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

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 24, 2020

9:00 AM **Call to Order**
Approval of Minutes
- **November 17, 2020**

Review Agenda
Consent Agenda

Auditor
a. Lease Contract Amendment w/BWR Holding LLP
b. Surplus and Disposition of Personal Property

Commissioners
c. Annexation of Territory Into West Benton Regional Fire Authority
d. Line Item Transfer, Fund No. 0000-101, Dept. 115 to 110

Human Services
e. Line Item Transfer, Fund No. 0152-101, Dept. 000

Information Technology

f. One-Year Subscription for NextRequest Public Records Management System From SHI International Corp.
g. Purchase of 275 NetIQ Two-Factor Authentication One-Year Licenses From SHI International Corp.

Juvenile

h. Line Item Transfer, Fund No. 0000-101, Dept. 138
i. Line Item Transfer, Fund No. 0000-101, Dept. 138

Office of Public Defense

j. District Court Public Defense Services Agreement w/Mark Cano
k. District Court Public Defense Services Agreement w/Heather Carlson
l. District Court Public Defense Services Agreement w/Adrienne Farabee
m. District Court Public Defense Services Agreement w/Brian Gieszler
n. District Court Public Defense Services Agreement w/Douglas McKinley
o. District Court Public Defense Services Agreement w/Stacey McKinley
p. District Court Public Defense Services Agreement w/Summer Rife
q. District Court Public Defense Services Agreement w/Benjamin Riley
r. District Court Public Defense Services Agreement w/Elisa Riley

Public Safety

s. Line Item Transfer, Fund No. 0148-101, Dept. 171
t. Line Item Transfer, Fund No. 0148-101, Dept. 138
u. Line Item Transfer, Fund No. 0148-101, Dept. 115 to 123

Public Works

v. Amending Resolution 2018-726 to Reflect Termination Date of Contract w/MMEC Architecture for Administration Building Project

Risk Management

w. Agreement w/Kroll Information Assurance for Data Breach Notification & Monitoring Support

Sheriff

x. Agreement w/WA Traffic Safety Commission Region 14 for Law Enforcement Funding

Sustainable Development

y. First Amendment to Benton County Museum and Historical Society Historic Preservation Grant Program

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

Public Hearings

Broadview Water Association Franchise ~ C Woods

Badger Mountain Irrigation District Franchise Renewal ~ C Woods

Adoption of Final Biennium Budgets for 2021-2022 ~ L Ivey

- Certifying Current Expense Levy for 2021
- Certifying County Road Levy for 2021

- Declaration of Substantial Need
- Certifying Budgeted Taxes for Collection in 2021
- Adoption of Final 2021-2022 Benton County Budgets

Scheduled Business

Rescinding Resolution 2020-602 ~ M Rasmussen

Juvenile Justice Position Requests ~ D Banks

- Legal Secretary IV
- Legal Processing Assistant III

Community Development Department Re-Organization ~ J MacPherson & L Wingfield

- Director of Community Development Classification Description
- Assistant Building Manager Classification Description
- Assistant Building Manager Salary Placement
- Line Item Transfer, Fund No. 0149-101, Dept. 000 - Assistant Building Manager
- Request to Fill Canine Control Officer I/II Vacant Positions

Benton County Noxious Weed Budget Presentation ~ Konrad Kauer

Feasibility Study Results for Behavioral Health Recovery Center ~ K Sullivan

Other Business

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Tuesday, November 17, 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; Lorene Roe, Chief Deputy Auditor; Commander Steve Caughey, Sheriff's Office; DPA Ryan Brown; DPA Reid Hay; DPA Stephen Hallstrom; Greg Wendt, Planning Manager.

Approval of Minutes

The Minutes of November 10, 2020 were approved.

Agenda Review

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

- Discussion – potential letter in response to recent statement by Governor Inslee
- Ongoing Litigation
- Potential Litigation

Consent Agenda

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

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

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

None.

Position Requests – Auditor's Office

Lorene Roe said they had two positions in their office that were being vacated. One was an accounts payable clerk who gave notice of her retirement and the other was an office assistant in the Elections Department that gave notice of resignation. The Accounting Support Specialist was very essential, and her backup position had less than six months with the County, so it was imperative they get this position replaced as soon as possible. Normally, they could absorb the loss of the position in the Elections Department until the hiring freeze was over, but they were anticipating a countywide election in February and this position was needed.

MOTION: Commissioner Small moved to approve posting and filling Position 1165, an Office Assistant III in the Auditor's Office and Position 1152, an Accounting Support Specialist in the Auditor's Office. Chairman Beaver seconded and upon vote, the motion carried.

Position Requests - Sheriff's Office

Commander Caughey said the Sheriff's Office 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 they maintain a high level of public safety. They have two candidates ready to hire, with one of the positions to be filled in the future.

MOTION: Commissioner Small moved to approve posting and filling both positions, PST Position 1494, a Detective in the Sheriff's Office and PST Position 1802, a Deputy in the Sheriff's Office. Commissioner Delvin seconded and upon vote, the motion carried unanimously.

Position Requests - Animal Control and Building Department

Mr. MacPherson stated that both the Canine Control Supervisor and the Building Manager were retiring, and he was requesting authorization to fill both positions as they were the lead for their respective departments and needed to be filled.

MOTION: Commissioner Small moved to approve posting and filling Position 1137, the Building Manager and Position 1146, Canine Control Supervisor. Commissioner Delvin seconded and upon vote, the motion carried.

Other Business

Response Letter to Governor

Mr. MacPherson indicated the cities were discussing a joint letter to be sent to the Governor about the recent rollback concerning COVID-19. He said the message they had been receiving was that the increase in recent cases was related to social gatherings, and not retail and other services. He asked the Board if it was interested in sending a letter expressing the County's concerns regarding this decision, as either a joint letter with the cities and/or Franklin County.

The Board indicated it was good with sending a joint letter or stand-alone letter and agreed to have Mr. MacPherson reach out to those agencies to see about sending a joint letter.

MOTION: Commissioner Small moved to approve sending the proposed letter and authorize the Chairman to sign as soon as possible. Commissioner Delvin seconded and upon vote, the motion carried.

Rattlesnake Mountain/Hanford Site

Commissioner Small discussed a phone call he received from a farmer on Rattlesnake Mountain whose property bordered the Hanford site. He said there was an issue with their cattle crossing the fence line, and then the farmers being told they are being charged for someone keeping their cattle and having to pay a fee to receive them back.

Mr. Fyall said he could contact DOE to discuss the issue and would draft a letter for the Board's review. The Board agreed.

Executive Session – Pending Litigation

Jerrod MacPherson announced at 9:21 a.m. the Board would be going into executive session for up to 30 minutes to discuss pending 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, Greg Wendt, Ryan Brown, Reid Hay, 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 9:44 a.m. and announced that no decisions were made in executive session.

MOTION: Commissioner Delvin moved to direct the Civil PA's office to file an appeal regarding the land use issue in Benton City. Commissioner Small seconded and upon vote, the motion carried.

MOTION: Commissioner Delvin moved to direct Planning staff to review code amendments (for both zoning and the comprehensive plan) to allow farm workers to reside together in zones that allowed residential use and to add language to not discriminate against someone's occupation. Commissioner Small seconded and upon vote, the motion carried.

Executive Session – Ongoing Litigation

Jerrod MacPherson announced at 9:47 a.m. the Board would be going into executive session for up to 10 minutes to discuss ongoing 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, Ryan Brown, Stephen Hallstrom, Linda Ivey, Lexi Wingfield 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 10:03 a.m. Mr. Hallstrom announced the Board discussed ongoing litigation and no action was taken. Additionally, he stated there was a slight delay due to technical difficulties.

Executive Session – Potential Litigation

Jerrod MacPherson announced at 10:04 a.m. the Board would be going into executive session for up to 30 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, Ryan Brown, Linda Ivey, Scott Souza 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 10:30 a.m. Mr. MacPherson announced that no decisions were made in executive session.

Payroll

Check Date: 11/05/2020

Payroll Checks
Total all funds: $2,374,833.63
Warrant #: 242832-242889
Direct Deposit #: 157138-157746

Payroll Deductions/Transfers
Total all funds: $2,289,620.99
Taxes #: 101201101-101201111
ACH #: 1504-1510

Payroll Deductions/Warrants
Total all funds: $131,578.75
Warrant #: 211467-211474

Accounts Payable

Check Date: 11/10/2020
P-Cards #: 1120
Total all funds: $312,555.46

Resolutions

2020-844: Agreement w/Michelle Dolven for Family Law Facilitator Services
2020-845: Line Item Transfer, Fund No. 0000-101, Dept. 115
2020-846: Line Item Transfer, Fund No. 0000-101, Dept. 115 to 109
2020-847: Deed for Boundary Line Adjustment for a Portion of Tract A, Meadow Springs Ranch No. 2
2020-848: Agreement w/SightLife for Recovery Services
2020-849: Contract w/C&E Trenching LLC for Snow Removal
2020-850: Line Item Transfer, Fund No. 0504-101, Dept. 000
2020-851: Line Item Transfer, Fund No. 0503-101, Dept. 000
2020-852: Line Item Transfer, Fund No. 0502-101, Dept. 000
2020-853: Line Item Transfer, Fund No. 0132-101, Dept. 000
2020-854: Purchase of Two Catalyst Port Switches From CompuNet, Inc.
2020-855: Purchase of Three Laptops for Human Services From Dell Inc.
2020-856: Purchase of Wireless Devices Services From Cellco Partnership
2020-857: Amended Contract No. 3 w/NCIC Inmate Communications for Inmate Telecommunications Systems & Services
2020-858: Agreement w/State of WA, Administrative Office of the Courts for Court Interpreter Services
2020-859: Contract w/Lutheran Community Services Northwest for Mental Health Assessments
2020-860: Superior Court Public Defense Agreement w/Branden Landon
2020-861: Superior Court Public Defense Agreement w/Justin Andrews
2020-862: Superior Court Public Defense Agreement w/Michelle Alexander
2020-863: Contract w/Knutzen Consulting Engineering for Engineering & Design Services for Hover Park Parking Lot
2020-864: Line Item Transfer, Fund No. 0148-101, Dept. 120
2020-865: Line Item Transfer, Fund No. 0148-101, Dept. 117
2020-866: Line Item Transfer, Fund No. 0148-101, Dept. 115
2020-867: Line Item Transfer, Fund No. 0501-101, Dept. 650
2020-868: Agreement w/City of Kennewick for Use of Kennewick Firearms Range Facility
2020-869: Agreement w/WA Traffic Safety Commission for Overtime Grant Funding
2020-870: Line Item Transfer, Fund No. 0135-101, Dept. 000

There being no further business before the Board, the meeting adjourned at approximately 10:30 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/24/2020
Subject:	Voting Center Lease Amendment
Presenter:	
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

Benton County and BWR Holdings LLP have entered into a Lease Agreement dated June 1st, 2020 and expiring on November 30, 2020. The Auditor's office wishes to continue the lease for the Benton County Voting Center for the period of December 1, 2020 through December 31, 2022. This lease amendment is needed for the period of 12-01-2020 through 12-31-2020.

Fiscal Impact

$7,233.00

0000101.102.00000.514.410.4503

Recommendation

The primary term of the lease expires on November 30th, 2020. Parties agree that the amended term of the lease shall expire on December 31st, 2022. The parties agree the minimum base rent shall be:
December 1st, 2020 – December 31st, 2020 $7,233.00

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A LEASE CONTRACT AMENDMENT BETWEEN BWR HOLDING LLP AND BENTON COUNTY,

WHEREAS, it is the desire of the Auditor's Office to continue the lease for the Benton County Voting Center at the space located at 2610 N. Columbia Center Blvd., Richland, WA; and

WHEREAS, the current temporary lease expires on November 30, 2020; and

WHEREAS, the Auditor's Office recommends executing a lease amendment to extend the lease for the period of December 1, 2020 through December 31, 2022; NOW, THEREFORE,

BE IT RESOLVED, the Chairman of the Board is authorized to sign the Lease Amendment between BWR Holding LLP and Benton County for the period of 12/01/2020 through 12/31/2022 as follows:

Rent	
December 1, 2020-December 31, 2020	$7,233.00
January 1, 2021-December 31, 2021	$7,233.00
January 1, 2022-December 31, 2022	$7,615.00

Plus, NNN pro-rata share of operating costs as estimated and reconciled pursuant to Section 8.c of the lease, currently estimated as $2566.69 per month.

BE IT FURTHER RESOLVED, that the Auditor is authorized to sign any subsequent addendums or modifications to the Lease Agreement as may be necessary to finalize the agreement set forth herein.

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: L. Roe, B. Chilton

LEASE AMENDMENT

THIS LEASE AMENDMENT is made and entered into this **10th day of November, 2020** by and between **BWR Holdings LLP** (hereinafter referred to as "Landlord") and **Benton County** (hereinafter referred to as "Tenant").

WITNESSETH

WHEREAS, Landlord and Tenant have entered into a certain Lease Agreement dated June 1st, 2020 (hereinafter referred to as "Lease"), wherein Landlord leased and demised to Tenant certain premises located within the City of Richland, County of Benton, State of Washington, and commonly known as 2610 N Columbia Center Blvd. and

WHEREAS, the parties desire to modify the Lease.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants herein contained and of good, lawful and valuable considerations moving to and received by each of the parties to be bound hereby, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Term. The primary term of the lease expires on November 30th, 2020. Parties agree that the amended term of the lease shall expire on December, 31st, 2022.

2. Minimum Rent. The parties agree the minimum base rent shall be:

December 1st, 2020 – December 31st, 2020	$7,233.00
January 1st, 2021 – December 31st, 2021	$7,233.00
January 1st, 2022 – December 31st, 2022	$7,615.00

3. NNN. Per section 8 of the lease tenant shall continue to include in addition to the base monthly rent listed above, it's Pro Rata share of Operating costs as estimated and reconciled pursuant to Section 8.c. As of the date of this amendment, Pro Rata operating costs for the above premises during 2020 are estimated as 2,566.69 per month.

Effect of this Document: This Lease Amendment shall operate to amend the Lease only to the extent that the terms of the Lease are inconsistent with the provision of this Lease Amendment, except as amended or modified by this Lease Amendment, all terms and conditions of the Lease shall remain in full force and effect and Landlord and Tenant shall be bound thereby.

IN WITNESS WHEREOF, the parties have executed this Lease Amendment on the corresponding dates shown below.

TENANT

Benton County

Printed Name: James R Beaver

Signature:_____

_ Date:_____

LANDLORD

BWR Holdings LLP

Printed Name: Ryan Ratchford

Signature:_____

Date:_____

Title: Member

Lease Amendment Approval as to Form

RH

Reid Hay
To Lorene Roe
Cc Brenda Chilton

Lorene,

I have reviewed the proposed amendment to the County's lease of property at 2610 N. Columbia Center Blvd from BWR Holdings, LLP, extending the lease to December 31, 2022. The lease amendment is approved as to form.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/24/2020
Subject:	Surplus
Presenter:	
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

As outlined in Resolution 07-752, County departments request personal property items be declared surplus and be disposed of.

Fiscal Impact

None

Recommendation

The Personal Property Manager has determined that the personal property on the attached exhibit can be declared surplus and disposed of accordingly.

Suggested Motion

Approve as part of the consent agenda.

D. Beck

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF SURPLUS AND DISPOSITION OF PERSONAL PROPERTY, IN ACCORDANCE WITH RESOLUTION 07-752

WHEREAS, the County's Personal Property Management Policy, Resolution No. 07-752, sets forth the policies and procedures for surplus and disposition of personal property; and

WHEREAS, pursuant to the policy, the Benton County Auditor is the Personal Property Manager for the County; and

WHEREAS, various departments have identified items of personal property for which they are no longer in need; and

WHEREAS, the Personal Property Manager has determined that no other department desires such property and, therefore, recommends the listed property be declared surplus; and

WHEREAS, the Board finds it to be in the best interest of the citizens of Benton County to surplus the property and the Personal Property Manager may dispose of such in accordance with the Personal Property Management Policy; **NOW, THEREFORE,**

BE IT RESOLVED, that based on the recommendation of the Personal Property Manager and as supported by the various departments, the listed property in Attachment A is hereby determined to be surplus and will be disposed of in one of the following manners, as may be determined by the Personal Property Manager depending on final condition assessment: public online auction, sealed bid, private negotiation with another governmental agency, surplus sale, waste disposal, donation to the poor and infirm, or recycled.

