expire December 31, 2020; and

WHEREAS, the use of this facility is for organized training events and routine target practice conducted by Benton County Sheriff's Office and its officers; and

WHEREAS, both parties would like to renew the License and Hold Harmless Agreement for calendar years 2021 & 2022; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners hereby authorizes the Chairman of the Board to sign the attached License and Hold Harmless Agreement between the City of Kennewick and Benton County; and

BE IT FURTHER RESOLVED, the term of this agreement shall commence January 1, 2021 and shall terminate on December 31, 2022.

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, Washington

Orig: BCSO
Cc: Auditor, City of Kennewick

K. Gillies

LICENSE/HOLD HARMLESS AGREEMENT

This License and Hold Harmless Agreement ("AGREEMENT") is hereby entered into between the City of Kennewick ("CITY"), a municipal corporation and Benton County by and for the Benton County Sheriff's Office ("LICENSEE"), for purposes of establishing the terms and conditions of use for the Kennewick Firearms Range facility for organized training events and routine target practice conducted by Benton County Sheriff's Office and its officers.

I. RECITALS

WHEREAS, the CITY has authorized the use of the Kennewick Firearms Range facility for LICENSEE; and

WHEREAS, as a condition of use of the Kennewick Firearms Range facility, the CITY has required a License and Hold Harmless Agreement to be executed by both parties; **NOW, THEREFORE**

THE PARTIES AGREE HERETO AS FOLLOWS:

II. AGREEMENT

1. License.

It is agreed and understood that LICENSEE shall have use of the Kennewick Firearms Range for firearms training and routine target practice and agrees to abide by the CITY's range rules. LICENSEE agrees that officers will use protective equipment whenever shooting, including proper eyewear, hearing protection, and bulletproof vest. LICENSEE further agrees that all organized training events, as well as routine target practice involving five or more law enforcement officers, shall be supervised by a certified firearms instructor from that law enforcement agency.

2. Hold Harmless.

(a) It is agreed and understood that LICENSEE shall defend, indemnify and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, suits, actions or liabilities, for injury or death of any person, or for loss or damage to property which arises out of the LICENSEES' use of the Firearms Range or from any activity, work or thing done, permitted or suffered by LICENSEE, in or about the Firearms Range. The LICENSEE's indemnity obligation herein does not extend to claims, suits, actions, or liabilities associated with negligence or other wrongful conduct by the CITY or its officers, officials, employees and volunteers.

(b) It is agreed and understood that the CITY shall defend, indemnify and hold harmless the LICENSEE, its employees, agents, or affiliates from and against all

claims, suits, actions or liabilities, for injury or death of any person, or for loss or damage to property which arises out of the CITY's use of the Firearms Range or from any activity, work or thing done, permitted or suffered by the CITY, in or about the Firearms Range. The CITY's indemnity obligation herein does not extend to claims, suits, actions, or liabilities associated with negligence or other wrongful conduct by the LICENSEE or its employees, agents, or affiliates.

(c) The provisions of this section shall survive the expiration or termination of this AGREEMENT.

3. **Notices.** In the event of any incident or claim, the LICENSEE shall provide notice as set forth below:

City of Kennewick:

Risk Management Coordinator
210 W. 6th Avenue
Kennewick, WA 99336
(509) 585-4354

Randy Maynard, Sergeant
Kennewick Police Department
211 W. 6th Avenue
Kennewick, WA 99336
(509) 585-1313

Benton County Sheriff's Office:

Jerry Hatcher, Sheriff
7122 W. Okanogan Place, Bldg. B
Kennewick, WA 99336
(509) 783-1451 Ext. 3260

Lexi Wingfield, Personnel Manager
Benton County Personnel Office
7122 W. Okanogan Place, Bldg. B
Kennewick, WA 99336
(509) 737-2777

4. **Term of Agreement.** The term of this AGREEMENT shall commence January 1, 2021 and shall terminate on December 31, 2022.

CITY OF KENNEWICK

Ken Hohenberg, Chief of Police

BENTON COUNTY

James Beaver, Chairman
Benton County Commissioner

Approved as to form:

Lisa Beaton, City Attorney

BENTON COUNTY SHERIFF'S OFFICE

Jerry Hatcher, Sheriff
Benton County Sheriff's Office

Approved as to form:

Ryan J. Lukson
Civil Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/2020
Subject:	WTSC Interagency Grant Funding for Traffic Safety Emphasis – Rescinding 2020-787
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Steve Caughey, Commander

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 2020-787 dated October 27, 2020 the Board of County Commissioners approved the Benton County Sheriff to sign the Interagency Agreement between Benton County Sheriff's Office and Washington Traffic Safety Commission for grant funding in the estimated amount of $7,625 to conduct over-time visibility enforcement patrols and related activities as outlined in the attached Interagency Agreement; and

The Interagency Agreement only included two of the three emphasis that were listed in Resolution 2020-787. It is recommended to rescind Resolution 2020-787 and replace it to only include Impaired Driving and Distracted Driving for a total of $5,375. A separate resolution will be submitted for the Seat Belt Patrol Emphasis.

Attached is an Interagency Agreement between BCSO and WTSC providing funding to BCSO to conduct multijurisdictional, high visibility enforcement, traffic safety emphasis patrols to reduce traffic related deaths and serious injuries through aggressive impaired driving, occupant protection, and distracted driving. Said patrol emphasis shall be conducted on specific dates from October 1, 2020 – September 30, 2021, as further outline in the attached Interagency Agreement, with an overall Region 14 Funding of $27,500; with Benton County's estimated budgeted grant funding as follows:

Impaired Driving Patrols: $3,000
Distracted Driving Patrols: $2,375

Fiscal Impact

This is a reimbursable grant, with no cash match requirements and has been included in the 21/22 budget

Recommendation

Approve the attached Resolution rescinding Resolution 2020-787, with a funding amount of $5,375

Suggested Motion

Approve as part of the Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE INTERAGENCY AGREEMENT BETWEEN BENTON COUNTY SHERIFF'S OFFICE AND WASHINGTON TRAFFIC SAFETY COMMISSION PROVIDING GRANT FUNDING FOR OVERTIME RELATING TO TRAFFIC SAFETY EMPHASIS PATROLS ; RESCINDING RESOLUTION 2020-787