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

D. Beck

SURPLUS

ER&R

- 2001 Ford Taurus
  Plate 57051C
  VEH# 42-22
  VIN# 1FAFP53221G218813

- 2015 Ford Explorer
  Plate B0791C
  VEH# S15-11
  VIN# 1FM5K8AR8FGC08828

- 2003 Ford Ranger
  Plate 66215C
  VEH# 1063
  VIN# 1FTZR15E83PB05954

- 2001 Chevrolet Van
  Plate A8022C
  VEH# 42-38
  VIN# 1GAHG39R011221927

- 2015 Ford Explorer
  Plate B0709C
  VEH# S15-05
  VIN# 1FM5K8AR7FGC08822

- 2014 Ford Explorer
  Plate A2873C
  VEH# S14-05
  VIN# 2FAHP2MT7EG159715

- 2012 Chevrolet Tahoe
  Plate A0395C
  VEH# S12-14
  VIN# 1GNSK2E06CR289108

- 2006 Ford Crown Vic
  Plate 76543C
  VEH# S06-08
  VIN# 2FAHP71W96X144590

- 2004 Eagle Utility Trailer
  Plate C2467C
  VEH# S04-15
  VIN# 1C9BE24284P694403

D. Beck

ER&R

- 2010 Chevrolet Van
  Plate 94426C
  VEH# S10-08
  VIN# 1GA2GXDG5A1138044

- 2004 Ford Crown Vic
  Plate 69153C
  VEH# 42-33
  VIN# 2FAHP71W44X140866

- 2008 Ford Crown Vic
  Plate 89367C
  VEH# S08-15
  VIN# 2FAHP71V38X140001

- (9) Street Broom Brushes

PARKS

- Coin Counter

CORRECTIONS

- Jail Bunk Beds

AUDITOR

- (4) Office Chairs
- (2) Black Reception Chairs
- (4) Folding Chairs

CLERK

- (12) Breakroom Chairs

SURPLUS (DESTROY)

CORRECTIONS

- 32” Vizio TV
  Tag# 20288

IT

- (3) HP Printers
  Tag#’s 23227, 18661, 20007

- Dell 27” Monitor
  Tag# 20373

SHERIFF

- (4) Video Cameras
  Tag#’s 15441, 13718, 15443

- (1) Thermal Printer
  Tag# 15445

- (1) Power Supply
  Tag# 14317

- (11) Cameras
  Tag#’s 11693, 8226, 6219, 13110, 10145, 8227, 10147, 10405, 10146, 18725

- (1) VCR
  Tag# 143350

- (3) Recorders
  Tag#’s 14346, 11367, 10322

- (1) Monitor
  Tag# 14831

- (5) Flash
  Tag#’s 12456

- (1) Lens
  Tag# 5661

- (1) Scan Jet
  Tag# 13604

- (1) Radar
  Tag# 139604

D. Beck

SHERIFF

- (1) Meter
- (1) GPS
  Tag# 1432
- (1) LCD Projector
  Tag# 16362

D. Beck

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24, 2020
Subject:	Annexation of Territory into West Benton Regional Fire Authority
Presenter:	
Prepared By:	Reid Hay
Reviewed By:	Matt Rasmussen

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

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

Summary / Background Information

A petition to annex certain territory was presented to the West Benton Regional Fire Authority ("WBRFA") from landowners wishing for their property to be added to the WBRFA. The WBRFA presented a copy of the petition to the Benton County Auditor to determine whether it was signed by at least 60% of the registered electors in the area to be annexed, as required by statute for the petition method of annexation. The Auditor issued a letter of confirmation. The WBRFA Board then held a public hearing and passed a resolution approving the requested annexation, which it then forwarded to the BOCC for its approval.

The Resolution under consideration would approve the annexation requested by the petitioners and already approved by the WBRFA following a public hearing held by that body.

Fiscal Impact

None.

Recommendation

Recommend the Board of Benton County Commissioners pass the proposed Resolution approving the annexation of certain territory into the West Benton Regional Fire Authority.

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ANNEXING CERTAIN TERRITORY INTO THE WEST BENTON REGIONAL FIRE AUTHORITY

WHEREAS, landowners submitted a petition for annexation to the West Benton Regional Fire Authority ("WBRFA") asking that certain territory be annexed into the WBRFA; and

WHEREAS, Benton County does not have a Boundary Review Board to process such petitions; and

WHEREAS, in the absence of a Boundary Review Board, Chapter 52.04 RCW governs annexations of this nature; and

WHEREAS, the petition method of annexation is an alternative method to the election method, and is governed by RCW 52.04.021, 031, 041, and .051, as well as by other statutes to which reference is made within those statutes; and

WHEREAS, in accord with RCW 52.04.031, an annexation petition was filed with the Board of Commissioners of the WBRFA, signed by the owners of at least 60% of the area of land to be annexed, and included a legal description and a plat outlining the boundaries of the proposed annexation; and

WHEREAS, in accord with RCW 52.04.041, the fire commissioners of the WBRFA by Resolution 2020-13 dated September 15, 2020, approved the annexation following notice and a public hearing; and

WHEREAS, the Board of Commissioners of the WBRFA submitted a copy of the Petition for Annexation to the Benton County Auditor's Office, which was then reviewed for sufficient signatures of not less than 60% of the area of land to be annexed as provided in RCW 52.04.031 and was issued a letter of confirmation; and

WHEREAS, the Board of Commissioners of the WBRFA submitted a signed copy of its Resolution 2020-13 to the Benton County Board of County Commissioners ("BOCC") for action pursuant to RCW 52.04.051; and

WHEREAS, according to RCW 52.04.011(3) if 60% of the qualified registered electors in the territory to be annexed sign the petition, it allows the county legislative authority, if the fire authority board concurs, to dispense with any hearing or election, and the county legislative authority may enter its order incorporating territory into the existing fire authority; and

WHEREAS, the BOCC approves the WBRFA Resolution 2020-13 dated September 15, 2020, to annex certain territory into the WBRFA; **NOW THEREFORE,**

BE IT RESOLVED: according to statute, the Board of Benton County Commissioners adopts the recommendation of the West Benton Regional Fire Authority, as submitted by the fire authority's Resolution 2020-13 dated September 15, 2020, to annex certain territory into West Benton Regional Fire Authority.

Orig: Commissioners
cc: Auditor, Assessor

Prepared by: R. Hay

Dated this _____ day of _____, 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners of Benton County, Washington

Attest.....
Clerk of the Board

Orig: Commissioners
cc: Auditor, Assessor

Prepared by: R. Hay

WEST BENTON REGIONAL FIRE AUTHORITY
RESOLUTION NO. 2020-13

WHEREAS there has been submitted to West Benton Regional Fire Authority a petition for annexation of territory legally described on the attached exhibit to the fire authority; and

WHEREAS the West Benton Regional Fire Authority Board, after holding public hearing considering evidence in favor of annexation, has approved the annexation petition; and

WHEREAS the West Benton Regional Fire Authority Board has found that the petition has been signed by more than 60% of the owners of land within the territory to be annexed,

BE IT RESOLVED by the West Benton Regional Fire Authority Board that said annexation be approved and that no election is required in that the petition has been signed by more than 60% of the owners of land within the territory to be annexed, and that this Resolution shall be forwarded to the Benton County Commission, as provided by law.

The property proposed for annexation is described as follows:

Wyckoff farms: section 4 township 9 north range 25: the northeast quarter, fractional: and the west 1620 feet of the southeast quarter lying north of lateral pump #17: subject to easements and restrictions of record 1-25-75

Klingele family properties: section 33 township 10 north range 25: that portion of the southwest quarter of the southeast quarter and the south half of the southwest quarter of said section lying southerly of right of way of lateral no p 15 hr, except the south 30 feet thereof and the west 25 feet of the southwest quarter of the southwest quarter thereof for road, and except a portion thereof conveyed to the united states of america for electric transmission line by instrument recorded under auditor's file no 227706 and except that portion of the southwest quarter of the southwest quarter thereof described as follows: beginning at the southwest corner of said section 33: thence north 01 degrees 30′ west along the west line of said section 850.34 feet to the true point of beginning: thence north 73 degrees 05′ east 283.00 feet: thence north 32 degrees 30′ west 44.88 feet: thence north 14 degrees 30′ west 95.84 feet: thence north 48 degrees 40′ west 63.47 feet: thence south 80 degrees 20′ west 183.50 feet: thence south 01 degree 30′ east 224.14 feet, more or less, to the true point of beginning: and the southeast quarter of the southeast quarter of said section 33, except the south 30 feet thereof for county road right of way, and except commencing at the southeast corner of the southeast quarter of section 33: thence west along the south line of said section 33, 674 feet to a point: thence north to the south line of the right of way of lateral 15 hl of roza irrigation district, the true point of beginning: thence south to the south line

of section 33: thence east 15 feet: thence north to a point 208.7 feet south of the south line of the right of way of lateral 15 hl of the roza irrigation district: thence east 192 feet: thence north to the south line of the right of way of lateral 15 hl of roza irrigation district: thence westerly along the south line of said lateral 15 hl to the true point of beginning: except that portion thereof described as follows: a tract of land located in the southeast quarter of the southeast quarter of section 33, being more particularly described as follows: commencing at the southeast corner of section 33: thence north 00 degrees 14'14' west 952.10 feet along the section line to the true point of beginning: thence south 52 degrees 51'15' west 233.74 feet: thence south 89 degrees 12' 29' west 115.45 feet: thence north 02 degrees 36'35' east 21.82 feet: thence north 54 degrees 59'22' east 366.75 feet to the east section line of said section: thence south 00 degrees 14'14' east 89.47 feet along said section line to the point of beginning: (per #91-02203 rec'd 6/21/91)

Kenny Riel: section 33 township 10 north range 25: portion defined as follows: commencing at the southeast corner of the southeast quarter: thence west along the south line of said section 33, 674 feet to a point: thence north to the south line of the right of way of lateral 15 hl of roza irrigation district, the true point of beginning: thence south 208.7 feet: thence east 207 feet: thence north to the south line of the right of way of lateral 15 hl of roza irrigation district: thence westerly along south line of said lateral 15 hl to the true point of beginning:

Kenny Riel: section 33 township 10 north range 25 east: a tract of land located in the southeast quarter of the southeast quarter of said section being more particularly described as follows: commencing at the southeast corner of section 33: thence north 00 degrees 14'14' west 952.10 feet along the section line to the point of beginning: thence south 52 degrees 51'15' west 233.74 feet: thence south 89 degrees 12'29' west 115.45 feet: thence north 2 degrees 36'35' east 21.82 feet: thence north 54 degrees 59'22' east 366.75 feet to the east section line of said section: thence south 00 degrees 14'14' east 89.47 feet along said section line to the point of beginning: (per excise #91-02202, 02203 & 02204 rec'd 5-30-91) together with an easement in, to, upon and over all of the existing roadway situated on the property being conveyed by qcd 91-02204 being located in the southeast quarter of the southwest (s/b se-contacted title co).

ADOPTED BY THE WEST BENTON REGIONAL FIRE AUTHORITY BOARD at a meeting held September 15, 2020.

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY

Benton County Auditor

Brenda Chilton, Auditor
620 Market St
Prosser, WA 99350
PHONE (509) 736-2727
www.bentonauditor.com

September 15, 2020

West Benton Fire Rescue
Attn: Jessica Trevino
1200 Grant Ave
Prosser, WA 99350

RE: West Benton Regional Fire Authority Annexation Petition

Dear Jessica,

The signatures of landowners in the proposed area to be annex into the West Benton Regional Fire Authority have been reviewed in accordance with RCW 52.04.031 to determine if the 60% threshold has been met.

It has been determined that it does in fact represent the threshold within the proposed area.

If you have any questions, please feel free to contact me.

Brenda Chilton

Brenda Chilton
Benton County Auditor

Annexation Petition

To: The Governance Board of West Benton Regional Fire Authority

Benton County, Washington

The undersigned legal property owners owning property in the territory described below, petition the Board of Commissioners of the West Benton Regional Fire Authority to annex the described territory into the Authority. The territory is contiguous to the Authority, is not in another fire protection district and its annexation into the Authority will be conducive to the public safety, welfare and convenience and will be a benefit to the properties to be annexed.

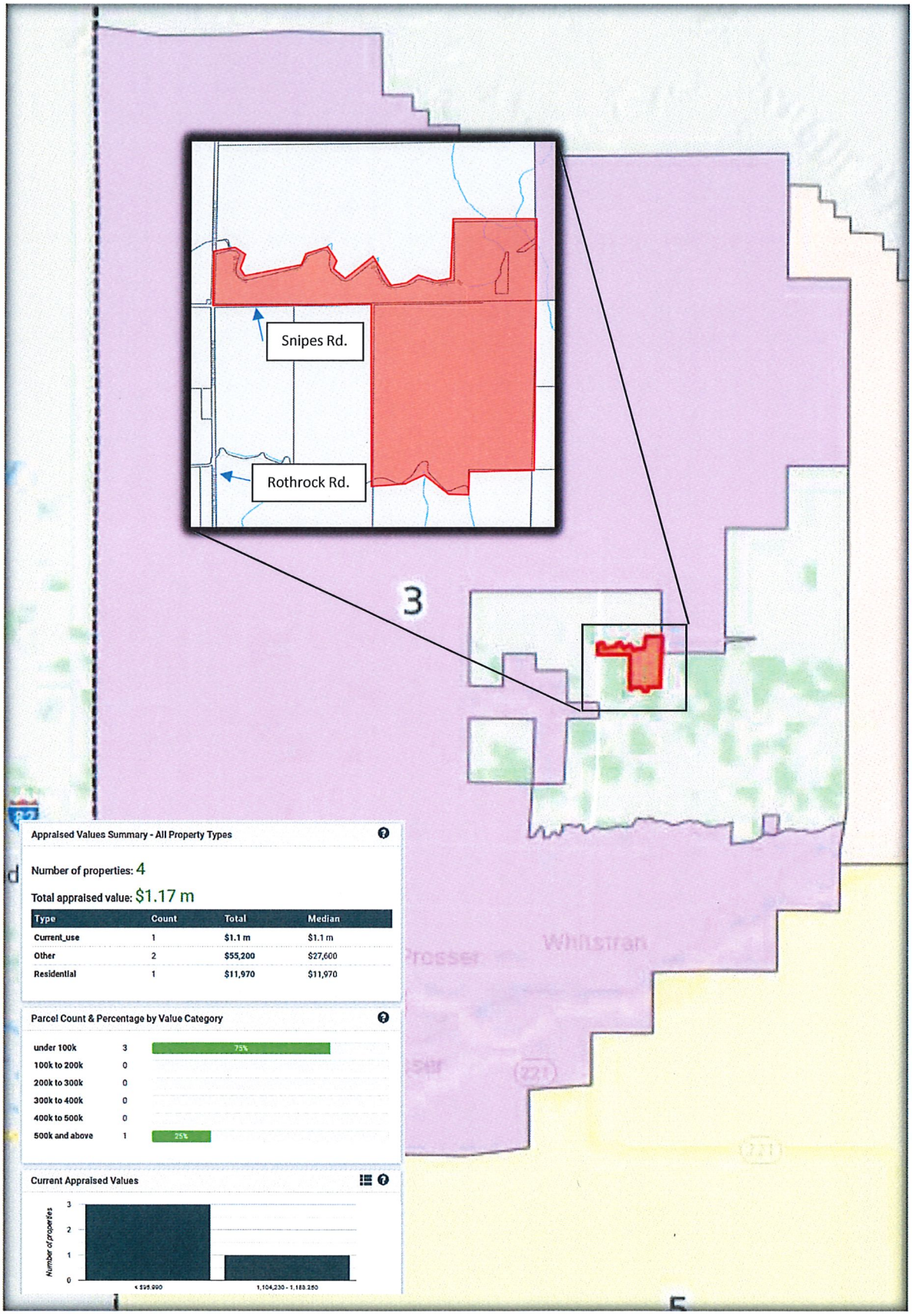
The undersigned legal property owners agree to assume all current and future financial obligations.

WBRFA Levy Rate 2020 = $1.3025 per $1,000 of Assessed Valuation

Date	Printed Name	Signature	Address	Parcel #
8/4/2020	Wyckoff Farms, Inc	CEO	94201 W Snipes Rd Prosser, WA 99350	1-0495-100-0000-000
8-4-20	Klingele Family Properties, LLC	Carolyn Klingele Pres.	99002 W Snipes Rd Prosser, WA 99350	1-3305-300-0003-001
	Kenny Riel		Undetermined	1-3305-400-0002-000
	Kenny Riel		Undetermined	1-3305-400-0001-002

Exhibit A: Legal description of the territory to be annexed

Exhibit B: Plat Map


Snipes Rd.
Rothrock Rd.
3
Whitstran
Prosser
Appraised Values Summary - All Property Types
Number of properties: 4
Total appraised value: $1.17 m
Type | Count | Total | Median
Current_use | 1 | $1.1 m | $1.1 m
Other | 2 | $55,200 | $27,600
Residential | 1 | $11,970 | $11,970
Parcel Count & Percentage by Value Category
under 100k 3 75%
100k to 200k 0
200k to 300k 0
300k to 400k 0
400k to 500k 0
500k and above 1 25%
Current Appraised Values
Number of properties
3
2
1
0
< $95,990
1,104,230 - 1,183,250

BENTON COUNTY PROPERTY SEARCH

21128
94201 W SNIPES RDNW

WYCKOFF FARMS
P O BOX 249
GRANDVIEW, WA 98930

Total Market Value
$1,053,120

KEY INFORMATION

Parcel # / Geo ID	**104951000000000**	Use Code	**83 Cur - Use - Ag**
Township	**09**	Section	**04**
Range	**25**	Legal Acres	**168**
Neighborhood	**540100**	Subdivision / Section	**-**
Land Size Acres	**1.0000**	Land Size Sq Foot	**43560.00**
Legal Description	**SECTION 4 TOWNSHIP 9 NORTH RANGE 25: THE NORTHEAST QUARTER, FRACTIONAL: AND THE WEST 1620 FEET OF THE SOUTHEAST QUARTER LYING NORTH OF LATERAL PUMP #17: SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD 1-25-72.**		

ASSESSMENT DETAILS

Improvement Homesite Value	**$0**
Improvement Non-Homesite Value	**$530,680**
Land Homesite Value	**$0**
Land Non-Homesite Value	**$0**
Market Value	**$2,400,210**
Assessed Value	**$1,053,120**
Taxable Value	**$1,053,120**

LAND

Land Type	Soil Type	Ag Use	Primary Use	Land Size Acres	Land Size Sq Foot
9	Rural Homesite	AG	83	1.0000	43560.00
4	Irrigated Agland #1	AG	83	167.2300	0.00

TAXING JURISDICTION

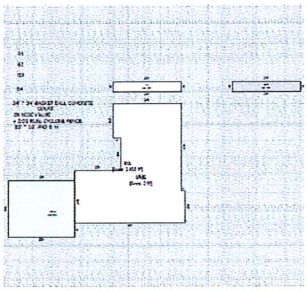
Owner: WYCKOFF FARMS

% Ownership: 100.00

Total Value: $2,383,640

Total Levy: $11,315

Levy Code	Description	Levy Rate	Appraised Value	Taxable Value	Estimated Tax
CNYADMR	COUNTY ADMIN REFUND	0.0000000000	$1,036,550	$1,036,550	$0.00
CNYHMNSVCS	COUNTY HUMAN SERVICES	0.0250000000	$1,036,550	$1,036,550	$25.91
CNYVET	COUNTY VETERANS	0.0113000000	$1,036,550	$1,036,550	$11.71
COUNTY	COUNTY	1.0467412064	$1,036,550	$1,036,550	$1085.00
CNYRDAD	COUNTY ROAD ADMIN REFUND	0.0010025999	$1,036,550	$1,036,550	$1.04
DIVROAD	DIV ROAD	0.1294426621	$1,036,550	$1,036,550	$134.17
ROAD	ROAD	1.2326886621	$1,036,550	$1,036,550	$1277.74
PROHOSP	PROSSER HOSPITAL	0.3150382321	$1,036,550	$1,036,550	$326.55
LIBADR	MID-COLUMBIA LIBRARY ADMIN REFUND	0.0000000000	$1,036,550	$1,036,550	$0.00
MCLIB	MID-COLUMBIA LIBRARY	0.3283417861	$1,036,550	$1,036,550	$340.34
PORTBNT	PORT OF BENTON	0.3133258756	$1,036,550	$1,036,550	$324.78
PTBNT11AB	PORT OF BENTON 2011 A & B BOND	0.0488772608	$1,036,550	$1,036,550	$50.66
PTBNTADR	PORT OF BENTON ADMIN REFUND	0.0000000000	$1,036,550	$1,036,550	$0.00
SD116ADR	SCHOOL DIST 116 ADMIN REFUND	0.0208598169	$1,036,550	$1,036,550	$21.62
SD116DS	SCHOOL DIST 116 DEBT SERVICE	2.6477334372	$1,036,550	$1,036,550	$2744.51
SD116MO	SCHOOL DIST 116 ENRICHMENT	1.7279472155	$1,036,550	$1,036,550	$1791.10
STATE	STATE SCHOOL	1.9931574122	$1,036,550	$1,036,550	$2066.01
STATE2	STATE SCHOOL PART 2	1.0747965210	$1,036,550	$1,036,550	$1114.08



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BENTON COUNTY PROPERTY SEARCH

61641
99002 W SNIPES RD

KLINGELE FAMILY PROPERTIES LLC
110201 W HANKS RD
PROSSER, WA 99350

Total Market Value
$436,810

KEY INFORMATION

Parcel # / Geo ID	**133053000003001**	Use Code	**83 Cur - Use - Ag**
Township	**10**	Section	**33**
Range	**25**	Legal Acres	**87**
Neighborhood	**540100**	Subdivision / Section	**-**
Land Size Acres	**1.0000**	Land Size Sq Foot	**43560.00**
Legal Description	**SECTION 33 TOWNSHIP 10 NORTH RANGE 25: THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION LYING SOUTHERLY OF RIGHT OF WAY OF LATERAL NO P 15 HR, EXCEPT THE SOUTH 30 FEET THEREOF AND THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER THEREOF FOR ROAD, AND EXCEPT A PORTION THEREOF CONVEYED TO THE UNITED STATES OF AMERICA FOR ELECTRIC TRANSMISSION LINE BY INSTRU- MENT RECORDED UNDER AUDITOR'S FILE NO 227706 AND EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 33: THENCE NORTH 01 DEGREES 30' WEST ALONG THE WEST LINE OF SAID SECTION 850.34 FEET TO THE TRUE POINT OF BEGINNING: THENCE NORTH 73 DEGREES 05' EAST 283.00 FEET: THENCE NORTH 32 DEGEES 30' WEST 44.88 FEET: THENCE NORTH 14 DEGREES 30' WEST 95.84 FEET: THENCE NORTH 48 DEGREES 40' WEST 63.47 FEET: THENCE SOUTH 80 DEGREES 20' WEST 183.50 FEET: THENCE SOUTH 01 DEGREE 30' EAST 224.14 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING: AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 33, EXCEPT THE SOUTH 30 FEET THEREOF FOR COUNTY ROAD RIGHT OF WAY, AND EXCEPT COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 33: THENCE WEST ALONG THE SOUTH LINE OF SAID SECTION 33, 674 FEET TO A POINT: THENCE NORTH TO THE SOUTH LINE OF THE RIGHT OF WAY OF LATERAL 15 HL OF ROZA IRRIGATION DISTRICT, THE TRUE POINT OF BEGINNING: THENCE SOUTH TO THE SOUTH LINE OF SECTION 33: THENCE EAST 15 FEET: THENCE NORTH TO A POINT 208.7 FEET SOUTH OF THE SOUTH LINE OF THE RIGHT OF WAY OF LATERAL 15 HL OF THE ROZA IRRIGATION DISTRICT: THENCE EAST 192 FEET: THENCE NORTH TO THE SOUTH LINE OF THE RIGHT OF WAY OF LATERAL 15 HL OF ROZA IRRIGATION DISTRICT: THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LATERAL 15 HL TO THE TRUE POINT OF BEGINNING: EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS: A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SECTION 33: THENCE NORTH 00 DEGREES 14'14' WEST 952.10 FEET ALONG THE SECTION LINE TO THE TRUE POINT OF BEGINNING: THENCE SOUTH 52 DEGREES 51'15' WEST 233.74 FEET: THENCE SOUTH 89 DEGREES 12' 29' WEST 115.45 FEET: THENCE NORTH 02 DEGREES 36'35' EAST 21.82 FEET: THENCE NORTH 54 DEGREES 59'22' EAST 366.75 FEET TO THE EAST SECTION LINE OF SAID SECTION: THENCE SOUTH 00 DEGREES 14'14' EAST 89.47 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING: (PER #91-02203 REC'D 6/21/91)**		

ASSESSMENT DETAILS

Improvement Homesite Value	**$0**
Improvement Non-Homesite Value	**$205,090**
Land Homesite Value	**$0**
Land Non-Homesite Value	**$0**
Market Value	**$1,038,610**
Assessed Value	**$436,810**
Taxable Value	**$436,810**

LAND

Land Type	Soil Type	Ag Use	Primary Use	Land Size Acres	Land Size Sq Foot
51	Wasteland	AG	83	1.6500	71874.00
51	Dry Pasture #1	AG	83	7.4000	322344.00
4	Irrigated Agland #2	AG	83	17.0000	740520.00
9	Rural Homesite	AG	83	1.0000	43560.00
4	Irrigated Agland #1	AG	83	59.6000	2596176.00

TAXING JURISDICTION

Owner: KLINGELE FAMILY PROPERTIES LLC

% Ownership: 100.00

Total Value: $1,038,610

Total Levy: $4,768

Levy Code	Description	Levy Rate	Appraised Value	Taxable Value	Estimated Tax
CNYADMR	COUNTY ADMIN REFUND	0.0000000000	$436,810	$436,810	$0.00
CNYHMNSVCS	COUNTY HUMAN SERVICES	0.0250000000	$436,810	$436,810	$10.92
CNYVET	COUNTY VETERANS	0.0113000000	$436,810	$436,810	$4.94
COUNTY	COUNTY	1.0467412064	$436,810	$436,810	$457.23
CNYRDAD	COUNTY ROAD ADMIN REFUND	0.0010025999	$436,810	$436,810	$0.44
DIVROAD	DIV ROAD	0.1294426621	$436,810	$436,810	$56.54
ROAD	ROAD	1.2326886621	$436,810	$436,810	$538.45
PROHOSP	PROSSER HOSPITAL	0.3150382321	$436,810	$436,810	$137.61
LIBADR	MID-COLUMBIA LIBRARY ADMIN REFUND	0.0000000000	$436,810	$436,810	$0.00
MCLIB	MID-COLUMBIA LIBRARY	0.3283417861	$436,810	$436,810	$143.42
PORTBNT	PORT OF BENTON	0.3133258756	$436,810	$436,810	$136.86
PTBNT11AB	PORT OF BENTON 2011 A & B BOND	0.0488772608	$436,810	$436,810	$21.35
PTBNTADR	PORT OF BENTON ADMIN REFUND	0.0000000000	$436,810	$436,810	$0.00
SD116ADR	SCHOOL DIST 116 ADMIN REFUND	0.0208598169	$436,810	$436,810	$9.11
SD116DS	SCHOOL DIST 116 DEBT SERVICE	2.6477334372	$436,810	$436,810	$1156.56
SD116MO	SCHOOL DIST 116 ENRICHMENT	1.7279472155	$436,810	$436,810	$754.78
STATE	STATE SCHOOL	1.9931574122	$436,810	$436,810	$870.63
STATE2	STATE SCHOOL PART 2	1.0747965210	$436,810	$436,810	$469.48

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BENTON COUNTY PROPERTY SEARCH

61645
UNDETERMINED

RIEL KENNY J
149411 W 138 PR NW
PROSSER, WA 99350

Total Market Value
$11,970

KEY INFORMATION

Parcel # / Geo ID	**133054000002000**	Use Code	**11 Single Unit**
Township	**10**	Section	**33**
Range	**25**	Legal Acres	**1**
Neighborhood	**540100**	Subdivision / Section	**-**
Land Size Acres	**0.9900**	Land Size Sq Foot	**43124.40**
Legal Description	**SECTION 33 TOWNSHIP 10 NORTH RANGE 25: PORTION DEFINED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER: THENCE WEST ALONG THE SOUTH LINE OF SAID SECTION 33, 674 FEET TO A POINT: THENCE NORTH TO THE SOUTH LINE OF THE RIGHT OF WAY OF LATERAL 15 HL OF ROZA IRRIGATION DISTRICT, THE TRUE POINT OF BEGINNING: THENCE SOUTH 208.7 FEET: THENCE EAST 207 FEET: THENCE NORTH TO THE SOUTH LINE OF THE RIGHT OF WAY OF LATERAL 15 HL OF ROZA IRRIGATION DISTRICT: THENCE WESTERLY ALONG SOUTH LINE OF SAID LATERAL 15 HL TO THE TRUE POINT OF BEGINNING:**		

ASSESSMENT DETAILS

Improvement Homesite Value	**$0**
Improvement Non-Homesite Value	**$1,080**
Land Homesite Value	**$0**
Land Non-Homesite Value	**$10,890**
Market Value	**$11,970**
Assessed Value	**$11,970**
Taxable Value	**$11,970**

No buildings to show.

LAND

Land Type	Soil Type	Ag Use	Primary Use	Land Size Acres	Land Size Sq Foot
4	Irrigated Agland #1	-	11	0.9900	43124.40

TAXING JURISDICTION

Owner: RIEL KENNY J

% Ownership: 100.00

Total Value: $11,970

Total Levy: $131

Levy Code	Description	Levy Rate	Appraised Value	Taxable Value	Estimated Tax
CNYADMR	COUNTY ADMIN REFUND	0.0000000000	$11,970	$11,970	$0.00
CNYHMNSVCS	COUNTY HUMAN SERVICES	0.0250000000	$11,970	$11,970	$0.30
CNYVET	COUNTY VETERANS	0.0113000000	$11,970	$11,970	$0.14
COUNTY	COUNTY	1.0467412064	$11,970	$11,970	$12.53
CNYRDAD	COUNTY ROAD ADMIN REFUND	0.0010025999	$11,970	$11,970	$0.01
DIVROAD	DIV ROAD	0.1294426621	$11,970	$11,970	$1.55
ROAD	ROAD	1.2326886621	$11,970	$11,970	$14.76
PROHOSP	PROSSER HOSPITAL	0.3150382321	$11,970	$11,970	$3.77
LIBADR	MID-COLUMBIA LIBRARY ADMIN REFUND	0.0000000000	$11,970	$11,970	$0.00
MCLIB	MID-COLUMBIA LIBRARY	0.3283417861	$11,970	$11,970	$3.93
PORTBNT	PORT OF BENTON	0.3133258756	$11,970	$11,970	$3.75
PTBNT11AB	PORT OF BENTON 2011 A & B BOND	0.0488772608	$11,970	$11,970	$0.59
PTBNTADR	PORT OF BENTON ADMIN REFUND	0.0000000000	$11,970	$11,970	$0.00
SD116ADR	SCHOOL DIST 116 ADMIN REFUND	0.0208598169	$11,970	$11,970	$0.25
SD116DS	SCHOOL DIST 116 DEBT SERVICE	2.6477334372	$11,970	$11,970	$31.69
SD116MO	SCHOOL DIST 116 ENRICHMENT	1.7279472155	$11,970	$11,970	$20.68
STATE	STATE SCHOOL	1.9931574122	$11,970	$11,970	$23.86
STATE2	STATE SCHOOL PART 2	1.0747965210	$11,970	$11,970	$12.87

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BENTON COUNTY PROPERTY SEARCH

61644
UNDETERMINED

RIEL KENNY J
149411 W 138 PR NW
PROSSER, WA 99350

Total Market Value
$190

KEY INFORMATION

Parcel # / Geo ID	**133054000001002**	Use Code	**97 Restricted**
Township	**10**	Section	**33**
Range	**25**	Legal Acres	**1**
Neighborhood	**540100**	Subdivision / Section	**-**
Land Size Acres	**0.5700**	Land Size Sq Foot	**24829.20**
Legal Description	**SECTION 33 TOWNSHIP 10 NORTH RANGE 25 EAST: A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SECTION 33: THENCE NORTH 00 DEGREES 14'14' WEST 952.10 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING: THENCE SOUTH 52 DEGREES 51'15' WEST 233.74 FEET: THENCE SOUTH 89 DEGREES 12'29' WEST 115.45 FEET: THENCE NORTH 2 DEGREES 36'35' EAST 21.82 FEET: THENCE NORTH 54 DEGREES 59'22' EAST 366.75 FEET TO THE EAST SECTION LINE OF SAID SECTION: THENCE SOUTH 00 DEGREES 14'14' EAST 89.47 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING: (PER EXCISE #91-02202, 02203 & 02204 REC'D 5-30-91) TOGETHER WITH AN EASEMENT IN, TO, UPON AND OVER ALL OF THE EXISTING ROADWAY SITUATED ON THE PROPERTY BEING CONVEYED BY QCD 91-02204 BEING LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST (S/B SE-CONTACTED TITLE CO).**		

ASSESSMENT DETAILS

Improvement Homesite Value	**$0**
Improvement Non-Homesite Value	**$0**
Land Homesite Value	**$0**
Land Non-Homesite Value	**$190**
Market Value	**$190**
Assessed Value	**$190**
Taxable Value	**$190**

No buildings to show.

LAND

Land Type	Soil Type	Ag Use	Primary Use	Land Size Acres	Land Size Sq Foot
51	Dry Pasture #3	-	97	0.5700	24829.20

TAXING JURISDICTION

Owner: RIEL KENNY J

% Ownership: 100.00

Total Value: $190

Total Levy: $0

Levy Code	Description	Levy Rate	Appraised Value	Taxable Value	Estimated Tax
CNYADMR	COUNTY ADMIN REFUND	0.0000000000	$190	$0	$0.00
CNYHMNSVCS	COUNTY HUMAN SERVICES	0.0250000000	$190	$0	$0.00
CNYVET	COUNTY VETERANS	0.0113000000	$190	$0	$0.00
COUNTY	COUNTY	1.0467412064	$190	$0	$0.00
CNYRDAD	COUNTY ROAD ADMIN REFUND	0.0010025999	$190	$0	$0.00
DIVROAD	DIV ROAD	0.1294426621	$190	$0	$0.00
ROAD	ROAD	1.2326886621	$190	$0	$0.00
PROHOSP	PROSSER HOSPITAL	0.3150382321	$190	$0	$0.00
LIBADR	MID-COLUMBIA LIBRARY ADMIN REFUND	0.0000000000	$190	$0	$0.00
MCLIB	MID-COLUMBIA LIBRARY	0.3283417861	$190	$0	$0.00
PORTBNT	PORT OF BENTON	0.3133258756	$190	$0	$0.00
PTBNT11AB	PORT OF BENTON 2011 A & B BOND	0.0488772608	$190	$0	$0.00
PTBNTADR	PORT OF BENTON ADMIN REFUND	0.0000000000	$190	$0	$0.00
SD116ADR	SCHOOL DIST 116 ADMIN REFUND	0.0208598169	$190	$0	$0.00
SD116DS	SCHOOL DIST 116 DEBT SERVICE	2.6477334372	$190	$0	$0.00
SD116MO	SCHOOL DIST 116 ENRICHMENT	1.7279472155	$190	$0	$0.00
STATE	STATE SCHOOL	1.9931574122	$190	$0	$0.00
STATE2	STATE SCHOOL PART 2	1.0747965210	$190	$0	$0.00

Disclaimer

All information contained herein, is considered in the public domain and is distributed without warranty of any kind, implied, expressed or statutory. The Benton County Assessor & Treasurer make no claims, promises or guarantees about the accuracy, completeness, or adequacy of this information and expressly disclaims liability for any errors and omissions.