WHEREAS, per Resolution 2020-787 dated October 27, 2020 the Board of County Commissioners approved the Benton County Sheriff to sign the Interagency Agreement between Benton County Sheriff's Office and Washington Traffic Safety Commission for grant funding in the estimated amount of $7,625 to conduct over-time visibility enforcement patrols and related activities as outlined in the attached Interagency Agreement; and

WHEREAS, the Interagency Agreement only included two of the three emphasis that were listed in Resolution 2020-787 and 2020-787 should be rescinded and replaced to only include Impaired Driving and Distracted Driving for a total of $5,375. A separate resolution will be submitted for the Seat Belt Patrol Emphasis; and

WHEREAS, the Benton County Sheriff's Office received the attached Interagency Agreement between the Benton County Sheriff's Office (BCSO) and Washington Traffic Safety Commission (WTSC) outlining grant funding for traffic safety grant project 2021-HVE-4055-Washington Traffic Safety Commission, to conduct over-time visibility enforcement patrols to engage, deter, and educate drivers about the impacts of making unsafe decisions when driving; and

WHEREAS, said patrol emphasis shall be conducted on specific dates from October 1, 2020 – September 30, 2021, as further outlined in the attached Interagency Agreement with an overall Region 14 Funding of $27,500 amongst Region 14 agencies, with Benton County's estimated budgeted grant funding as follows:

- Statewide Impaired Driving Patrol Funding: $3,000
- Statewide Distracted Driving Patrols Funding: $2,375

WHEREAS, the Benton County Sheriff recognizes the importance for traffic safety emphasis patrols to reduce traffic related accidents and recommends approving the Interagency Agreement to accept the estimated budgeted grant funding from WTSC for an estimated amount of $5,375; and

WHEREAS, with the total amount of $27,500 awarded to Region 14, the estimated amount awarded to Benton County may be adjusted based on usage or need; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby concurs with the recommendation and authorizes the Benton County Sheriff to sign the attached Interagency Agreement between Benton County Sheriff's Office and Washington Traffic Safety Commission for grant funding in the estimated amount of $5,375 to conduct over-time visibility enforcement patrols and related activities as outlined in the attached Interagency Agreement; and

BE IT FURTHER RESOLVED, the term of this Interagency Agreement is October 1, 2020 – September 30, 2021.

BE IT FURTHER RESOLVED, that Resolution 2020-787 is hereby rescinded.

Orig: BCSO
Cc: Auditors, PA's Office, WTSC K. Gillies

Dated this _____ day of _____, 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Attest.....
Clerk of the Board

Constituting the Board of Commissioners
of Benton County, Washington

Orig: BCSO
Cc: Auditors, PA's Office, WTSC

K. Gillies

INTERAGENCY AGREEMENT

BETWEEN THE

Washington Traffic Safety Commission

AND

BENTON COUNTY SHERIFF'S OFFICE

THIS AGREEMENT is made and entered into by and between the Washington Traffic Safety Commission, hereinafter referred to as "WTSC," and BENTON COUNTY SHERIFF'S OFFICE, hereinafter referred to as "SUB-RECIPIENT."

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the Parties mutually agree as follows:

1. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to provide funding, provided by the United States Department of Transportation (USDOT) National Highway Traffic Safety Administration (NHTSA) and allowed under the Assistance Listings Catalog of Federal Domestic Assistance (CFDA) numbers 20.600 and 20.616, for traffic safety grant project **2021-HVE-4055-Region 14 Target Zero Task Force**, specifically to provide funding for the law enforcement agencies in WTSC Region 14 to conduct overtime high-visibility enforcement (HVE) traffic safety emphasis patrols as outlined in the Statement of Work (SOW), in support of Target Zero priorities. The Target Zero Manager (TZM) and/or the Law Enforcement Liaison (LEL) shall coordinate the SOW with the SUB-RECIPIENT with the goal of reducing traffic crashes.

Grant **2021-HVE-4055-Region 14 Target Zero Task Force** was awarded to the **Region 14** to support collaborative efforts to conduct HVE activities. By signing this agreement, the SUB-RECIPIENT is able to seek reimbursement for approved overtime expenses incurred as a participant in the region's HVE grant.

2. PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence upon the date of execution by both Parties, but not earlier than October 1, 2020, and remain in effect until September 30, 2021, unless terminated sooner, as provided herein.

3. STATEMENT OF WORK

SCOPE OF WORK:

Note: This statement of work applies only to High Visibility Emphasis patrols (HVE) for traffic safety areas which your region has received HVE funding.

GOAL: To prevent traffic crashes to reduce traffic related deaths and serious injuries through increased enforcement.

STRATEGY: Prevent drivers from engaging in high risk behaviors by increasing their perception of the risk of receiving a citation through high visibility enforcement campaigns (HVE). HVE Campaigns influence driver behavior by creating the perception that there is an increased risk of engaging in risky driving behaviors. This perception is achieved through 1) an increase in media messages about upcoming emphasis periods so that the targeted drivers know when the patrols will occur and what will be enforced and 2) during the patrols drivers have the perception of increased enforcement because they can see a significant and noticeable increase in law enforcement presence (officers pulling cars over) that reinforces the media messages they received and influences them to modify their driving behavior.

OBJECTIVES: Research and experience has shown that the strategy is only effective if all partners that engage in HVE adhere to these requirements. The SUB-RECIPIENT agrees to follow all seven of these requirements.

1. Implement the mobilization plan developed by the local traffic safety task force for each HVE event that includes:
    a. Problem Statement
    b. Description of enforcement strategy, including expected law enforcement agencies participating in the event, target violation, and target locations so that the HVE has the greatest chance of preventing traffic crashes.
    c. Public outreach strategy that targets the drivers most likely to contribute to traffic crashes.
    d. Evaluation plan

2. The event is data driven. This means data (such as traffic crash data) is used to identify the locations where the HVE should occur and drivers with the highest potential of causing traffic crashes.

3. The enforcement is multijurisdictional and uses a saturation approach. This means SUB-RECIPIENT is coordinating its efforts with adjacent law enforcement agencies so that the driving public has the perception of law enforcement omnipresence on the targeted roads. Enforcement is highly visible – clearly more than a typical day. WTSC proposes that no less than three officers work an HVE.

4. Each participating officer will make at least 3 contacts per hour.

5. The public is made aware of the event before, during, and after the enforcement takes place. This means that messages reach all target audiences in the community, regardless of English proficiency, who use the targeted transportation system. The WTSC will conduct statewide public education campaigns during national campaigns, but it is the responsibility of the SUB-RECIPIENT and task force to ensure that all elements of HVE are being met.

6. Local media are highly involved in the effort to reach communities in which HVE will occur.

7. The SUB-RECIPIENT deploys resources to enforce traffic laws in priority areas throughout the year when HVE is not being implemented.

ADDITIONAL REQUIREMENTS FOR ALL HVE EVENTS:

In addition to the seven critical elements, SUB-RECIPIENT agrees to all of the following requirements for all HVE events.

1. To use the WEMS system provided by the WTSC to record all activities conducted by their commissioned officers pursuant to the HVE events. SUB-RECIPIENT will also ensure all supervisors and fiscal staff have the ability to review and edit those activity logs.
2. All participating staff receive a briefing prior to the event so that every participant understands and can explain all of the items on the briefing list below. This can be done in person (preferred) or electronic via telephone, email, or virtually.
    - Purpose, goals, strategy, and objectives of the specific HVE event with a focus on the targeted locations and driving behaviors
    - List of on-call DREs and request procedures
    - How to fill out their digital activity log in WEMS
    - Information on how the Mobile Impaired Driving Unit will be used (if applicable)
    - Dispatch information
    - All Participating officers
    - Spotter processes (if applicable)
    - Available Draeger machines and locations
3. All officers participating in these patrols are BAC certified and passed the SFST refresher training within the prior three years (this is regardless of ARIDE or DRE Training mentioned below).
4. To utilize all available media platforms it has available (website, email newsletters, social media etc...) to the fullest extent to publicize the HVE events.
5. Make at least one individual available for weekend media contacts, beginning at noon on Fridays before HVE mobilizations.

ADDITIONAL REQUIREMENTS FOR SPECIFIC HVE EVENTS

In addition to the seven critical elements, and the additional requirements of all HVE events, the SUB-RECIPIENT agrees to all of the following requirements for each type of specific HVE in which they will participate.

1. IMPAIRED DRIVING:
    a. Impaired driving HVE events must begin after 8:00 p.m. and occur between Thursday-Sunday.
    b. SUB-RECIPIENT will ensure participating officers have made a DUI/DWI arrest within the past twelve months.

c. SUB-RECIPIENT will participate in national impaired driving HVE events including:
    i. Holiday DUI Patrols (December 11 – January 2)
    ii. Drive Sober or Get Pulled Over (August 20 – September 6)

2. DISTRACTED DRIVING
    a. Distracted driving HVE events will be conducted using a team approach with designated spotters.
    b. SUB-RECIPIENT will participate in national impaired driving HVE events including:
        i. U Drive. U Text. U Pay. (October 5 – 12)
        ii. On the Road, Off the Phone (April 1 – 19)

3. MOTORCYCLE SAFETY PATROLS
    a. Patrols will focus on the illegal and unsafe driving actions of motorcycles that are known to cause serious and fatal crashes. This includes impaired driving, speeding, and following too closely.
    b. Patrols will focus on the illegal and unsafe driving actions of all other motor vehicles when relating to motorcycles. This includes speeding, failure to yield to a motorcycle, following too closely to a motorcycle, distracted driving, etc.
    c. SUB-RECIPIENT will utilize motorcycle officers in these patrols to the fullest extent possible.
    d. The SUB-RECIPIENT will engage in multijurisdictional HVE patrols, as part of a regional or national effort, for all or part of the following campaigns:
        i. It's a Fine Line – July 11 – 27, 2021. Note: Patrols must take place Friday, Saturday, or Sunday during the campaign.
        ii. Oyster Run Event – Summer 2021 (Region 11 only)
        iii. ABATE Spring Opener – Summer 2021 (Region 12 only)
        iv. Ocean Shores Motorcycle Event (formerly Bikers at the Beach) – Summer 2021 (Region 2 only)

OTHER CONSIDERATIONS, EXCEPTIONS, AND NOTES REGARDING HVE EVENTS

At least three contacts per hour requirement explained:

- Participating law enforcement officers should make as many contacts as they can during their OT patrol in the spirit of changing driving behavior.
- They must make a minimum of three self-initiated contacts per hour of enforcement unless they engage in a related enforcement activity that prevents them from doing so – in which case, the contact requirement is waived while the officer is addressing that activity. For example, if an officer stops a vehicle and arrests the driver for DUI, he/she is not required to make three contacts per hour for the time spent processing the DUI.
- Other activities, such as collision investigations or emergency response that are not initiated through emphasis patrol contact WILL NOT be reimbursed.

Impaired Driving HVE events:

- The WTSC encourages participation from officers who have successfully completed Advanced Roadside Impaired Driving Enforcement (ARIDE) or are a certified Drug Recognition Expert.

- Exceptions to any impaired driving HVE requirements must be submitted to the WTSC HVE Program Manager for approval.
- Funding in this category can be expended outside of the campaign periods. However, the funds must only be used for impaired driving enforcement and during another national impaired driving enforcement campaign or other large local event/mobilization. Participation during Holiday DUI Patrols and Drive Sober or Get Pulled Over should be prioritized when scheduling enforcement dates.
- The WTSC encourages law enforcement agencies to use this funding to support the professional growth of officers with limited exposure to impaired driving enforcement. With the approval of the region's TZM and WTSC, officers can participate in mentoring for impaired driving enforcement. Requirements for this use of funds include the following:
    - WTSC approval for impaired driving mentorship is done through the HVE Mobilization Plan. Approval for mentorship must be received prior to the activity date.
    - The training officer must be a Drug Recognition Expert or ARIDE trained. TZMs can submit a request for an officer who doesn't meet these requirements to be a mentor. This request must be detailed on the HVE Mobilization Plan.
    - There must be a review of the SFST procedure prior to the enforcement activity.
    - There is a limit of two times per year that an officer can be a mentee.
    - Funds permitting, it is expected that mentees will participate in at least one impaired driving mobilization after completing mentoring.
    - Each region or county-level task force can set additional requirements for participation in this use of funding.
    - To be eligible for this activity, the task force must have a policy for DUI Mentoring. WTSC will provide a model DUI Mentoring policy if requested.
    - Funding will pay for overtime for the mentor officer and the mentee officer.
- This funding can be used to conduct premises checks (such as the Home Safe Bar Program) in bars and other establishments that sell alcohol. To be used for this purpose, the activity must meet the following requirements:
    - Approval for this activity must done through the HVE Mobilization Plan. This plan must be received by WTSC at least 2 weeks prior to the activity date. It should include details such as the estimated number of hours and officers who will be participating in this activity. It should also include a plan for what officers will discuss with the establishment (Ex. distributing coasters, HVE dedication materials, mobilization creative, etc.)
    - Each establishment is counted as one contact on the Officer Activity Log.
    - The WA Liquor and Cannabis Board should be notified in advance of this activity to encourage collaboration and support.
- These funds can be used for DUI warrant round-up events. Prior approval is needed for these activities and must include evidence of thorough planning to include a threat matrix on warrant suspects, most current address information obtained through the court or local record management system and current Department of Licensing or booking photos on warrant suspects available.