Information relating to 2018 should be considered a "work in progress". Prior year data is informational only and does not necessarily replicate the values certified to the tax office.

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 110

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 Facilities

Dept Nbr: 115 to Department Number 110

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 110

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	$100,000	518.301	3108	Janitorial Supplies	$15,000
				518.301	3133	Building Maintenance	$10,000
				518.301	4701	Utilities	$50,000
				523.500	4804	Repair/Maintenance-Other	$25,000
TOTAL			$100,000	TOTAL			$100,000

Explanation:

Transfer needed for shortages due to COVID expenses that were prepaid, ER&R mechanic services and salaries/benefits unbudgeted, material expenses for Courthouse remodel projects done in-house, a large retainage pay-out, utilities, and new Janitorial contract requiring purchasing supplies in-house, etc. in Facilities Maint./Repair Budget and Facilities/Jail Maint./Repair Budget

Prepared by: Linda Ivey

Date: 12-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 STATE HOUSING INCOME TRANSMITTAL FUND NUMBER 0152101, DEPARTMENT 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: t.mckeirnan

McKeirnan

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: State Housing Income Transmittal | Fund Nbr: 0152101

TRANSFER FROM: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
565.400	4102	Contract Services	$10,000
TOTAL			$10,000

TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
565.400	9108	Administrative Cost	$10,000
TOTAL			$10,000

Explanation:

Moving funds from Contract Services to Administrative Cost to pay professional services for administration and monitoring the 2060 Contracts and Programs.

Prepared by: Tammy McKeirnan | Date: 11/9/20

Approved ☐ | Denied ☐ | Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24, 2020
Subject:	Approving the purchase of a one-year subscription for NextRequest public records management system from SHI International Corp.
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

NextRequest is a centralized public records management system that can help Benton County formally organize efforts needed to complete public records requests. With twenty-eight different public records officers and over 1,500 public records requests from January 2020 to August 2020, the County's current methods are barely keeping up with the public's demand for public records. To better assist the County's public records officers, public citizens, and reduce risk, IT is recommending purchasing NextRequest public records management system to improve how record requests are received, tracked, and released.

For the past three months, IT, Risk Management, Prosecuting Attorney's Civil Department, Sheriff, and Corrections public records officers have been reviewing two public records management systems. NextRequest and GovQA are the two primary public records management solutions used throughout the State. After talking with several local agencies and testing out each solution, our team decided on NextRequest as being the best fit for the County.

On July 28, 2020, the Board signed Resolution 2020-504 authorizing the Director of Operations and Capital Programs to register Benton County as a member of Sourcewell granting the County the ability to purchase goods and services from Sourcewell – Technology Catalog Solutions. NextRequest will be purchased from SHI International Corp. a Sourcewell authorized vendor contract number 081419-SHI.

Fiscal Impact

Amount: **$35,000 excluding WSST.**

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

Recommendation

Information Technology recommends that the Board approves the purchase of a one-year subscription for NextRequest in an amount not to exceed $35,000 excluding WSST from SHI International Corp.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF A ONE-YEAR SUBSCRIPTION FOR NEXTREQUEST PUBLIC RECORDS MANAGEMENT SYSTEM FROM SHI INTERNATIONAL CORP.

WHEREAS, RCW 42.56, Public Records Act requires that all public records maintained by Benton County be made available to all members of the public; and

WHEREAS, since January 1, 2020, Benton County has received and processed over 1,500 public records requests; and

WHEREAS, the County's current methods of processing public records requests is decentralized and inefficient; and

WHEREAS, to better assist the County's public records officers, public citizens, and reduce risk, Information Technology is recommending purchasing a centralized public records management solution in NextRequest; and

WHEREAS, NextRequest provides government agencies with an organized approach of receiving, tracking, and releasing records; and

WHEREAS, Information Technology, Risk Management, Prosecuting Attorney's Civil Department, Sheriff, and Corrections' public records officers reviewed two solutions used widely across the State in GovQA and NextRequest;

WHEREAS, after talking with several local agencies that use GovQA and NextRequest, county public records officers selected NextRequest as the best fit for Benton County; and

WHEREAS, on July 28, 2020, Resolution 2020-504 authorized the Chairman of the Board to execute an agreement with Sourcewell a cooperative purchasing contract that helps local agencies reduce costs when purchasing goods and services; and

WHEREAS, NextRequest will be purchased from SHI Inc. a Sourcewell – Technology Catalog Solutions authorized software vendor contract number #081419-SHI; NOW THEREFORE,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves a one-year subscription for NextRequest public records management system from SHI International Corp. in an amount not to exceed $35,000 per year excluding Washington State Sales Tax (WSST).

Dated this 24 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, Risk Management

Prepared by: R. Heard

Pricing Proposal
Quotation #: 19671762
Created On: 11/9/2020
Valid Until: 1/5/2021

Benton County

Robert Heard
620 Market St
PO Box 608
Prosser, WA 99350
United States
Phone:
Fax:
Email: robert.heard@co.benton.wa.us

Inside Account Manager-Public Sector

Gianna Colgero
290 Davidson Ave
Somerset, NJ 08873
Phone: 732-652-4773
Fax:
Email: gianna_colgero@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	NextRequest Pro Annual License NextRequest Co. - Part#: Contract Name: Sourcewell- Technology Catalog Solutions Contract #: 081419-SHI	1	$13,586.96	$13,586.96
2	Additional NextRequest Portal NextRequest Co. - Part#: Contract Name: Sourcewell- Technology Catalog Solutions Contract #: 081419-SHI	1	$3,396.74	$3,396.74
3	CJIS Compliance Package NextRequest Co. - Part#: Contract Name: Sourcewell- Technology Catalog Solutions Contract #: 081419-SHI	1	$2,173.91	$2,173.91
4	RapidReview NextRequest Co. - Part#: Contract Name: Sourcewell- Technology Catalog Solutions Contract #: 081419-SHI	1	$6,793.48	$6,793.48
5	RapidReview for 2nd NextRequest Portal NextRequest Co. - Part#: Contract Name: Sourcewell- Technology Catalog Solutions Contract #: 081419-SHI	1	$1,698.37	$1,698.37
6	Set Up (One-time) NextRequest Co. - Part#: Contract Name: Sourcewell- Technology Catalog Solutions Contract #: 081419-SHI **Note:** waived if set up by 9/30/2020 - otherwise $2,717.39 set up fee	1	$0.00	$0.00

Subtotal	$27,649.46
*Tax	$2,377.85
Total	$30,027.31

*Tax is estimated. Invoice will include the full and final tax due.

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Thank you for choosing SHI International Corp! The pricing offered on this quote proposal is valid through the expiration date listed above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order. For any additional information including Hardware, Software and Services Contracts, please contact an SHI Inside Sales Representative at (888) 744-4084. SHI International Corp. is 100% Minority Owned, Woman Owned Business. TAX ID# 22-3009648; DUNS# 61-1429481; CCR# 61-243957G; CAGE 1HTF0

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.

Public Works Department

PO Box 1001
Prosser, WA 99350
PHONE (509) 786-5611
www.co.benton.wa.us

APPROVED AS TO FORM:

The Sourcewell Agreement for becoming a member of Sourcewell, a cooperative purchasing agency, has been reviewed and approved as to form:

Reid Hay, Deputy Prosecuting Attorney

7/16/20

Date

DocuSign Envelope ID: 4B665D62-A258-4414-846F-867710EF4129

Sourcewell
Formerly NJPA

SOURCEWELL AGREEMENT

This Agreement, made effective on the date hereof, by and between Sourcewell (formerly known as National Joint Powers Alliance) and County of Benton (hereinafter referred to as the "Member").

Agreement

1. Sourcewell, a public entity whose creation was authorized by Minn. Stat. § 123A.21, has followed procurement procedures for products and services offered by this Agreement in accordance with Minn. Stat. § 471.345. Sourcewell is permitted to engage in cooperative purchasing pursuant to Minn. Stat. § 123A.21 Subd. 7(23).

2. It is the sole responsibility of each Member to follow state and local procurement statutes and rules as it pertains to cooperative purchasing or joint power Agreements with in-state or out-of-state public agencies.

3. Sourcewell makes cooperative purchasing contracts available to Members "as is," and is under no obligation to revise the terms, conditions, scope, price, and/or any other conditions of the contract for the benefit of the Member. Members are permitted to negotiate and agree to additional terms and conditions with Vendors directly.

4. Each party shall be responsible for its acts and the results thereof, to the extent authorized by law, and will not be responsible for the acts of the other party and the results thereof. The Member will be responsible for all aspects of its purchase, including ordering its goods and/or services, inspecting and accepting the goods and/or services, and paying the Vendor who will have directly billed the Member placing the order.

5. The use of each contract by the Member will adhere to the terms and conditions of the Sourcewell contract.

6. Any dispute which may arise between the Member and the Vendor are to be resolved between the Member and the Vendor.

7. This Agreement incorporates all Agreements, covenants and understandings between Sourcewell and the Member. No prior Agreement or understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not be altered, changed or amended except by written amendment executed by both parties.

Member Name	**Sourcewell**
By [signature]	DocuSigned by: [signature]
Its Chairman, Board of County Commissioners	Executive Director/CEO
TITLE	TITLE
July 28, 2020	7/30/2020 | 3:12 PM CDT
DATE	DATE

Rev. 5/2018

Sourcewell
Formerly NJPA

MEMBER INFORMATION

Indicate an address to which correspondence may be delivered.

Organization Name*	County of Benton
Address*	7122 W. Okanogan Pl., Bldg. A
City	Kennewick
State/Province Code	WA ZIP code* 99336
Country	USA
Employer Identification Number	91-6001296
Website	co.benton.wa.us
Contact person* (First, Last)	Shannon Christen
Job Title*	Contract Coordinator
Job Role*	Procurement and contracts
E-mail*	shannon.christen@co.benton.wa.us
Phone*	509-786-5611

Organization Type:

Government

- __ Federal
- __ State
- X County
- __ Municipality
- __ Tribal
- __ Township
- __ Special District

Education

- __ Pre-K
- __ Public K-12
- __ Private K-12
- __ Public Higher Ed
- __ Private Higher Ed

Sourcewell
Formerly NJPA

Non-Profit (Please include documentation demonstrating non-profit status)

__ Church

__ Medical Facility

__ Other

REFERRED BY

__ Advertisement

__ Colleague/Friend

X Vendor Representative

__ Conference/Trade Show_____

__ Search Engine/Web Search

RETURN COMPLETED AGREEMENT TO:

Sourcewell
202 12th Street NE
P.O. Box 219
Staples, MN 56479

877-585-9706
membership@sourcewell-mn.gov

**Denotes required information*

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24, 2020
Subject:	Approving the Purchase of 275 NetIQ Two-Factor Authentication One-Year Licenses from SHI International Corp.
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

In December of 2018, per Resolution 2018-927 IT purchased 70 NetIQ two-factor authentication licenses for Sheriff Deputies who have access to Criminal Justice Information Services (CJIS) from their patrol vehicles. Prior to the purchase, because of CJIS requirements, IT with the help of City of Kennewick found a two-factor authentication solution NetIQ. IT was impressed with NetIQ's feature set which includes Bluetooth, fingerprint, and RFID badge authentication methods that IT immediately added two-factor authentication to staff improving internal security practices. In January 2020, the entire Auditor's office including the Elections Department had enrolled in IT's two-factor authentication program. Information Technology has approval to install 2FA in the Treasurer and Prosecuting Attorney departments with other county departments to follow. To accommodate county departments interests in 2FA, Information Technology needs to purchase more licenses.

NetIQ licensing is being purchased by SHI International Corp. under Washington State Master Contract No. 05116, NASPO ValuePoint Cloud Solutions 2019-2026 Master Agreement No. AR2488.

Fiscal Impact

Amount: **$18,000 excluding WSST.**

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

Recommendation

Information Technology recommends that the Board approves the purchase of NetIQ two factor authentication licenses from SHI International Corp. in an amount not to exceed $18,000 excluding WSST.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF 275 NETIQ TWO-FACTOR AUTHENTICATION ONE-YEAR LICENSES FROM SHI INTERNATIONAL CORP.

WHEREAS, in December of 2018, per Resolution 2018-927 IT purchased 70 NetIQ two-factor authentication licenses required for Sheriff Deputies who have access to Criminal Justice Information Services (CJIS) in patrol vehicles; and

WHEREAS, since December 2018, Information Technology has successfully rolled out all 70 licenses which include the Sheriff, Prosecuting Attorney, Auditor, and Elections departments; and

WHEREAS, to accommodate other county department interests in two-factor authentication, Information Technology needs to purchase more licenses; and

WHEREAS, a quote to purchase another 275 NetIQ licenses has been prepared by SHI International Corp. a NASPO ValuePoint Cloud Solutions Master Agreement No. AR2488, Washington State Master Contract No. 05116; and

WHEREAS, per the County-Wide Procurement, Leasing, and Contract Policy, Resolution 2012-677, Section 7 allows the County to enter into a written Intergovernmental Cooperative Purchasing Agreement with the State of Washington, signed on June 11, 2013 per Resolution 2013-431; and

WHEREAS, Information Technology recommends the purchase of 275 NetIQ two-factor authentication licenses from SHI International Corp. and is in the best interest of Benton County; NOW, THEREFORE,

BE IT RESOLVED, that the Board of Benton County Commissioners, Benton County Washington agrees with Information Technology's recommendation and authorizes the purchase of 275 NetIQ two-factor authentication one-year licenses from SHI International Corp. in an amount not to exceed $18,000.00 excluding WSST.

Dated this 24 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

Micro Focus Customer Quote # 1989252

Program: *VLA*
Pricing Good: *23 Oct 2020 - 23 Nov 2020*
Status: *Pending Customer Acceptance*

Approved

Maximizing your IT investments means committing to an ongoing training plan.

Created By: Brooks, Brianna (Brianna)
Brianna.Brooks@microfocus.com

Comments: Maintenance renewals received after the start date of the service may be subject to a 20% reinstatement fee.

Customer	Reseller	Shipping	Billing
BENTON COUNTY WA CENTRAL SERVICES **620 MARKET ST** **PROSSER WA 99350-1300**	**QUOTE NORTH AMERICA RESELLER** **1800 S NOVELL PL** **PROVO UT 84606-6101**	**BENTON COUNTY WA CENTRAL SERVICES** **620 MARKET ST** **PROSSER WA 99350-1300**	**BENTON COUNTY WA CENTRAL SERVICES** **620 MARKET ST** **PROSSER WA 99350-1300**

Contract:
7391994

End User Contact	Reseller Contact	Shipping Contact	Billing Contact
ROBERT HEARD ROBERT.HEARD@CO.BENTON.WA.US	NOT APPLICABLE 1 801 8619000 orderackcc@microfocus.com	ROBERT HEARD ROBERT.HEARD@CO.BENTON.WA.US	ROBERT HEARD ROBERT.HEARD@CO.BENTON.WA.US

QTY	SKU	Description	Start/End Date	SPR	Unit MSRP	Unit Price	Subtotal
275	873-011284	Advanced Authentication Clients 1-User License	N/A	No	33.00	29.70	8,167.50
275	877-008486-I	Advanced Authentication Clients 1-User 1-Year Initial Business Support	01 Nov 2020 - 31 Oct 2021	No	7.40	7.40	2,035.00
275	873-011285	Advanced Authentication 1-User License	N/A	No	25.00	22.50	6,187.50
275	877-008487-I	Advanced Authentication 1-User 1-Year Initial Business Support	01 Nov 2020 - 31 Oct 2021	No	5.50	5.50	1,512.50

Total USD 17,902.50

How to Place an Order:

- If purchasing directly, you will need to purchase from Micro Focus by submitting a purchase order showing Micro Focus Software Inc. as the vendor/supplier and send this quote directly to one of the following:

  Email: orders@microfocus.com

  Mail: Micro Focus Software Inc.
  Mail Stop H-42343
  1800 South Novell Place
  Provo, UT 84606
  USA

- If purchasing via an authorized Micro Focus reseller, please provide this document to your reseller to ensure order accuracy, and to receive a quote of your final purchase price. If the purchase is made via a reseller the price in this quote is a suggested price.
- This quote does not include any shipping or taxes, if any.
- If a pricing discrepancy should arise, the pricing as published in the current Micro Focus Product Price List and/or Product Announcement will prevail.