<u>Distracted Driving HVE Events:</u>

- With the State of Washington's distracted driving law, these patrols will be important to ensure through education and enforcement that drivers understand and are following the new law (RCW 46.61.672).

- These patrols shall be deployed at locations where the data indicates that the most traffic safety benefit can be realized as determined by the local Traffic Safety Task Force. Wherever possible these patrols shall occur in areas with the highest number of past distracted driving violations. This approach has shown to best identify distracted driving violations.
- Spotter Requirement Explained: A distracted driving HVE patrol must consist of at least three officers – one spotter and at least two officers responding to violations.
- This funding can be expended outside of the national campaigns, but the funds must only be used for distracted driving HVE enforcement.

Motorcycle Safety HVE Events:

- Patrols must take place Friday, Saturday, or Sunday during the It's a Fine Line campaign, however the local Traffic Safety Task Force can request to conduct patrols during other days in the week if data shows the need for this. These requests must be sent to the WTSC Program Manager managing the Motorcycle Safety program prior to the enforcement dates.
- During special events, patrols should be scheduled during the dates of the event and could start one day before the official event start date and end one day after the official event end date.

3.1. MILESTONES AND DELIVERABLES

Mobilization	**Dates**
U Drive. U Text. U Pay.	October 5 – 12
DUI Holiday Patrols	December 11 - January 2
On the Road, Off the Phone	April 1 - 19
It's a Fine Line	July 11 - 27
DUI Drive Sober or Get Pulled Over	August 20 - September 6

3.2. COMPENSATION

3.2.1. Compensation for the overtime work provided in accordance with this Agreement has been established under the terms of RCW 39.34. The cost of accomplishing the work described in the SOW will not exceed dollar total from amounts listed below. Payment for satisfactory performance of the overtime work shall not exceed this amount unless the WTSC and SUB-RECIPIENT mutually agree to a higher amount in a written Amendment to this Agreement executed by both the WTSC and SUB-RECIPIENT. Comp-time is not considered overtime and will not be approved for payment. All law enforcement agencies who are active members of the Region 14 traffic safety task force with a fully executed grant agreement are eligible to participate in this grant.

3.2.2. WTSC will reimburse for personnel overtime expenses at 150 percent of the officer's normal salary rate plus SUB-RECIPIENT's contributions to employee benefits, limited to the following:

- FICA
- Medicare
- Any portion of L & I that is paid by the employer (SUB-RECIPIENT)

- Retirement contributions paid by the employer (SUB-RECIPIENT) can be included if the contribution is based on a percentage of their hours worked

Health insurance, or any other benefits not listed above, are not eligible for reimbursement.

The SUB-RECIPIENT will provide law enforcement officers with appropriate equipment (e.g., vehicles, radars, portable breath testers, etc.) to participate in the emphasis patrols.

3.2.3. Funding alterations are permitted as follows: Upon agreement by the regional TZM and all other parties impacted by a proposed budget alteration, the allocation amounts may be increased or decreased without amending this agreement. HVE grant funds should be managed collaboratively by the SUB-RECIPIENT and the TZM.

These alterations must be requested through email communication among all involved parties, including the TZM, and the WTSC Fiscal Analyst. This communication shall include an HVE Allocation Adjustment form, which details the funding alterations.

Funds within the same HVE campaign budget category only, can be increased and decreased across parties, so long as the modified total does not exceed the regional total allocation per funding category.

3.2.4. These funds, designated for salaries and benefits, are intended to pay for the hourly overtime costs and proportional amounts of fringe benefits of commissioned staff pursuing the activities described in the statement of work. These funds may not be used for any other purpose for example any work required to maintain a law enforcement commission including recertification trainings like firearm qualification.

3.2.5. Dispatch: WTSC will reimburse communications officers/dispatch personnel for work on this project providing SUB-RECIPIENT has received prior approval from their region's TZM. This activity must be overtime and only the expenses listed in section 3.2 and its subsections will be reimbursed.

3.2.6. Transport Officers: WTSC will reimburse transport officers for their work on this project providing SUB-RECIPIENT has received approval from their regions TZM. The TZM will work with the regional LEL to determine if need is warranted for the type of HVE activity. This activity must be overtime and only the expenses listed in section 3.2 and its subsections will be reimbursed.

3.2.7. The law enforcement agency involved will not schedule individual officer overtime shifts for longer than eight hours. WTSC understands there may be instances when more than eight hours are billed due to DUI processing or other reasons and an explanation should be provided on the WEMS Officer Activity Log.

3.2.8. The law enforcement agency involved will ensure that any reserve officer for whom reimbursement is claimed has exceeded his/her normal weekly working hours when participating in an emphasis patrol and is authorized to be paid at the amount requested. Reserve officers may only be paid at the normal hourly rate and not at the 150 percent overtime rate.

3.3. SUMMARY OF PROJECT COSTS

The WTSC has awarded **$27,500.00** to the **Region 14 Traffic Safety Task Force** for the purpose of conducting coordinated overtime HVE activities. By signing this agreement, the SUB-RECIPIENT is able to seek reimbursement for approved overtime expenses incurred as a participant in this grant. All activity must be coordinated by the region's traffic safety task force and TZM in order to be eligible for reimbursement.

The funding for **Region 14** is as follows:

EMPHASIS PATROL

Impaired Driving Patrols (Section 402, CFDA 20.600)	$15,000.00
Distracted Driving Patrols (Section 402, CFDA 20.600)	$12,500.00
Motorcycle Safety (164 Funds, CFDA 20.608)	$0.00

3.3.1. The funds issued under this Agreement are only to be used for the specified category and shall not be commingled between categories.

APPLICABLE STATE AND FEDERAL TERMS AND CONDITIONS:

4. ACTIVITY REPORTS

The SUB-RECIPIENT agrees to have all personnel who work HVE patrols submit a WEMS Officer Activity Log within 24 hours of the end of all shifts worked. These same logs will be associated with invoices as detailed in the "BILLING PROCEDURE" section. Use of the Officer Activity Log in the WTSC's online grant management system, WEMS, is required. Supervisor review and accuracy certification will also be done in WEMS.

5. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by the WTSC.

6. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties in the form of a written request to amend this Agreement. Such amendments shall only be binding if they are in writing and signed by personnel authorized to bind each of the Parties. Changes to the budget, SUB-RECIPIENT'S Primary Contact, and WTSC Program Manager can be made through email communication and signatures are not required.

7. ALL WRITINGS CONTAINED HEREIN

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 deemed to exist or to bind any of the Parties hereto.

8. ASSIGNMENT

The SUB-RECIPIENT may not assign the work to be provided under this Agreement, in whole or in part, without the express prior written consent of the WTSC, which consent shall not be unreasonably withheld. The SUB-RECIPIENT shall provide the WTSC a copy of all third-party contracts and agreements entered into for purposes of fulfilling the SOW. Such third-party contracts and agreements must follow applicable federal, state, and local law, including but not limited to procurement law, rules, and procedures. If any of the funds provided under this Agreement include funds from NHTSA, such third-party contracts and agreements must include the federal provisions set forth in this Agreement in sections 34 through 42.

9. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the Agreement terms, each Party agrees to bear its own attorney fees and costs.

10. BILLING PROCEDURE

All invoices for reimbursement of HVE activities will be done using the WTSC's grant management system, WEMS. WEMS Officer Activity logs will be attached to invoices, directly linking the cost of the activity to the invoice. Because the activity, approval, and invoicing are all done within WEMS, no back up documentation is required in most cases.

Once submitted by the SUB-RECIPIENT, invoices are routed to the regional TZM for review and approval. The TZM will submit all approved invoices to the WTSC via WEMS within 10 days of receipt.

Payment to the SUB-RECIPIENT for approved and completed work will be made by warrant or account transfer by WTSC within 30 days of receipt of such properly documented invoices acceptable to WTSC. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 45 days after the expiration date of this Agreement. All invoices for goods received or services performed on or prior to June 30, 2021, **must be received by WTSC no later than August 10, 2021.** All invoices for goods received or services performed between July 1, 2021 and September 30, 2021, **must be received by WTSC no later than November 15, 2021.**

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The SUB-RECIPIENT shall not use or disclose any information concerning the WTSC, or information which may be classified as confidential, for any purpose not directly connected with the administration of this Agreement, except with prior written consent of the WTSC, or as may be required by law.

12. COST PRINCIPLES

Costs incurred under this Agreement shall adhere to provisions of 2 CFR Part 200 Subpart E.

13. COVENANT AGAINST CONTINGENT FEES

The SUB-RECIPIENT warrants that it has not paid, and agrees not to pay, any bonus, commission, brokerage, or contingent fee to solicit or secure this Agreement or to obtain approval of any application for

federal financial assistance for this Agreement. The WTSC shall have the right, in the event of breach of this section by the SUB-RECIPIENT, to annul this Agreement without liability.

14. DISPUTES

14.1. Disputes arising in the performance of this Agreement, which are not resolved by agreement of the Parties, shall be decided in writing by the WTSC Deputy Director or designee. This decision shall be final and conclusive, unless within 10 days from the date of the SUB-RECIPIENT's receipt of WTSC's written decision, the SUB-RECIPIENT furnishes a written appeal to the WTSC Director. The SUB-RECIPIENT's appeal shall be decided in writing by the Director or designee within 30 days of receipt of the appeal by the Director. The decision shall be binding upon the SUB-RECIPIENT and the SUB-RECIPIENT shall abide by the decision.

14.2. Performance During Dispute. Unless otherwise directed by WTSC, the SUB-RECIPIENT shall continue performance under this Agreement while matters in dispute are being resolved.

15. GOVERNANCE

15.1. 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.

15.2. 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:

15.2.1. Applicable federal and state statutes and rules
15.2.2. Terms and Conditions of this Agreement
15.2.3. Any Amendment executed under this Agreement
15.2.4. Any SOW executed under this Agreement
15.2.5. Any other provisions of the Agreement, including materials incorporated by reference

16. INCOME

Any income earned by the SUB-RECIPIENT from the conduct of the SOW (e.g., sale of publications, registration fees, or service charges) must be accounted for, and that income must be applied to project purposes or used to reduce project costs.

17. INDEMNIFICATION

17.1. To the fullest extent permitted by law, the SUB-RECIPIENT shall indemnify and hold harmless the WTSC, its officers, employees, and agents, and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs of whatsoever kind ("claims") brought against WTSC arising out of or in connection with this Agreement and/or the SUB-RECIPIENT's performance or failure to perform any aspect of the Agreement. This indemnity provision applies to all claims against WTSC, its officers, employees, and agents arising out of, in connection with, or incident to the acts or omissions of the SUB-RECIPIENT, its officers, employees, agents, contractors, and subcontractors. Provided, however, that nothing herein shall require the SUB-RECIPIENT to indemnify and hold harmless or defend the WTSC, its agents, employees, or officers to the extent that claims are caused by the negligent acts or omissions of the WTSC, its officers, employees or agents; and provided further that if such claims result from the concurrent negligence of (a) the SUB-RECIPIENT, its officers, employees, agents, contractors, or

subcontractors, and (b) the WTSC, its officers, employees, or agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the SUB-RECIPIENT, its officers, employees, agents, contractors, or subcontractors.

17.2. The SUB-RECIPIENT waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the WTSC, its officers, employees, or agents.

17.3. The indemnification and hold harmless provision shall survive termination of this Agreement.

18. 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.

19. INSURANCE COVERAGE

19.1. The SUB-RECIPIENT shall comply with the provisions of Title 51 RCW, Industrial Insurance, if required by law.

19.2. If the SUB-RECIPIENT is not required to maintain insurance in accordance with Title 51 RCW, prior to the start of any performance of work under this Agreement, the SUB-RECIPIENT shall provide WTSC with proof of insurance coverage (e.g., vehicle liability insurance, private property liability insurance, or commercial property liability insurance), as determined appropriate by WTSC, which protects the SUB-RECIPIENT and WTSC from risks associated with executing the SOW associated with this Agreement.