PARTICIPATING ADDENDUM
NASPO ValuePoint

CLOUD SOLUTIONS 2016-2026

Administered by the State of Utah (hereinafter "Lead State")

MASTER AGREEMENT

Master Agreement No: AR2488

SHI International Corp.
(hereinafter "Contractor")
and
State of Washington
(hereinafter "Participating State")

Washington Master Contract No.: 05116

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and SHI International Corp., a New Jersey corporation ("Contractor") and is dated and effective as of November 1, 2017.

1. **SCOPE:** This Participating Addendum covers Cloud Solutions led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.

2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities"):

   (a) WASHINGTON STATE AGENCIES. Washington state agencies, departments, offices, divisions, boards, and commission; and any the following institutions of higher education in Washington: state universities, regional universities, state college, community colleges, and technical colleges.

   (b) MCUA PARTIES. The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services (MCUA list is available at https://fortress.wa.gov/ga/apps/ContractSearch/MCUAListing.aspx):

   - Political subdivisions (e.g., counties, cities, school districts, public utility districts);
   - Federal governmental agencies or entities;
   - Public-benefit nonprofit corporations (i.e., § 501(c) (3) nonprofit corporations that receive federal, state, or local funding); and

- Federally-recognized Indian Tribes located in the State of Washington.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:

3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM**: Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at https://fortress.wa.gov/ga/webs/. Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

3.2. **WASHINGTON'S STATEWIDE PAYEE DESK**: To be paid for contract sales, Contractors must register with Washington's Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: Receiving Payment from the State.

3.3. **CONTRACT SALES REPORTING.** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.

(a) REPORTING. Contractor shall report quarterly Contract sales in Enterprise Services' Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number.

(b) DATA. Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.

(c) DUE DATES FOR CONTRACT SALES REPORTING. Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

3.4. **VENDOR MANAGEMENT FEE**: Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax).

(a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total contract sales invoiced (not including sales tax) x .015

(b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.

(c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:

- This Washington Master Contract No.: 05116
- The NASPO Master Agreement No.: AR2488
- The year and quarter for which the VMF is being remitted, and
- Contractor's name as set forth in this Contract, if not already included on the face of the check.

(d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.

(e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.

(f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION**: Contractor shall comply with all applicable law. Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to purchasers in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

3.6. **PAY EQUALITY**: Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of this Master Contract for the time period of July 1, 2017 through June 30, 2019, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within

thirty (30) days, Enterprise Services may suspend or terminate this Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to the Master Contract.

3.7. **COMPLIANCE WITH PARTICIPATING STATE'S (WASHINGTON'S) STATEWIDE IT POLICIES:** Contractor shall comply with Participating State's statewide information technology policies, as applicable, for Purchasing Entities – promulgated by Washington's Office of the Chief Information Officer (OCIO). Such policies are located on the OCIO website at: https://ocio.wa.gov//policies. These policies include, but are not limited to, the following:

- Security Policy 141
- Accessibility Policy 188

Prior to final execution of a Purchasing Entities' contract with a Contractor, the Contractor's solution(s) will be subject to a Security Design Review performed by Washington Consolidated Technology Services to ensure compliance with Office of the Chief Information Officer (OCIO) Security Policies.

4. **LEASE AGREEMENTS**: Leasing, renting, or purchasing equipment is not allowed throughout the term of the Master Agreement.

5. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor	Participating State
SHI International Corp. 290 Davidson Ave. Somerset, NJ 08873	State of Washington Department of Enterprise Services Contracts, Procurement and Risk Mgmt. P.O. Box 41411 Olympia, WA 98504-1411
Attn: Alison Turner Tel: (425) 974-5997 Email: alison_turner@shi.com	Attn: Mike Dombrowsky Tel: (360) 407-8717 Email: mike.dombrowsky@des.wa.gov

6. **FULFILLMENT PARTNERS:** All Contractor's Fulfillment Partners authorized in the State of Washington, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Fulfillment Partner's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

8. **GENERAL**:

(a) INTEGRATED AGREEMENT; MODIFICATION. This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.

(b) AUTHORITY. Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

(c) ELECTRONIC SIGNATURES. A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.

(d) COUNTERPARTS. This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: Scott Smith

Scott Smith

Its: State IT Procurement Manager

SHI INTERNATIONAL CORP.
A NEW JERSEY CORPORATION

By: Natalie Castagno

Natalie Castagno

Its: Director of Response Team

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 138

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Prepared by: S. Berry

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Adult & Juvenile Drug Court Dept Nbr: 138

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
527.235	4103	Professional Services	$1,800
TOTAL			$1,800

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
527.235	1710	Counselor II	$1,800
TOTAL			$1,800

Explanation:

This transfer is necessary to cover the 2019 and 2020 COLA that was approved in the guild contract BC Resolution 2019-117 that was not in the baseline 2019-2020 budget.

Prepared by: Shela Berry Date: 12-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 138

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Prepared by: S. Berry

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Adult & Juvenile Drug Court Dept Nbr: 138

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.235	4103	Professional Services	$2,200
TOTAL			$2,200

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.235	1664	Counselor III	$2,200
TOTAL			$2,200

Explanation:

This transfer is necessary to cover the 2019 and 2020 COLA that was approved in the guild contract BC Resolution 2019-117 that was not in the baseline 2019-2020 budget.

Prepared by: Shela Berry Date: 12-Nov-2020

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 MARK CANO TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS FACING PROBATION VIOLATION PROCEEDINGS

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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, in addition to contracts for public defense services in newly filed criminal cases, which constitute the bulk of the public defense services in Benton County District Court, it is also necessary to provide public defense services to defendants facing probation violation proceedings in Benton County District Court ("Probation Cases"); and

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

BE IT RESOLVED that the public defense contract with attorney Mark Cano, designated BCDC2122MC001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per month compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, 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, Mark Cano
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122MC001

CONTRACT SUMMARY			
Contract Type	**Probation Only - Monthly**		
Contract Number	**BCDC2122MC001**	**Contract Holder**	**Mark Cano**
WSBA #	**45276**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**75% of full-time caseload**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly** ☐ **By the case but paid monthly**
Compensation Payable To:	**Cano Law, PLLC**		
Contract Slot Identifier: **DCS-1**			

THIS AGREEMENT is entered into by and between **Mark Cano,** attorney at law, Washington State Bar Association **# 45276** ("Attorney"), dba Cano Law, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **7101 Hood Pl, Suite B-202, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 367-8449** and respectively; and Attorney's current office/work e-mail address is **mark@cano-law.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall be responsible for the following:

a) **Benton County District Court Probation Violation Docket.** Attorney shall provide public defense services to all defendants who are ordered to appear on any of the Benton County District Court Probation Violation Dockets (other than dockets taking place in Prosser) including the Show Cause docket as well as any revocation hearing dockets. Attorney's duties shall include, without limitation:

i. Appearing at all such dockets to provide defendants there with provisional representation and advice even when they are appearing for Show Cause or progress-check purposes with no threat or risk of a jail sanction.

ii. Individually representing defendants for contested hearings whereby the prosecution or the court is seeking to impose a jail sanction on defendants for violation of a condition of probation.

iii. Being available to defendants, by phone, by virtual meeting, or in person, to consult about their probation violation cases.

Changes to court schedule: The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order

of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **CONTRACT CASELOAD.**

The caseload for this Agreement is anticipated to be up to 75% of a "full-time caseload" as provided for in Washington State's Public Defense Standards ("Standards"). This calculation is a combination of:

a) Time spent in court at "Show Cause" dockets, representing groups of defendants to whose cases Attorney has not been personally and directly assigned, and who are not facing the prospect of revocation of probation. For purposes of this caseload statement, time spent in court at such Show Cause dockets are to be counted as time toward Attorney's annual maximum availability for caseload capacity (by which such maximum availability shall be reduced).

b) Appointment to individual Probation Hearings whereby Attorney is appointed personally and directly to represent a defendant on a case where the prosecution or court is seeking to revoke the defendant's probation and impose a jail sanction. Appointments to individual probation hearings shall count as 0.17 of a case each, pursuant to Benton County's Case Weighting System.

8. **CASE EQUIVALENTS.**

See Section 7.

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

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment

consequences), and the preparation for and appearance on behalf of the client in all stages of District Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

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

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $6,375 per month as a flat fee

ii) for the year 2022, $6,500 per month as a flat fee

***All compensation shall be payable to: Cano Law, PLLC** since Attorney is a principal with that firm.*

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this

Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

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

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the

event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS**. Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed

representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

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

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

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

If Attorney, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and Counties (or either of them) incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Attorney shall indemnify the Counties (or either of them). Indemnity shall include all fines, payment of benefits to Attorney or subcontractor employees, or their heirs or legal

representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to Counties by Attorney pursuant to the indemnity agreement may be deducted from any payments owed by Counties to Attorney for performance of this Contract.

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

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

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

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

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

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

d. **Other Insurance Provisions:**

1. The Attorney's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the Counties, its

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

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

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

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

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

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

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County District Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved

complaint about the legal services rendered to such person by Attorney and such complaint is not amenable to resolution by simply facilitating the communication between the client and attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County Court Administrator and the PDM.

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

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

17. **TERMINATION.**

Cause for Termination and Notice

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In the event of automatic termination or termination

pursuant to suspension or disbarment, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then Attorney shall continue to provide the services for which he is contracted under this Agreement, for the entirety of the 90 day notice period.

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as

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

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

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

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

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

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

27. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable

provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

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

29. **DISPUTE RESOLUTION.**

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

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

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

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

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

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

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

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

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

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 10, 2020 14:16 PST)
Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 10, 2020

Mark Cano (Nov 10, 2020 14:42 PST)
Mark Cano, WSBA 45276
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
- 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
- Amount of time spent per case

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:

Mark Cano (Nov 10, 2020 14:42 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:	November 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 HEATHER CARLSON TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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 Heather Carlson for public defense services on Criminal Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Heather Carlson, designated BCDC2122HMC001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, 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, Heather Carlson
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122HMC001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2122HMC001**	**Contract Holder**	**Heather M. Carlson**
WSBA #	**34166**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Heather M. Carlson**		
Contract Slot Identifier: DCF-6			

THIS AGREEMENT is entered into by and between **Heather M. Carlson,** attorney at law, Washington State Bar Association **# 34166** ("Attorney"), and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **1030 N. Center Parkway, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 222-8945** and ***no fax no*** respectively; and Attorney's current office/work e-mail address is **hcarlsonlaw@gmail.com.**

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

c) ***In-Custody Team*** **assignment**: Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **three hundred ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for trial per diems and arraignment docket assignment (12.e) and RALJ appeals (12.f) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably

required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising

appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

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

15. **INSURANCE.**

a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the Attorney shall secure and maintain at his/her own expense Professional Liability Insurance appropriate to the Attorney's profession and shall be written subject to limits of not less than one million dollars

($1,000,000) each claim and in the aggregate. Such insurance will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

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

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

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

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

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

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

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

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

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

d. **Other Insurance Provisions**:

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have

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

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

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

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

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

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

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the PDM within five (5) business days,

who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The PDM shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

17. **TERMINATION.**

Cause for Termination and Notice

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

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach

of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by

withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

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

between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

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

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may

temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

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

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

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

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

sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation, and shall further comply with the County's policy against sexual harassment.

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

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

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 9, 2020 14:12 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 9, 2020

Heather Carlson
Heather Carlson (Nov 9, 2020 14:27 PST)

Heather M. Carlson, WSBA 34166
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
- 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
- Amount of time spent per case

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:

Heather Carlson
Heather Carlson (Nov 9, 2020 14:27 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:	November 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 ADRIENNE FARABEE TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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 Adrienne Farabee for public defense services on Criminal Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Adrienne Farabee, designated BCDC2122AMF001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, 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, Adrienne Farabee
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122AMF001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2122AMF001**	**Contract Holder**	**Adrienne M. Farabee**
WSBA #	**32859**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Farabee Law, PLLC**		
Contract Slot Identifier: DCF-9			

THIS AGREEMENT is entered into by and between **Adrienne M. Farabee,** attorney at law, Washington State Bar Association **# 32859** ("Attorney"), dba Farabee Law, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **1030 N. Center Parkway, Suite N190, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 460-8181** and ***no fax no*** respectively; and Attorney's current office/work e-mail address is **afarabeelaw@gmail.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

*c) **In-Custody Team** assignment*: Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **three hundred ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

***All compensation shall be payable to: Farabee Law, PLLC** since Attorney is a principal with that firm.*

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

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

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

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

15. **INSURANCE.**

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

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

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

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

c. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and

property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

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

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

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

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

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

d. **Other Insurance Provisions**:

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

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

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

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

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

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

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

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

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

17. **TERMINATION.**

Cause for Termination and Notice

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

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

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this

Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual

Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other

Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an

appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be

selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and

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

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

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

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 9, 2020 11:27 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 9, 2020

Adrienne Farabee (Nov 9, 2020 17:50 PST)

Adrienne M. Farabee, WSBA 32859
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
- 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
- Amount of time spent per case

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:

Adner[illegible]arabee (Nov 3, 2020 17:50 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:	November 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 BRIAN GIESZLER TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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 Brian Gieszler for public defense services on Criminal Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Brian Gieszler, designated BCDC2122BJG001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, 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, Brian Gieszler
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122BJG001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2122BJG001**	**Contract Holder**	**Brian J. Gieszler**
WSBA #	**53047**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Gravis Law, PLLC**		
Contract Slot Identifier: DCF-8			

THIS AGREEMENT is entered into by and between **Brian J. Gieszler,** attorney at law, Washington State Bar Association **# 53047** ("Attorney"), dba Gravis Law, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **403 Knight St, Ste A, Richland, WA 99352.** Attorney's current local office telephone and fax numbers are **(509) 380-9102** and **(888) 419-9269** respectively; and Attorney's current office/work e-mail address is **bgieszler@gravislaw.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

c) ***In-Custody Team*** **assignment:** Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **three hundred ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

***All compensation shall be payable to: Gravis Law, PLLC** since Attorney is an associate with that firm.*

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

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

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

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

15. **INSURANCE**.

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

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

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

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

c. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and

property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

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

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

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

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

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

d. **Other Insurance Provisions:**

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

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

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

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

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

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

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

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

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

17. **TERMINATION.**

Cause for Termination and Notice

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

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

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this

Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual

Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other

Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an

appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be

selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and

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

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

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

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 9, 2020 13:42 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 9, 2020

Brian Gieszler

Brian Gieszler, WSBA 53074
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)

Asa LaMusga

Asa LaMusga, WSBA 46253
I am a principal with signing authority for Gravis 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, 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
- 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
- Amount of time spent per case

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:

Brian Gieszler

_____

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 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 DOUGLAS MCKINLEY TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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 Douglas McKinley for public defense services on Criminal Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Douglas McKinley, designated BCDC2122DEM001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, 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, Douglas McKinley
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122DEM001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2122DEM001**	**Contract Holder**	**Douglas E. McKinley**
WSBA #	**20806**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Douglas E. McKinley**		
Contract Slot Identifier: DCF-5			

THIS AGREEMENT is entered into by and between **Douglas E. McKinley,** attorney at law, Washington State Bar Association **# 20806** ("Attorney"), and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **8350 Grandridge Blvd #200, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 628-0809** and **(509) 392-8083** respectively; and Attorney's current office/work e-mail address is **doug@mckinleylaw.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

*c) **In-Custody Team** **assignment**:* Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **three hundred ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for trial per diems and arraignment docket assignment (12.e) and RALJ appeals (12.f) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably

required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising

appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

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

15. **INSURANCE.**

a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the Attorney shall secure and maintain at his/her own expense Professional Liability Insurance appropriate to the Attorney's profession and shall be written subject to limits of not less than one million dollars

($1,000,000) each claim and in the aggregate. Such insurance will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

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

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

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

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

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

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

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

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

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

d. **Other Insurance Provisions:**

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have

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

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

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

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

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

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

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the PDM within five (5) business days,

who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The PDM shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

17. **TERMINATION.**

Cause for Termination and Notice

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

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach

of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by

withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

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

between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

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

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may

temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

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

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

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

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

sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation, and shall further comply with the County's policy against sexual harassment.

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

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

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 9, 2020 14:00 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 9, 2020

Douglas E. McKinley

Douglas E. McKinley, WSBA 20806
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
- 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
- Amount of time spent per case

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:

Douglas E. McKinley
Douglas E. McKinley (Nov 9, 2020 14:32 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:	November 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 STACEY MCKINLEY TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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 Stacey McKinley for public defense services on Criminal Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Stacey McKinley, designated BCDC2122AMM001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, 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, Stacey McKinley
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122AMM001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2122AMM001**	**Contract Holder**	**Anastasia M. McKinley**
WSBA #	**20789**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Anastasia McKinley**		
Contract Slot Identifier: DCF-4			

THIS AGREEMENT is entered into by and between **Anastasia M. McKinley,** attorney at law, Washington State Bar Association **# 20789** ("Attorney") and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **8350 W. Grandridge Blvd #200, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 628-6800** and **(509) 392-8083** respectively; and Attorney's current office/work e-mail address is **mckinley.stacey@gmail.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

c) ***In-Custody Team*** **assignment**: Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **three hundred ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for trial per diems and arraignment docket assignment (12.e) and RALJ appeals (12.f) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably

required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising

appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

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

15. **INSURANCE.**

a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the Attorney shall secure and maintain at his/her own expense Professional Liability Insurance appropriate to the Attorney's profession and shall be written subject to limits of not less than one million dollars

($1,000,000) each claim and in the aggregate. Such insurance will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

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

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

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

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

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

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

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

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

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

d. **Other Insurance Provisions:**

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have

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

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

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

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

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

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

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the PDM within five (5) business days,

who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The PDM shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

17. **TERMINATION.**

Cause for Termination and Notice

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

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach

of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by

withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

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

between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

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

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may

temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

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

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

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

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

sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation, and shall further comply with the County's policy against sexual harassment.