20. LICENSING, ACCREDITATION, AND REGISTRATION

The SUB-RECIPIENT shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of this Agreement. The SUB-RECIPIENT shall complete registration with the Washington State Department of Revenue, if required, and be responsible for payment of all taxes due on payments made under this Agreement.

21. RECORDS MAINTENANCE

21.1. During the term of this Agreement and for six years thereafter, the SUB-RECIPIENT shall maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended in the performance of the services described herein. These records shall be subject to inspection, review, or audit by authorized personnel of the WTSC, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration. The Office of the State Auditor, federal auditors, the WTSC, and any duly authorized representatives shall have full access and the right to examine any of these materials during this period.

21.2. Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. The receiving Party will not disclose or make available this material to any third Parties without first giving notice to the furnishing Party and giving them a reasonable opportunity to respond. Each Party will utilize reasonable security procedures

and protections to assure that records and documents provided by the other Party are not erroneously disclosed to third Parties.

22. RIGHT OF INSPECTION

The SUB-RECIPIENT shall provide right of access to its facilities to the WTSC or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement. The SUB-RECIPIENT shall make available information necessary for WTSC to comply with the right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The SUB-RECIPIENT shall upon request make available to the WTSC and the United States Secretary of the Department of Health and Human Services all internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this Agreement.

23. RIGHTS IN DATA

23.1. WTSC and SUB-RECIPIENT agree that all data and work products (collectively called "Work Product") pursuant to this Agreement shall be considered works made for hire under the U.S. Copyright Act, 17 USC §101 et seq., and shall be owned by the state of Washington. Work Product includes, but is not limited to, reports, documents, pamphlets, advertisement, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, designs, plans, diagrams, drawings, software, and/or databases to the extent provided by law. Ownership includes the right to copyright, register the copyright, distribute, prepare derivative works, publicly perform, publicly display, and the ability to otherwise use and transfer these rights.

23.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, the SUB-RECIPIENT assigns and transfers to WTSC the entire right, title, and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

23.3. The SUB-RECIPIENT may publish, at its own expense, the results of project activities without prior review by the WTSC, provided that any publications (written, visual, or sound) contain acknowledgment of the support provided by NHTSA and the WTSC. Any discovery or invention derived from work performed under this project shall be referred to the WTSC, who will determine through NHTSA whether patent protections will be sought, how any rights will be administered, and other actions required to protect the public interest.

24. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to completion of the SOW under this Agreement, the WTSC may terminate the Agreement under the "TERMINATION FOR CONVENIENCE" clause, without the 30-day notice requirement. The Agreement is subject to renegotiation at the WTSC's discretion under any new funding limitations or conditions.

25. 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, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

26. SITE SECURITY

While on WTSC premises, the SUB-RECIPIENT, its agents, employees, or sub-contractors shall conform in all respects with all WTSC physical, fire, or other security policies and applicable regulations.

27. TAXES

All payments of payroll taxes, unemployment contributions, any other taxes, insurance, or other such expenses for the SUB-RECIPIENT or its staff shall be the sole responsibility of the SUB-RECIPIENT.

28. TERMINATION FOR CAUSE

If the SUB-RECIPIENT does not fulfill in a timely and proper manner its obligations under this Agreement or violates any of these terms and conditions, the WTSC will give the SUB-RECIPIENT written notice of such failure or violation, and may terminate this Agreement immediately. At the WTSC's discretion, the SUB-RECIPIENT may be given 15 days to correct the violation or failure. In the event that the SUB-RECIPIENT is given the opportunity to correct the violation and the violation is not corrected within the 15-day period, this Agreement may be terminated at the end of that period by written notice of the WTSC.

29. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, either Party may terminate this Agreement, without cause or reason, with 30 days written notice to the other Party. If this Agreement is so terminated, the WTSC shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

30. TREATMENT OF ASSETS

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

30.2. Any property of the WTSC furnished to the SUB-RECIPIENT shall, unless otherwise provided herein or approved by the WTSC, be used only for the performance of this Agreement.

30.3. The SUB-RECIPIENT shall be responsible for any loss or damage to property of the WTSC which results from the negligence of the SUB-RECIPIENT or which results from the failure on the part of the SUB-RECIPIENT to maintain and administer that property in accordance with sound management practices.

30.4. If any WTSC property is lost, destroyed, or damaged, the SUB-RECIPIENT shall immediately notify the WTSC and shall take all reasonable steps to protect the property from further damage.

30.5. The SUB-RECIPIENT shall surrender to the WTSC all property of the WTSC upon completion, termination, or cancellation of this Agreement.

30.6. All reference to the SUB-RECIPIENT under this clause shall also include SUB-RECIPIENT's employees, agents, or sub-contractors.

31. 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.

APPLICABLE CERTIFICATIONS AND ASSURANCES FOR HIGHWAY SAFETY GRANTS (23 CFR PART 1300 APPENDIX A):

32. BUY AMERICA ACT

The SUB-RECIPIENT will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using federal funds. Buy America requires the SUB-RECIPIENT to purchase only steel, iron, and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use federal funds to purchase foreign produced items, the WTSC must submit a waiver request that provides an adequate basis and justification, and which is approved by the Secretary of Transportation.

33. DEBARMENT AND SUSPENSION

Instructions for Lower Tier Certification

33.1. By signing this Agreement, the SUB-RECIPIENT (hereinafter in this section referred to as the "lower tier participant") is providing the certification set out below and agrees to comply with the requirements of 2 CFR part 180 and 23 CFR part 1300.

33.2. The certification in this section is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

33.3. The lower tier participant shall provide immediate written notice to the WTSC if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

33.4. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Covered Transactions sections of 2 CFR part 180.

33.5. The lower tier participant agrees by signing this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

33.6. The lower tier participant further agrees by signing this Agreement that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions, and will require lower tier participants to comply with 2 CFR part 180 and 23 CFR part 1300.

33.7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

33.8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

33.9. Except for transactions authorized under paragraph 35.5. of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

33.10. The lower tier participant certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

33.11. Where the lower tier participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Agreement.

34. THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

34.1. The SUB-RECIPIENT shall:

34.1.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and shall specify the actions that will be taken against employees for violation of such prohibition.

34.1.2. Establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the SUB-RECIPIENT's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations occurring in the workplace.

34.1.3. Make it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph 36.1.1. of this section.

34.1.4. Notify the employee in the statement required by paragraph 36.1.1. of this section that, as a condition of employment under the grant, the employee will abide by the terms of the statement, notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction, and notify the WTSC within 10 days after receiving notice from an employee or otherwise receiving actual notice of such conviction.

34.1.5. Take one of the following actions within 30 days of receiving notice under paragraph 36.1.3. of this section, with respect to any employee who is so convicted: take appropriate personnel action against such an employee, up to and including termination, and/or require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

34.1.6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

35. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

In accordance with FFATA, the SUB-RECIPIENT shall, upon request, provide WTSC the names and total compensation of the five most highly compensated officers of the entity, if the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in federal awards, received $25,000,000 or more in annual gross revenues from federal awards, and if the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986.

36. FEDERAL LOBBYING

36.1. The undersigned certifies, to the best of his or her knowledge and belief, that:

36.1.1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the

entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

36.1.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

36.1.3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grant, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly.

36.2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

37. NONDISCRIMINATION (Title VI, 42 U.S.C. § 2000d et seq.)

37.1. During the performance of this Agreement, the SUB-RECIPIENT agrees:

37.1.1. To comply with all federal nondiscrimination laws and regulations, as may be amended from time to time.

37.1.2. Not to participate directly or indirectly in the discrimination prohibited by any federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR Part 21 and herein.

37.1.3. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the WTSC, USDOT, or NHTSA.

37.1.4. That, in the event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding Agreement, the WTSC will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies, and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part.

37.1.5. To insert this clause, including all paragraphs, in every sub-contract and sub-agreement and in every solicitation for a sub-contract or sub-agreement that receives federal funds under this program.

38. POLITICAL ACTIVITY (HATCH ACT)

The SUB-RECIPIENT will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

39. PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

The SUB-RECIPIENT will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists. This Agreement does not include any aspects or elements of helmet usage or checkpoints, and so fully complies with this requirement.

40. STATE LOBBYING

None of the funds under this Agreement will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a state official whose salary is supported with NHTSA funds from engaging in direct communications with state or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

41. DESIGNATED CONTACTS

The following named individuals will serve as designated contacts for each of the Parties for all communications, notices, and reimbursement regarding this Agreement:

The Contact for the SUB-RECIPIENT is:	**The Target Zero Manager for Region 14 is:**	**The Contact for WTSC is:**
Commander Steve Caughey 7122 W. Okanogan Place, Bldg A Kennewick, WA 99336 steve.caughey@co.benton.wa.us	Jen Dorsett Region 14 Target Zero Manager tzm14@wtscwa.com 509-851-1348	Manny Gonzalez WTSC Program Manager mgonzalez@wtsc.wa.gov 360-725-9888

42. AUTHORITY TO SIGN

The undersigned acknowledges that they are authorized to execute this Agreement and bind their respective agencies or entities to the obligation set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement.

	WASHINGTON TRAFFIC SAFETY COMMISSION
Signature	Signature
Jerry Hatcher Printed Name	Printed Name
Sheriff Title	Title
10/6/2020 Date	Date

Approved as to form:

Ryan Lukson, Civil DPA

Grant Requirements Acknowledgement Form for High Visibility Enforcement (HVE) Mobilizations

WEMS ID: 2021-HVE-4055-Region 14 Target Zero Task Force

Before beginning work on this grant project, the grantee Project Manager should thoroughly read and understand the terms of the Interagency Agreement (IAA). This Grant Requirements Acknowledgement Form provides an explanation of some key terms and highlights but is not comprehensive. If the Project Manager has questions after reviewing this document, please refer to the WTSC Grants Management Manual, or contact the WTSC Program Manager assigned to this grant.

When you, the grant Project Manager, agree to this document, you certify that you understand the grant requirements and agree to fully comply with the terms and conditions set forth in the Agreement/Contract, as well as additional federal requirements outlined in the Code of Federal Regulations for Federal Grants and Agreements, as referenced below.

If anything in this document conflicts with the Agreement/Contract, the Agreement/Contract takes precedence.

Before you begin work, you must have:

- A fully executed IAA or contract signed by both parties.
- Attested to the Grant Requirements Acknowledgment Form (this document).

Work cannot begin before the start date on the IAA, or before the IAA is signed by all parties. **WTSC will only reimburse expenses incurred after the IAA is fully executed.**

Select Contract Provisions:

- **Statement of Work:** This summarizes the work to be done for this grant. If this changes significantly, the grantee will need to request a change in WEMS, and an IAA amendment may be required.
- **High Visibility Enforcement (HVE) Operational Requirements:** The specific HVE requirements listed in the Scope of Work are extremely important to the success of the high visibility enforcement strategy. ALL of these requirements must be followed.
- **WEMS Digital Activity Log:** WTSC requires all agencies participating in high visibility enforcement to use the WEMS system to document the activity of all participating officers. An officer cannot participate if they do not have a WEMS account and do not input their activities into the WEMS digital activity log.
- **Officer Training Requirements:** Starting March 31, 2021, WTSC will begin to enforce the training requirements of participating officers. Any officer participating officer must document in WEMS that they have current qualifications for BAC and SFST.
- **Period of Performance:** All work must be completed, and goods and services must be received, during the period of performance on the IAA.

- **Compensation:**
  - Comp time is not an allowable expense for reimbursement on a high visibility enforcement (HVE) campaign contract or other OT (Overtime) patrol projects. The funding for these types of projects are for the actual activity of patrolling and comp time or any other type of leave will not be reimbursed.
  - All expenses must be incurred during the period of performance on the IAA.
  - Expenses cannot exceed the total amount of the agreement and must fall within the amounts of each budget category as listed in the IAA.
  - Funds may be moved, with prior approval and within certain limits, between planned budget categories. A formal request must be submitted to the Target Zero Manager.