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

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

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 9, 2020 14:07 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 9, 2020

Anastasia M. McKinley, WSBA 20789
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:

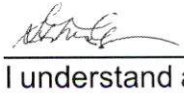
a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held
- 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
- Amount of time spent per case

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 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 SUMMER RIFE TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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, in addition to contracts on a full-caseload monthly-compensated basis, it is also necessary to award "Conflict and Overflow" contracts in order to better manage the anticipated caseload in a fine-grained manner; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award a contract to attorney Summer Rife for public defense services on Criminal Cases in Benton County District Court on a Conflict and Overflow basis only; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Summer Rife, designated BCDC2122SMR001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $210 (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, Summer Rife
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122SMR001

CONTRACT SUMMARY			
Contract Type	**Conflict & Overflow Only**		
Contract Number	**BCDC2122SMR001**	**Contract Holder**	**Summer M. Rife**
WSBA #	**57150**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**100**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	**☒ By the case** **☐ Monthly** **☐ Hourly** **☐ By the case but paid monthly**
Compensation Payable To:	**Rodriguez, Interiano, Hanson & Rodgers, PLLC**		
Contract Slot Identifier: DCC-2			

THIS AGREEMENT is entered into by and between **Summer M. Rife,** attorney at law, Washington State Bar Association **# 57150** ("Attorney"), dba Rodriguez, INteriano, Hanson & Rodgers, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

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

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

*c) **In-Custody Team** **assignment**:* Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **one hundred (100)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

***All compensation shall be payable to: Rodriguez, Interiano, Hanson, & Rodgers, PLLC** since Attorney is an associate with that firm.*

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

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

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

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

15. **INSURANCE.**

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

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

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

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

c. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and

property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

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

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

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

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

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

d. **Other Insurance Provisions**:

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

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

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

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

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

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

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

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

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

17. **TERMINATION.**

Cause for Termination and Notice

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

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

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this

Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual

Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other

Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an

appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be

selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and

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

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

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

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 10, 2020 16:03 PST)
_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 11, 2020

Summer Rife
Summer Rife (Nov 11, 2020 09:33 PST)
_____
Summer M. Rife, WSBA 57150
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)

Dennis Hanson
Dennis Hanson (Nov 10, 2020 16:12 PST)
_____
Dennis A. Hanson, WSBA 41655
I am a principal with signing authority for Rodriguez, Interiano, Hanson, and Rodgers, 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, 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
- 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
- Amount of time spent per case

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:

Summer Rife
Summer Rife (Nov 11, 2020 09:38 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:	November 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Stacey McKinley
i) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 BENJAMIN RILEY TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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 Benjamin Riley for public defense services on Criminal Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Benjamin Riley, designated BCDC2122BJR001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, (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, Benjamin Riley
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122BJR001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2122BJR001**	**Contract Holder**	**Benjamin J. Riley**
WSBA #	**34949**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Saxton Riley, PLLC**		
Contract Slot Identifier: DCF-2			

THIS AGREEMENT is entered into by and between **Benjamin Riley,** attorney at law, Washington State Bar Association **# 34949** ("Attorney"), dba Saxton Riley, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **1112 Meade Ave, Prosser, WA 99350.** Attorney's current local office telephone and fax numbers are **(509) 786-1817** and **(509) 786-1617** respectively; and Attorney's current office/work e-mail address is **ben@saxtonriley.com.**

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES**. During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

c) ***In-Custody Team*** **assignment**: Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **three hundred ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

***All compensation shall be payable to: Saxton Riley, PLLC** since Attorney is a principal with that firm.*

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

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

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

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

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

15. **INSURANCE.**

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

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

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

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

c. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and

property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

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

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

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

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

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

d. **Other Insurance Provisions:**

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

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

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

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

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

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

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

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

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

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

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

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

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

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

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

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

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

17. **TERMINATION.**

Cause for Termination and Notice

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

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

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this

Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual

Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other

Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an

appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be

selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and

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

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

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

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 9, 2020 11:31 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 12, 2020

Benjamin J. Riley (Nov 12, 2020 12:39 PST)

Benjamin Riley, WSBA 34949
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
- 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
- Amount of time spent per case

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:

Benjamin J. Riley (Nov 12, 2020 12:39 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:	November 24, 2020
Subject:	Awarding public defense contracts for District Court criminal cases
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 District Court by way of a combination of staff trial attorneys and contract attorneys. Almost all of the contracts are scheduled to expire on December 31, 2020. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded a Benton County District Court public defense contract for the 2021-2022 contract cycle.

a) Adrienne Farabee
b) Benjamin Riley
c) Brian Gieszler
d) Douglas McKinley
e) Elisa Riley
f) Heather Carlson
g) Mark Cano
h) Rebecca Lemons
i) Stacey McKinley
j) Summer Rife

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys 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 ELISA RILEY TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for 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 Elisa Riley for public defense services on Criminal Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Elisa Riley, designated BCDC2122EVR001, for services to be provided in Benton County District Court to defendants charged with criminal offenses, commencing January 1, 2021 and expiring December 31, 2022, with a per case compensation in the amount of $6,375 per month in 2021 and $6,500 per month in 2022, 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, Elisa Riley
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122EVR001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDc2122EVR001**	**Contract Holder**	**Elisa V. Riley**
WSBA #	**36142**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Saxton Riley, PLLC**		
Contract Slot Identifier: DCF-3			

THIS AGREEMENT is entered into by and between **Elisa V. Riley,** attorney at law, Washington State Bar Association **# 36142** ("Attorney"), dba Saxton Riley, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District 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 misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2021** and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **1112 Meade Ave, Prosser, WA 99350.** Attorney's current local office telephone and fax numbers are **(509) 786-1817** and **(509) 786-1617** respectively; and Attorney's current office/work e-mail address is **elisa@saxtonriley.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

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

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

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

constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

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

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

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

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

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

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

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

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

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

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

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall 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 the Benton County District 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 misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District 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 post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District 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; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

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

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling 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.

c) ***In-Custody Team*** **assignment:** Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

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 particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **three hundred ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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 District Court and Attorney continues representing the same person in such matter within a 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, however, 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. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

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

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct and a serious and incurable breach of this agreement that shall result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

(i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130;under the laws of the State of Washington, any other State, or Federal law, or any misdemeanor sex offense.

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the year 2021, $196.15 per case as a flat fee

ii) for the year 2022, $200 per case as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,375 in the year 2021 and $6,500 in the year 2022. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

All compensation shall be payable to: Saxton Riley, PLLC since Attorney is a principal with that firm.

b. **Payment of compensation shall be contingent on Attorney complying with case reporting provisions stated herein, including in Articles 8(e) and 3(f). Failure by attorney to comply with case reporting provisions shall be cause to delay payment of compensation until such failure is remedied.**

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for trial per diems and arraignment docket assignment (12.e) and RALJ appeals (12.f) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses or otherwise retain professional services directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

a. **Professional Liability Insurance**: Prior to the start of work under this Contract, the Attorney shall secure and maintain at his/her own expense Professional Liability Insurance appropriate to the Attorney's profession and shall be written subject to limits of not less than one million dollars ($1,000,000) each claim and in the aggregate. Such insurance will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the Attorney's services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the Attorney's services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. Attorney is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. Attorney shall annually provide Counties with proof of all such insurance.

b. **Workers Compensation:** Attorney shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of Attorney and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, Attorney waives all rights of subrogation against the Counties for recovery of damages to the extent they are covered by workers compensation and employers liability.

If Attorney, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and Counties (or either of them) incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Attorney shall indemnify the Counties (or either of them). Indemnity shall include all fines, payment of benefits to Attorney or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to Counties by Attorney pursuant to the indemnity agreement may be deducted from any payments owed by Counties to Attorney for performance of this Contract.

c. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and

property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal Injury and Advertising Injury
$1,000,000 Each Occurrence

The commercial general liability policy shall contain an endorsement naming the Counties, its elected and appointed officials, employees and agents as an Additional Insured and an endorsement that specifically states that Attorney's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the Counties.

The Attorney will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section **[7]**. Attorney's commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

Attorney shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

$1,000,000 Each Accident
$1,000,000 Policy Limit for Disease
$1,000,000 Each Employee for Disease

d. **Other Insurance Provisions:**

1. The Attorney's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the Counties, its elected and appointed officers, officials, employees and agents. Attorney's liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the Counties shall be excess and not contributory to Attorney's insurance policies.

2. The Attorney's liability insurance policies shall contain no special limitations on the scope of protection afforded to the Counties as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, its officers, officials, employees or agents.

4. The Attorney's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The Attorney shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the Attorney maintains higher limits than the minimums required in this contract, the Counties require and shall be entitled to coverage for the higher limits maintained by the Attorney.**

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

8. Attorney hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Attorney to enter into a pre-loss agreement to waive subrogation without an endorsement, then Attorney agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Attorney enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to Attorney under this Agreement are expressly conditioned upon Attorney's strict compliance with all insurance requirements. Payment to Attorney may be suspended in the event of non-compliance. Upon receipt of evidence of Attorney's compliance, such payments not otherwise subject to withholding or set-off will be released to Attorney.

f. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have a A. M. Best's rating of at least A-VI or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Counties' Risk Managers. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. All insurance to be maintained by the Attorney, other than Professional Liability and Workmen's Compensation, shall specifically include the Counties, its elected and appointed officers, officials, employees and agents as "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the Counties. Any insurance or self-insurance maintained by the Counties, its elected and appointed officials, employees and agents shall be excess of the Attorney's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Benton County Office of Public Defense within ten (10) days of execution of this Agreement.

3. All written notices under this Section **[8]** and notice of cancellation or change of required insurance coverages shall be mailed to the Benton County Office of Public Defense.

4. The Attorney or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Office of Public Defense: Attn: Office Manager, Benton County Office of Public Defense, 7122 W Okanogan Pl, Bldg A, Kennewick, WA 99336.

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County District Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and such complaint is not amenable to resolution by simply facilitating the communication between the client and attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County Court Administrator and the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the PDM within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The PDM shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County District Court and/or the District Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. **TERMINATION.**

Cause for Termination and Notice

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In the event of automatic termination or termination pursuant to suspension or disbarment, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election ("Early Termination"). Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney's continuing obligation to accept case appointments shall be governed by the provisions of Section 17.f herein.. A ninety (90) day notice of termination given by either party under this paragraph 17.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 30 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this

Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual

Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County District Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's PDM, nor the Benton County District Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

19. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 19.a-d below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other

Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County District Court Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the District Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an

appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

(i) The proposed sub-contractor meets all the criteria set out in Section 3 of this Agreement; and

(ii) County agrees to the selection of the sub-contractor in its sole and exclusive discretion; and

(iii) Sub-contractor signs an acknowledgement and agreement to abide by all the terms and conditions of this Agreement (in such form as may be required by County); and

(iv) Attorney agrees to continue to be professionally responsible for any sub-contracted work.

Even in the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

20. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County District Court.

21. **OTHER APPOINTMENTS.**

Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with

Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

24. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

25. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

26. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

27. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

28. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

29. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be

selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his below-stated office address; mailed to the County's PDM at his below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at the below-stated official email address for notices:

Eric Hsu, Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.Benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and

regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation, and shall further comply with the County's policy against sexual harassment.

32. **PUBLIC DEFENSE MANAGER.** Attorney acknowledges that the County has established and employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the PDM to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

33. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that Attorney's performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

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 9, 2020 13:33 PST)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Nov 9, 2020

Elisa Riley (Nov 9, 2020 14:35 PST)

Elisa Riley, WSBA 36142
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
- 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
- Amount of time spent per case

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:

Elisa Riley (Nov 9, 2020 14:35 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.

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 171

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

Prepared by: S. Berry

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Juvenile-Operations Dept Nbr: 171

Fund Name: Public Safety Tax Fund 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
527.100	4103	Professional Services	$3,205	527.100	1710	Counselor II	$3,205
TOTAL			$3,205	TOTAL			$3,205

Explanation:

This transfer is necessary to cover the 2019 and 2020 COLA that was approved in the guild contract BC Resolution 2019-117 that was not in the baseline 2019-2020 budget.

Prepared by: Shela Berry Date: 12-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 138

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto .

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Prepared by: S. Berry

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Adult & Juvenile Drug Court Dept Nbr: 138

Fund Name: Public Safety Tax Fund Fund Nbr: 0148101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.232	3101	Supplies	$3,000
TOTAL			$3,000

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.232	1664	Counselor III	$3,000
TOTAL			$3,000

Explanation:

This transfer is necessary to cover the 2019 and 2020 COLA that was approved in the guild contract BC Resolution 2019-117 that was not in the baseline 2019-2020 budget.

Prepared by: Shela Berry Date: 12-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 115 TO DEPARTMENT NUMBER 123

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto; 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 Superior Court

Dept Nbr: 115 to Department Number 123

Fund Name: Public Safety Tax

Fund Nbr: 0148101

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 123

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	$12,000	512.210	1473	Superior Court Judge	$ 12,000
TOTAL			$12,000	TOTAL			$12,000

Explanation:

To appropriate funding for wages & benefits

Prepared by: Linda Ivey

Date: 17-Nov-2020

Approved ❑

Denied ❑

Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24, 2020
Subject:	Amending Res. 2018-726 to correct the expiration date of contract with MMEC Architecture on New Administration Building
Presenter:	
Prepared By:	S. Christen
Reviewed By:	R. Blain

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance
	☐ Sign Letter/Document	☐ Execute Contract

Summary / Background Information

Per Resolution 2018-726 dated October 16, 2018, the Board approved a contract with MMEC Architecture & Interiors for the New Administration Building. The contract, in AIA Document B102-2017 Section 5.9, states "this Agreement shall terminate one year from the date of Substantial Completion." The Resolution states, incorrectly, "the Agreement will expire December 31, 2020."

The Resolution needs to be amended to reflect the correct termination date.

Fiscal Impact

Amount: **n/a**

Fund: **n/a**

Recommendation

Amend Resolution 2018-726 to state "BE IT FURTHER RESOLVED the Agreement will expire one year from the date of Substantial Completion."

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF AMENDING RESOLUTION 2018-726 TO REFLECT THE CORRECT TERMINATION DATE OF THE CONTRACT WITH MMEC ARCHITECTURE & INTERIORS FOR THE NEW ADMINISTRATION BUILDING PROJECT

WHEREAS, on October 16, 2018 the Board of County Commissioners approved Resolution 2018-726 and executed a contract with MMEC Architecture & Interiors for the New Administration Building project; and

WHEREAS, the contract in AIA Document B102-2017 Section 5.9, states "this Agreement shall terminate one year from the date of Substantial Completion."; and

WHEREAS, the resolution states, incorrectly, "the Agreement will expire December 31, 2020."; and

WHEREAS, Resolution 2018-726 needs to be amended to reflect the correct termination date; **NOW THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners hereby amends Resolution 2018-726 to state the Agreement will expire one year from the date of Substantial Completion.

Dated this 24th day of November 2020.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member
Constituting the Board of County Commissioners of Benton County, Washington

Attest:_____
Clerk of the Board

Original: Public Works
c: Auditor, PA

S. Christen

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24, 2020
Subject:	Authorizing the County to enter into an agreement alongside our outside counsel, Mullen Coughlin, LLC, with an outside information security services provider, Kroll Information Assurance, LLC, for data breach notification, communications, and monitoring support.
Presenter:	
Prepared By:	Reid Hay
Reviewed By:	Adam Morasch

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 has retained the firm of Mullen Coughlin, LLC, as outside counsel to assist in the response to the incident involving a potential breach of personal identifiable information within one county employee's email account. Outside counsel has recommended Kroll Information Assurance, LLC ("Kroll") to provide information security services related to the breach, and the choice has been approved by our insurer. The proposed agreement is a three-party agreement between the county, outside counsel, and Kroll. As provided in the associated statement of work, Kroll will provide notification to those potentially affected by the data breach, credit monitoring services for those who request it, and a call center to address questions from affected individuals.

Fiscal Impact

Amount: **A maximum of $15,000.00, excluding WSST.**

Fund: **Risk Management**

Recommendation

Recommend the Board of Benton County Commissioners enter into the three-party Information Security Services Agreement and related Statement of Work with an information security contractor and outside counsel for services needed to provide notification and support services associated with a data breach event.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE COUNTY TO ENTER INTO AN AGREEMENT AND STATEMENT OF WORK WITH AN INFORMATION SECURITY SERVICES CONTRACTOR, KROLL INFORMATION ASSURANCE, LLC FOR DATA BREACH NOTIFICATION, COMMUNICATIONS, AND MONITORING SUPPORT.