- **Advance Payments Prohibited:** WTSC cannot pay for any costs prior to the work being completed or the goods being delivered.
- **Agreement Alterations and Amendments:** If your agency wants to seek an exception to any of the HVE operational requirements, you must submit an exception request to the WTSC's primary contact listed in the in Interagency Agreement.
- **Billing Procedure:** Your agency is required to utilize the Digital Activity Log in the WEMS system, supplied by the WTSC for all of your invoices. Your local TZM can give you training and support if you need assistance using this system.
- **Buy America Act:** For any manufactured goods over $5,000, the grantee must provide written certification that the goods, including IT software and hardware, were produced in the USA.
- **Cost Principles:** Grantee cannot use grant funds to replace routine and/or existing staff or expenditures. Must comply with 2 CFR Part 200 Subpart E.
- **Income:** Any income generated with this grant must be accounted for and applied to project purposes or used to reduce project costs.
- **Lobbying/Political Activity:** Because this grant uses federal funds, no work being funded by this grant can be used to lobby or otherwise influence state or federal officials, or support or oppose legislation; there is an allowance for "customary state practice."
- **Records Maintenance:** Maintain records pertaining to this agreement for 6 years after expiration

Other Requirements:

- **Promotional Item Purchase Restrictions:** No promotional items can be purchased with these grant funds.
- **Single Audit Requirements:** Required of an entity that expends $750,000 or more annually of federal funds, federal grants, or federal awards; usually performed annually.

By checking this box and typing your name below, you certify that you agree to fully comply with the terms and conditions set forth in the Agreement, as well as the requirements listed in this document. Typing your name below constitutes your electronic signature on this document.

☑ I Agree

(Name, Agency, Title) (Date)

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN SUSTAINABLE DEVELOPMENT FUND NUMBER 0135101, 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 _____, 2020

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor (A. Coverdell) C. McKenzie

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Sustainable Development | Fund Nbr: 0135101

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
558-701	4102	Contract Services	$9,793	558-701	1731	Sus. Dev. Coordindator	$6,972
				558-701	2102	Social Security	$291
				558-701	2103	Medical Insurance	$1,265
				558-701	2104	Retirement	$897
				558-701	2119	Paid Family Leave Act	$368
TOTAL			$9,793	TOTAL			$9,793

Explanation:

Transfer needed to keep salaries and benefits category from going over budget.

Prepared by: Cami McKenzie | Date: 05-Nov-2020

Approved ❑ Denied ❑ Date: 11/17/2020

Chairman

Member

Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/2020
Subject:	Approval Request to Post and Fill Auditor's Office Assistant III Position
Presenter:	Brenda Chilton and Lorene Roe
Prepared By:	L. Wingfield
Reviewed By:	Brenda Chilton and Lorene Roe

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

Resolution 2020-602 required Benton County Board of Commissioners approval prior to posting and filling vacant positions. The Auditor's office experienced an unexpected resignation from an Office Assistant III that works in the Elections Department. With an anticipated county-wide election to take place in February we need to ensure that staffing levels are adequate to handle the workload. This position is vital to maintain effective operations and the Auditor's office would like to have time to hire and train the new staff member to assist with this vital process. The current vacancy is an Office Assistant III, position 1165.

Fiscal Impact

No supplement required.

Recommendation

Approve the resolution approving position 1165, Office Assistant III, in the Auditor's Office be posted and filled.

Suggested Motion

I move to approve the resolution to post and fill position 1165, an Office Assistant III in the Auditor's Office.

cc: Auditor,HR L. Wingfield

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/2020
Subject:	Approval Request to Post and Fill Auditor's Accounting Support Specialist
Presenter:	Lorene Roe
Prepared By:	Lorene Roe
Reviewed By:	Brenda Chilton

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

Resolution 2020-602 required Benton County Board of Commissioners approval prior to posting and filling vacant positions. The Auditor's office experienced an unexpected retirement announcement from the Accounting Support Specialist in the Accounting Department. This essential position handles all accounts payables for the county. In addition, the back-up to this position, the Accounting Assistant II has only been with the county since 9/21/2020. Filling of the Accounting Support Specialist is vital to maintain effective operations. The current vacancy is position 1152.

Fiscal Impact

No supplement required.

Recommendation

Approve the resolution approving position 1152, Accounting Support Specialist, in the Auditor's Office be posted and filled.

Suggested Motion

I move to approve the resolution to post and fill position 1152, Accounting Support Specialist in the Auditor's Office.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/20
Subject:	Approval Requested to Post and Fill Sheriff's Office Vacancies
Presenter:	Steve Caughey, Commander
Prepared By:	Katie Gillies, CFO
Reviewed By:	Lexi Wingfield, HR Manager

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

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

Summary / Background Information

Resolution 2020-602 required Benton County Board of Commissioners approval prior to posting and filling vacant positions. The Sheriff's Office has had recent vacancies due to the retirement and resignation of deputies. Currently, the Sheriff's Office has three vacancies and it is imperative to fill the positions to ensure we maintain a high level of public safety. The current Deputy vacancies requested to be filled are, position number 1494 and 1802 within the public safety tax fund.

Fiscal Impact

No supplement required.

Recommendation

Pass motion for position 1494 and 1802 in the Sheriff's Office to be filled.

Suggested Motion

I move to authorize PST position 1494, a Detective in the Sheriff's Office, to be filled.

I move to authorize PST position 1802, a Deputy Sheriff in the Sheriff's Office, to be filled.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/2020
Subject:	Approval Requested to Post and Fill in Canine Control and Building Dept
Presenter:	J. MacPherson
Prepared By:	L. Wingfield
Reviewed By:	

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

Resolution 2020-602 required Benton County Board of Commissioners approval prior to posting and filling vacant positions. With the retirement of the Building Manager, it is essential in County operations and Building Department operations to post and fill the vacancy. In addition to a retirement in the Building Department, the Canine Control Supervisor is also retiring. Both of these positions are vital to the county.

Fiscal Impact

No supplement required.

Recommendation

Pass motion for position 1137, Building Manager and 1146, and Canine Control Supervisor, positions to be filled.

Suggested Motion

I move to authorize position 1137, Building Manager, to be filled.

I move to authorize position 1146, a Canine Control Supervisor, to be filled.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/17/2020
Subject:	Approval Requested to Post and Fill in Canine Control and Building Dept
Presenter:	J. MacPherson
Prepared By:	L. Wingfield
Reviewed By:	

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

Resolution 2020-602 required Benton County Board of Commissioners approval prior to posting and filling vacant positions. With the retirement of the Building Manager, it is essential in County operations and Building Department operations to post and fill the vacancy. In addition to a retirement in the Building Department, the Canine Control Supervisor is also retiring. Both of these positions are vital to the county.

Fiscal Impact

No supplement required.

Recommendation

Pass motion for position 1137, Building Manager and 1146, and Canine Control Supervisor, positions to be filled.

Suggested Motion

I move to authorize position 1137, Building Manager, to be filled.

I move to authorize position 1146, a Canine Control Supervisor, to be filled.