WHEREAS, a potential data breach incident involving a county employee's e-mail account was discovered and investigated; and

WHEREAS, the county has retained the firm of Mullen Coughlin, LLC, as outside counsel to assist in the response to the incident; and

WHEREAS, the county's outside counsel in this matter, Mullen Coughlin, LLC, is also included as a party to the Agreement and Statement of Work; and

WHEREAS, outside counsel has recommended contracting with Kroll Information Assurance, LLC ("Kroll") to provide information security services related to the breach; and

WHEREAS, as provided in the associated statement of work, Kroll will provide notification to those potentially affected by the data breach, credit monitoring services for those who request it, and a call center to address questions from affected individuals; and

WHEREAS, the county's insurer has approved the choice of contractor and the associated Statement of Work, and the Prosecuting Attorney's Office Civil Division has reviewed the Agreement and Statement of Work and approved as to form; and

WHEREAS, the Risk Manager, IT Manager and the County Administrator recommend that alongside our outside counsel, Mullen Coughlin, LLC, the Board of County Commissioners enter into the Agreement and related Statement of Work with Kroll; NOW, THEREFORE

BE IT RESOLVED, the Chairman of the Board of Benton County Commissioners, Benton County, Washington, is hereby authorized to sign the attached Information Security Services Agreement and Statement of Work for Data Breach Services with Kroll Information Assurance, LLC, for information security services in an amount not to exceed $15,000.00 excluding WSST.

Dated this ___ day of _____ , _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Risk Management cc:
Information Technology

Prepared by: R. Hay

Kroll | A Division of DUFF & PHELPS

INFORMATION SECURITY SERVICES AGREEMENT

This Information Security Services Agreement ("Agreement") is entered into this November 5, 2020 (the "Effective Date") by and among **Kroll Information Assurance, LLC on behalf of itself and its affiliates ("Kroll")**, a Delaware company with a principal office at 55 East 52nd Street, 31st Floor, New York, NY 10055; and **Mullen Coughlin LLC**, a law firm doing business as a Pennsylvania limited liability partnership having its principal place of business at 426 W. Lancaster Avenue, Suite 200, Devon, PA 19333 ("Attorney") as counsel for and on behalf of **Board of Benton County Commissioners ("Client")** with an office at 620 Market St., Prosser, Washington 99350-1300 (each a "Party" and collectively referred to as "Parties"), and includes all Statements of Work, exhibits and appendices.

Recitals

WHEREAS, Kroll provides certain Information Security Services (as defined below to ascertain a breach of information systems' security (as defined below) has occurred); and,

WHEREAS, Attorney, as counsel for Client, has retained Kroll to provide such Information Security Services to facilitate Attorney's provision of legal advice to Client regarding its legal position if Client suffered a breach of its information systems' security;

WHEREAS, Kroll has agreed to be retained by Attorney to determine whether Client suffered a breach of its information systems' security pursuant to the terms and conditions set forth herein and the applicable Schedules and/or Statements of Work. Additionally, in consultation with and with the approval of Client, Attorney may engage Kroll to provide additional, complementary Information Security Services which, if elected, shall be subject to the terms and conditions set forth herein and the applicable Schedules and/or Statements of Work.

WHEREAS, while Kroll will perform its services at the direction of Attorney, the Parties agree that Client is exclusively responsible for payment of Kroll's fees and costs for services hereunder.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth more specifically below.

Definitions

As used herein, the following terms shall have the stated definitions unless the context clearly mandates otherwise.

"Information Security Services" means the services or programs provided by Kroll pursuant to a Statement(s) of Work.

"Breach of Information Security" means the unauthorized access or loss of custody by Client, or a third-party service provider, of Client's data or of data that Client holds on behalf of another party.

"Suspected Breach of Information Security" means an incident in which Client's data (or data that Client holds) may have been compromised through unauthorized access or loss of custody, but whether such data has been compromised or the extent thereof cannot reasonably be determined without further investigation and/or analysis of the underlying facts.

"Statement of Work" means any supplementary attachment to this Agreement that sets forth Information Security Services to be provided to Client by Kroll and the pricing associated with such Information Security Services.

"Term of Agreement" means the contract term as set forth below and any renewal term.

Terms and Conditions

1. Scope of Services

Kroll shall provide the Information Security Services set forth in the applicable Statement of Work. Upon Attorney's request and at Attorney's direction, Kroll shall perform the Information Security Services. Kroll understands that Attorney may supply Kroll with certain information and materials developed for litigation or other matters protected by attorney-client privilege and the work product doctrine and that Kroll may develop certain information and materials regarding such matter. Kroll agrees that such information and materials are protected by the attorney-client privilege and the work product doctrine. At the conclusion of the work performed under the direction of Attorney, Kroll shall provide to Attorney exclusively any and all final reports or information requested by Attorney regarding Kroll's conclusions.

Any additional Information Security Services to be performed by Kroll will be set forth in a Statement of Work that references this Agreement, sets forth the charge for and describes such additional Information Security Services and is signed by Client, Attorney, and the applicable Kroll entity providing Services. Any additional Information Security Services will be governed by the terms of this Agreement.

The Parties shall communicate and cooperate to permit each to fully carry out its obligations hereunder and will provide Kroll with such assistance and access to information, data, documentation or other materials and personnel where reasonably required (or which would reasonably be expected to be relevant to or required by Kroll) to perform the Information Security Services. Attorney will keep Kroll fully informed of any developments and information which may come to its attention and which might have a bearing on the provision of the Information Security Services.

Kroll will not be responsible for any failure to advise or comment on any matter which falls outside the scope and limitations of the Information Security Services hereunder, and will have no responsibility to update any report or other deliverable for events or changes of circumstances which take place after it or they are issued. Reports and information provided hereunder cannot amount to a guarantee, determination or prediction of future events, nor be relied upon as such.

2. Fees

Kroll will assess fees and charges for the Information Security Services in accordance with the pricing set forth in the applicable Statement of Work. Kroll agrees that Client is exclusively responsible for payment of all of Kroll's fees, charges, and invoices for services provided hereunder. Client acknowledges that the actual amount of the professional fees incurred will depend on the circumstances encountered during performance of the Information Security Services. The fees and charges are based on the scope of the Information Security Services described in the relevant Statement of Work and Kroll's current understanding of the assignment therein. The fees and charges for the Services do not include applicable federal, foreign, state or local sales, use, value added, gross income, excise or ad valorem taxes. Client will be solely responsible for all such taxes levied or assessed in connection with Kroll's performance of Services, other than income taxes assessed with respect to Kroll's income.

Client will be billed by Kroll on a monthly basis. All invoices are due within thirty (30) days from date of invoice. Interest and penalties may accrue at the rate of 1.5% per month or the maximum amount permitted under applicable law, whichever is greater, for invoices more than sixty (60) days in arrears. Kroll reserves the right to terminate the Information Security Services at any time if Client fails to pay invoices in a timely manner. If it becomes necessary for Kroll to incur expenses in order to collect the fees and expenses owed to Kroll, Client agrees to reimburse Kroll for such expenses, including reasonable attorney's fees. Client is responsible for paying all invoices that Client does not in good faith dispute.

3. Term

This Agreement shall commence on the Effective Date and shall continue in effect until terminated by any Party. Kroll, Client or Attorney may terminate this Agreement upon thirty (30) business days' notice, in

writing; provided however, that for any Statement of Work for data breach notification and management services provided by Kroll Information Assurance, LLC, termination of the Statement of Work and this Agreement shall require sixty (60) days' notice in writing. In the event of termination by Client, Client shall pay Kroll for all services rendered, costs incurred and undisputed invoices and charges outstanding as of the effective date of termination. To the extent Client is billed any reoccurring monthly charges, Client agrees to continue to pay for such charges through the duration of the month in which the termination of this Agreement was effective.

In the event of a termination of this Agreement for any reason, whether for cause or otherwise, paragraphs 2, 4, 5, 6, 8-15 and 22 shall survive such termination.

4. Compliance with Laws

Attorney, on behalf of Client, acknowledges and agrees that Client is solely responsible for complying with all applicable laws, including but not limited to breach notification laws, pertaining to an actual or suspected Breach of Information Security. Attorney and Client agree that Kroll is not being retained to provide legal advice, that Client and Kroll do not have an attorney-client relationship and that Attorney remains exclusively and directly responsible for any legal opinions or legal strategy arising out of Kroll's performance of the Information Security Services. Rather, Kroll is retained by Attorney to assist Attorney and act at Attorney's direction as Attorney's consultant. Kroll shall perform the Information Security Services in compliance with applicable laws.

Client represents and warrants that (i) it has the right to be in possession of, or is the owner of, all equipment, data, media and information furnished hereunder ("Data"), (ii) such Data is furnished for a lawful purpose, and (iii) where applicable, Client's collection, possession, processing and transfer of such Data is in compliance with any and all applicable laws, regulations and company policies, including without limitation those concerning data privacy and employee consents.

5. Information Requests and Subpoenas

If any consumer, person or entity (including without limitation regulatory bodies) requests (in the form of an administrative or legal request) or subpoenas any information or materials relating to the Information Security Services performed pursuant to this Agreement, which are in the custody or control of Kroll, Kroll shall, to the extent legally permissible, promptly inform Client of such request or subpoena and permit Client an opportunity to seek a protective order prior to releasing any information or materials or to otherwise limit disclosure relating to the Information Security Service. Should Kroll take any legal action to seek protection against disclosure of such information or materials, Client will either retain legal counsel to represent Kroll or will indemnify Kroll for all costs and expenses, including reasonable attorneys' fees and disbursements, resulting from such action. If Kroll is required to respond to the request or subpoena or to provide testimony, Client agrees to compensate Kroll for reasonable costs and expenses incurred (e.g., reimbursement of reasonable attorneys' fees and disbursements), which includes without limitation, paying the applicable hourly rate to Kroll for responding to discovery or other legal requests and preparing for and testifying in depositions, administrative or legal proceedings, and at trial.

6. Confidentiality

a. For purposes of this section, "Confidential Information" means the disclosing Party's trade secrets, "know-how", business plans, marketing strategy, financial information, data security information, technology, intellectual property, audit reports, customer lists, information relating to loyalty programs, technology, enrollee or customer lists and any personal identifying information, solicitation methods, membership and marketing methods, and all information concerning or related to the foregoing, the terms and conditions of this Agreement, information that the disclosing Party designates, in writing or otherwise, as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential, and any tangible materials, in any media, incorporating, analyzing or compiling any of the foregoing information. "Confidential Information" does not include information that: (i) is now or subsequently becomes generally available to the public through no fault or breach on the part of the receiving Party; (ii)

is received from any person or entity who, to the best of the receiving Party's knowledge, has no duty of confidentiality to the disclosing Party; (iii) the receiving Party can demonstrate to have had lawfully in its possession without an obligation of confidentiality prior to disclosure hereunder; or (iv) is independently developed by the receiving Party without the use of any Confidential Information of the disclosing Party as evidenced by written documentation.

b. Each Party agrees that it will (a) use any Party's Confidential Information only to the extent necessary to perform its obligations or exercise its rights under this Agreement; (b) not disclose, without the disclosing Party's prior written consent, the disclosing Party's Confidential Information to any third party (other than as provided in clause (c) below); and (c) disclose any other Party's Confidential Information only to those of its employees, subcontractors, and legal and financial advisors who need to know such information for purposes of this Agreement, provided that all such persons are informed that the information is confidential and as such, is subject to protection and handling in accordance with the terms of this Agreement. The receiving Party may disclose Confidential Information to the extent required pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative, legislative, regulatory or self-regulating authority or body, provided that the receiving Party shall use commercially reasonable efforts to give the disclosing Party sufficient prior written notice in order, at its own expense, to contest or defend against such requirement or order as set forth above. If Kroll or its affiliates or agents encounter what may be considered illegal contraband on any computer media delivered in the course of the engagement, Kroll reserves the right to disclose such contraband to the appropriate authorities.

c. Notwithstanding the foregoing or anything to the contrary contained herein, the Parties agree that investigative reports and information received from Kroll (each, a "Kroll Report") will be treated as confidential and are intended solely for Attorney's and Client's private and exclusive use and subject to Section 1 above, except with Kroll's prior written consent, provided, however, that Kroll Reports may be disclosed by Attorney or Client (i) to Client's employees, counsel, agents, and representatives (the "Representatives") who are aware of and agree to the confidentiality obligations herein, and Client shall be responsible for the use and disclosure of Kroll Reports by the Representatives as if it were Client's own use and disclosure, or (ii) if required by law or in response to a lawful order or demand or request of any court of competent jurisdiction, regulator, or regulatory authority or regulatory agency, provided, however, that before making such a disclosure, Attorney or Client will provide Kroll with prompt prior notice of any such disclosure so that Kroll and/or Client may seek a protective order or other appropriate remedy. Should Attorney so request, Kroll may deliver its findings to Attorney in person or orally, either prior to, or in lieu of, memorializing same in written form. Attorney and Client agree that any Kroll Reports provided hereunder will not be used for employment purposes, credit evaluation or insurance underwriting purposes.

d. Each Party agrees that its obligations under this Section are necessary and reasonable in order to protect the disclosing Party and its business, and each Party expressly agrees that monetary damages may be inadequate to compensate the disclosing Party for any breach by the receiving Party or its Representatives of its or their obligations under this Agreement. Each Party agrees and acknowledges that any breach or threatened breach may cause irreparable injury to the disclosing Party and that, in addition to any other remedies that may be available in law, in equity or otherwise, the disclosing Party shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any breach by the receiving Party or its agents or representatives, without the necessity of proving actual damages and without posting a bond or other security.

7. Independent Contractors

Kroll may subcontract any of the work, services or other performance required of Kroll under this Agreement without the consent of Client. Kroll will be responsible for all work performed by its independent contractors and agents as if it were performing the work itself. Kroll shall advise its independent contractors and agents, by agreement or otherwise, of the obligation to protect Client's Confidential Information and shall be responsible for any breach of obligations regarding Confidential Information by its independent contractors and agents as if Kroll had breached the obligations itself.

8. Force Majeure

Neither Party shall be responsible for any delay in performance or failure in performance of any obligations pursuant to this Agreement if such delay or failure is the result of causes beyond its reasonable control and which was not the result of such Party's negligence. Such causes shall include, without limitation, acts of God, strikes, lockouts, riots, insurrections, civil disturbances, sabotage, embargoes, blockades, acts of war, acts or failures to act of any governmental or regulatory body (whether civil or military, domestic or foreign), governmental regulations imposed after the fact, epidemic, terrorism, fires, explosions, floods, accidents, earthquakes or other natural or man-made disasters, and all occurrences similar to the foregoing.

9. Limitation on Liability

Except to the extent judicially and finally determined to have resulted from Kroll's gross negligence, fraud or willful misconduct, Client and Law Firm agree that neither Kroll nor any of its respective officers, employees, affiliates or agents will be liable for any claims, liabilities or expenses relating to the Information Security Services provided hereunder for an aggregate amount in excess of the greater of i) three times (3x) the fees paid to Kroll by Client pursuant to the SOW under which the claim arose; or ii) $250,000, not to exceed $1,000,000 in the aggregate. Kroll, Client and Law Firm, their respective officers, employees, affiliates or agents shall not be liable for consequential, special, indirect, punitive or exemplary losses, damages or expenses, including without limitation, liability for loss of data, loss of business profits, loss of product or business interruption or other pecuniary loss however the same may be caused, including the fault or negligence of such Party, provide however, as to Law Firm this limitation of liability only applies to Kroll and not to CLIENT. CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT ONLY THE KROLL ENTITY PROVIDING THE INFORMATION SECURITY SERVICES PURSUANT TO THE STATEMENT OF WORK (THE "KROLL SERVICE PROVIDER") UNDER WHICH ANY CLAIM, LIABILITY, OR EXPENSE MAY ARISE SHALL BE RESPONSIBLE AND LIABLE TO CLIENT, AND THEN ONLY TO THE EXTENT SET FORTH IN THIS SECTION. ACCORDINGLY, CLIENT HEREBY COVENANTS NOT TO SUE ANY OTHER KROLL COMPANY OR TO ADVANCE ANY CLAIMS AGAINST ANY SUCH OTHER KROLL COMPANY (OTHER THAN THE KROLL SERVICE PROVIDER) FOR ANY ALLEGED BREACH OF THIS AGREEMENT.

In the event of an unauthorized use or disclosure of personally identifiable information (as defined by applicable law or regulation) in Kroll's or its agents' custody or control ("Incident"), resulting directly from Kroll's or its agents' negligent acts or omissions, Kroll will provide legally required data breach notification to affected individuals (including associated call center services) and one (1) year of single bureau credit monitoring (or longer, where required by applicable law) to such affected individuals.

10. Indemnification

Client agrees to hold harmless and indemnify Kroll (including its respective officers, employees, affiliates and agents) against all claims, damages and costs (including reasonable attorney's fees and disbursements) asserted by a third party against Kroll arising out of an actual or suspected Breach of Information Security, the Information Security Services or this Agreement, except for such claims, damages and costs resulting from any actions by Kroll constituting finally judicially determined negligence, gross negligence, fraud or willful misconduct, breach of this Agreement or unlawful conduct.

Kroll agrees to hold harmless and indemnify Client (including its respective officers, employees, affiliates and agents) against all claims, damages and costs (including reasonable attorney's fees and disbursements) asserted by a third party against Client arising out of the Information Security Services or a breach of this Agreement by Kroll resulting from any actions by Kroll constituting finally judicially determined negligence, gross negligence, fraud or willful misconduct, breach of this Agreement, or unlawful conduct.

In connection with each third party claim, action or proceeding, each party shall make reasonable effort to (unless prohibited by law): (i) provide the indemnifying party with prompt written notice of such claim, action or proceeding, provided, however, that failure to give prompt notice shall not affect the indemnifying party's

obligations under this section unless and to extent that the failure materially prejudices the defense of the matter; (ii) permitting the indemnifying party opportunity to assume sole control over the defense of such claim, action or proceeding and all related settlement negotiations, at its sole cost and expense, with reputable independent counsel chosen by the indemnifying party who are reasonably acceptable to the indemnified party, provided, however, that indemnifying party shall not have the power or authority to enter into any settlement which compels any action or imposes any liability on the indemnified party, unless with the indemnified party's prior written consent; and (iii) reasonably cooperating at the indemnifying party's request with the defense or settlement of such claim, action or proceeding, which cooperation shall include providing reasonable assistance and information.

11. Disclaimer of Warranties

Client acknowledges that digital/computer equipment, drives, data and media may be damaged, infected or corrupted prior to forensic analysis hereunder, and that Kroll and its affiliates and agents do not assume responsibility or liability for such damage or further problems resulting therefrom. Any data, especially data restored from unknown sources, may contain viruses or other malware; therefore, Client assumes responsibility to protect itself with respect to the receipt of data from Kroll or any other party and shall advise its agents and third-party recipients to take similar precautions.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, OR ANY AMENDMENT OR STATEMENT OF WORK ISSUED HEREUNDER, KROLL DOES NOT GUARANTEE OR WARRANT THE CORRECTNESS, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE INFORMATION SECURITY SERVICES. KROLL WILL NOT BE RESPONSIBLE FOR ANY FAILURE TO ADVISE OR COMMENT ON ANY MATTER WHICH FALLS OUTSIDE THE SCOPE AND LIMITATIONS OF THE INFORMATION SECURITY SERVICES HEREUNDER, AND WILL HAVE NO RESPONSIBILITY TO UPDATE ANY REPORT OR OTHER DELIVERABLE FOR EVENTS OR CHANGES OF CIRCUMSTANCES WHICH TAKE PLACE AFTER IT OR THEY ARE ISSUED, UNLESS SPECIFICALLY AGREED TO IN SUBSEQUENT STATEMENT(S) OF WORK.

12. Jury Waiver

Each Party, to the fullest extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement or the Services. The foregoing waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise. Each Party also agrees not to include any employee, officer or director of the other Party or its affiliates as a Party in any such action or proceeding.

13. Choice of Laws; Forum Selection

This Agreement shall be governed in accordance with the laws of the state of **Washington**, without regard to its conflict of laws rules. Any claim arising under this Agreement shall be filed in the federal or state courts in the State of **Washington**, and any defense of lack of personal jurisdiction, improper venue, or *forum non conveniens* is hereby waived.

14. Attorneys' Fees

Should a claim be filed by any Party to interpret or enforce any term of this Agreement, each Party shall pay its own attorneys' fees and costs.

15. Conflicts

Client agrees that the engagement of Kroll in the current discrete Information Security Services matter does not prevent Kroll from providing future services to clients adverse to Client on matters not substantially related to the current discrete Information Security Services matter. However, Kroll agrees that it will not

disclose any of Attorney's or Client's Confidential Information and that it will be bound by the terms of Section 6 of this Agreement when providing such future services.

16. Notices

Any notice regarding this Agreement: (1) must be in writing, (2) must be delivered by either (a) certified mail, return receipt requested, postage pre-paid, or (b) a nationally recognized overnight delivery service; (3) must be delivered to the applicable Party at the address set forth below, or such other address as a Party may designate by notice in accordance with this provision; and (4) will be deemed given on the date of delivery.

If to Client:
Board of Benton County Commissioners
620 Market St
Prosser, Washington 99350-1300

With Copy to:
Claudia McCarron
General Counsel
Mullen Coughlin LLC
426 W. Lancaster Avenue
Suite 200
Devon, PA 19333

If to Kroll:
Kroll Information Assurance, LLC
55 East 52nd Street, 31st Floor
New York, NY 10055
Attn: General Counsel

17. Counterparts

This Agreement may be executed in one or more counterparts and the several executed counterparts will be considered one document with full and binding force and effect.

18. Assignment

Except as otherwise provided herein, no Party shall assign the Agreement or any of its rights or privileges without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Kroll and Client may assign this Agreement to any commonly owned and controlled companies or in the event of a merger, acquisition or sale of all or substantially all of its assets. Should Kroll or Client assign this Agreement pursuant to the terms of this section, Client and Kroll shall have the right to sue the respective assignee for any alleged breach of this Agreement, notwithstanding, but subject to, the terms of Section 9 of this Agreement.

19. Severability

Should any term or provision hereof be deemed invalid, void or unenforceable either in its entirety or in a particular application, the remainder of this Agreement shall nonetheless remain in full force and affect.

20. Merger

Except as otherwise provided herein, this Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, oral, written, or otherwise. This Agreement may be amended or modified only in a writing executed by duly authorized representatives of the Parties. All documents or schedules referred to in this Agreement are incorporated herein by reference.

21. Waiver

No waiver of any provision of this Agreement shall be valid or binding unless contained in a writing signed by the other Party.

22. Press Release

No Party shall issue a press release revealing or discussing the existence or contents of this Agreement, or make any other public statement revealing or discussing the existence or contents of this Agreement, without first obtaining the prior written consent of the other Parties.

23. Effective Date

This Agreement shall be effective as of the date set forth in the first paragraph of this Agreement.

In the event the Parties enters a Statement of Work to engage Kroll Information Assurance, LLC to perform Data Breach Management Services, the following additional terms shall apply (and shall not apply to a Statement of Work executed with Kroll Associates, Inc.

24. Client Responsibilities

Attorney on behalf of Client agrees to complete a profile providing all information requested to ensure accurate delivery of products and Services. Upon request from Kroll, Attorney, on behalf of Client, agrees to provide breach specific Frequently Asked Questions prior to notification of affected individuals. Attorney, on behalf of Client, further agrees to provide a data file in accordance with the specifications outlined in the Statement of Work and shall provide final text, logo and signature files. The timeline for mailing notification and membership materials to affected individuals will be finalized once Kroll is in receipt of a complete profile, mail-ready data file, finalized letter text and logo.

25. Security

Client and The Parties shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (1) protect the security and confidentiality of personally identifiable information of affected individuals; (2) protect against any anticipated threats or hazards to the security or integrity of such information; (3) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer; and (4) protect against unauthorized access to or use of such information in connection with its disposal. Each Party will respond promptly to remedy any known security breaches involving personally identifiable information of affected individuals and shall inform the other Party of such breaches.

26. Trademarks

Client grants to Kroll, and Kroll grants to Client, a non-exclusive, non-transferable, revocable license, without the right of sub-license, to use its respective trademarks, service marks, trade names and logos for the sole and exclusive purpose of providing data breach services pursuant to this SOW. Either Kroll or Client may revoke this license at any time upon written notice to the other. Except as expressly set forth herein, neither Kroll nor Client shall have any rights, title or interest in or to any trademarks, service marks, trade names or logos owned or otherwise used by the other Party.

27. Credit Reports

Kroll makes no warranty, express or implied, for the accuracy of the information contained in the credit reports which any individual receives and is not responsible for negative factual information contained in any such reports. Kroll assumes no liability for obtaining copies of any individual's credit report or monthly update report and shall not be imputed to have so assumed by any action taken in accordance with the Statement of Work.

28. Availability of Services

In the event the Services, or any component thereof, become unavailable or inaccessible to Kroll for any reason, including financial detriment as defined by Kroll, Kroll may elect to discontinue providing any or all of the Services. Kroll will provide 30 days advance written notice to the Parties for any discontinued Services. Kroll may, in its sole discretion, replace discontinued Services with an equal or greater valued offering. In the event Services cannot be replaced and are discontinued, Client is entitled to a prorated return of fees calculated based on the Services already provided to Members and the time remaining for Services not yet rendered. In no event can Kroll provide Services to individuals in terrorist sponsored nations, as identified by the U.S. Department of State.

29. Effect of Termination

In the event of termination of the Agreement for any reason, if Kroll has commenced an Identity Monitoring and/or Identity Theft Restoration service for an individual, such services shall continue for the duration of the enrollment period or until said individual's Identity Monitoring and/or Restoration Services is/are complete, whichever comes first, provided that any remittance due by or on behalf of such individual has been received in full.

IN WITNESS WHEREOF, Attorney, Client and Kroll have each caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

BOARD OF BENTON COUNTY COMMISSIONERS

By:_____

Name:_____

Title:_____

Date:_____

KROLL INFORMATION ASSURANCE, LLC

By:_____

Name:_____

Title:_____

Date:_____

MULLEN COUGHLIN LLC

By:_____

Name:_____

Title:_____

Date:_____

Kroll | A Division of DUFF & PHELPS

STATEMENT OF WORK
FOR
DATA BREACH SERVICES

This Statement of Work ("SOW"), dated November 5, 2020, is entered into by and between Kroll Information Assurance, LLC on behalf of itself and its affiliates ("Kroll"), and Mullen Coughlin LLC ("Law Firm"), as counsel for Board of Benton County Commissioners ("Client") and incorporates herein by reference the Information Security Services Agreement, entered into as of November 5, 2020 between Kroll, Law Firm, and Client (together with this SOW, the "Agreement"). All work under this SOW is to be performed at the direction of Law Firm and is subject to the attorney-client privilege and/or the work product doctrine. Capitalized terms herein shall have the meaning ascribed in the Information Security Services Agreement.

A. Services

Data Breach Notification & Monitoring Services

The services provided hereunder relate only to the data breach event discovered on or about January 2020. In the event additional services are requested by Client that do not relate to the above data breach event, such services will be set forth in a separate SOW. All services described herein will be provided to affected individuals via Kroll's online platform[1]. Select services can be available offline via US Postal Service upon request for an additional charge.

An "Eligible Member" is an individual included in an approved list of affected individuals provided to Kroll by Client: i) where those affected individuals are identified by Client to be recipients of the services, or ii) may also be a Member of a group of potentially affected individuals which has been identified by Client as being eligible to receive the services. Spouses and dependents of Eligible Members are not covered under the Fee Structure, unless specifically set forth therein.

Eligible Members will have until either: i) ninety (90) calendar days from the date set forth in the initial enrollment communication to Eligible Members about the event, or ii) the enrollment deadline date set forth in the individual's enrollment communication, to activate the services offered thereunder (the "Activation Period"). No Activation Period shall exceed 120 calendar days. Each Eligible Member who activates the services during the Activation Period (thereafter each an "Activated Member" and the date of activation by each Eligible Member during the Activation Period is the "Member Activation Date") will receive twelve (12) or twenty-four (24) months of the services as calculated from the Member Activation Date and expiring as of the end of the twelfth or twenty-fourth month (the "Services Period"). No Eligible Member will be permitted to activate services subsequent to the expiration of the Activation Period without express Client approval. Identity Theft Restoration Services provided hereunder will remain available to Activated Members who have an approved Restoration case, for an additional two (2) years after expiration of the Services Period.

Data Breach Notification & Communications Support

Notification - This service provides for the preparation of and distribution to the residential addresses of affected or potentially affected individuals, notification letters (as approved by client counsel), providing affected individuals with information regarding the breach event and guidance for activation of services. Up to five (5) notification letter versions are allowed (US and International letter versions all count together towards the five (5)). More than five (5) notification letter versions will be subject to an additional fee per version. Client will submit the residential addresses in accordance with the Data File Requirements set forth below. In the event the Client requests to

[1] *Kroll's online platform is compatible with the following desktop web browsers: Google Chrome, Mozilla Firefox, Microsoft Edge and Apple Safari (for Mac computers only).*

remove data from Kroll or third-party systems (ex. Data submitted by the Client in error), the Client will incur a data destruction fee, plus any relevant fees for printing new letters.

PDF Notification Letter Copies - For Clients that require digital copies of notification letters, Kroll will provide a file with a copy of the notification letter sent to each impacted individual, in PDF format. Digital copies of letters will be delivered to the Client after the notification has been completed, via secure file sharing. The digital copies will be delivered in a single file, with page breaks for each impacted individual, and will contain the specific text and format delivered to the impacted individual. PDF copies must be requested before notification begins.

Data Services - Kroll will process the residential address records received through a data standardization process that will identify duplicates, standardize addresses for U.S. Postal Service mailing, parse records if necessary, identify problem records, and sort special populations for mailing. Prior to mailing, address records received from Client may be compared against the National Change of Address (NCOA) Database. Records that can be mailed as received, or have been updated appropriately, will be processed. Records that cannot be mailed or require further research will be categorized, quarantined, and reported to the Client. Kroll will also work with the Client to identify an approach for records that require special handling and further investigative services. Kroll will work with the Client to define the business rules for identifying duplicate records to help reduce the likelihood that an individual receives multiple breach notification letters.

Extended Data Processing **-** An Engagement includes the processing of up to two (2) data files, delivered by Client to Kroll for processing. Extended Data Processing fees will be charged for any additional files (exceeding two (2) data files), regardless of the size or amount of data contained in subsequent files. Kroll will consider multiple files submitted on a single day as one file.

Call Center - A toll-free phone number provided by Kroll and staffed by an experienced call center support team to address questions about the services being provided to the affected individuals, as well as general questions about identity theft. The support team will be knowledgeable about the breach event and able to address specific questions about the services being provided. The Call Center is the focal point for all calls, and callers are transferred based on need. The Call Center may be referenced on a client website or in a notification letter, but not in a written press release. The Call Center is staffed during the Activation Period from 8 am to 5:30 pm, Central Time, Monday through Friday excluding major U.S. holidays.

Standard Reporting - (delivered via e-mail) is provided daily during the first two (2) weeks after the call center opens or mailing commences, and weekly thereafter, includes the following fields: (as applicable) Number of Enrolled, Number of Calls to Call Center, Number of Kroll Monitoring Activations, and Number of Returned Mail. These items are reported daily for the first two weeks of an Engagement, commencing when the call center goes live and/or communication is sent and weekly thereafter. (Included)

Enhanced Reporting **-** Clients may select Enhanced Reporting to increase the frequency or duration of reporting, or when Client wishes to add additional items or metrics to the reporting. Enhanced Reporting fees will apply to any Reporting requests that exceed Standard Reporting.

Special Populations

Deceased Individuals	Notification to a deceased individual is directed to the estate of the deceased individual. Kroll can provide Eligible Member Notification, Call Center, Fraud Consultation, and Identity Theft Restoration services. Consumer Identity Monitoring services are not available for the credentials of the deceased individual. All services must be initiated, managed, and maintained by the appropriate legal representative of the estate
Minors	Kroll can provide Eligible Members Notification, Call Center, Fraud Consultation, and Identity Theft Restoration services. Notification is directed to the parent or legal guardian of any minor impacted by an event. All services must be initiated, managed, and maintained by the parent or guardian of the minor.

International Notification Letter (non-EEA residents)	This service provides for the preparation of and distribution to the residential addresses of affected or potentially affected individuals residing outside of the U.S., Notification letters (as approved by client counsel) providing affected individuals with information regarding the breach event. Client will submit the residential addresses in accordance with the Data File Requirements set forth below and all exceptions and/or amendments to such data file must be received within thirty (30) calendar days of submission of the initial data file.

Locator Address Find

Kroll can utilize a Social Security number search database to help remediate records with insufficient or out-of-date mailing information to increase the likelihood of Notification letters reaching those affected by an event. Locator Address Find can also locate records in your file associated with a deceased individual. This service is only available in conjunction with Kroll providing Notification services for the individuals submitted.

Consumer Identity Monitoring

Single Bureau Credit Monitoring - Single bureau credit monitoring will be provided to Activated Members. The credit data comes from one of the national credit bureaus. This service can be accessed online by the Eligible Member where credit activity will be reported promptly to an Activated Member via email. Where offline service is selected, this service may be received via U.S. Postal Service by completing a credit authorization process with Kroll. Credit Monitoring does not affect an individual's credit score, nor does it appear as a hard inquiry on his or her credit report when the credit report is accessed by a third party.

Triple Bureau Credit Monitoring - Triple bureau credit monitoring will be provided to Activated Members. The credit data comes from the national credit bureaus. This service can be accessed online by the Eligible Member where credit activity will be reported promptly to an Activated Member via email. Where offline service is selected, this service may be received via U.S. Postal Service by completing a credit authorization process with Kroll. Credit Monitoring does not affect an individual's credit score, nor does it appear as a hard inquiry on his or her credit report when the credit report is accessed by a third party.

Offline Service Delivery - In the event the Client has impacted individuals that cannot or prefer not to receive digital communication for the monitoring service, Kroll can provide offline service delivery for an additional fee. These services include the processing of the individual's credit authorization and the delivery of credit reports and alerts via U.S. Postal Service, as applicable. For each offline Activated Member, the Client will be billed for the monitoring service(s) and an offline management fee.

Consultation & Restoration

Fraud Consultation **-** If an Eligible Member's situation appears fraud related or identity theft related following a conversation with the Call Center (or as otherwise routed to Kroll from the Client), the call will be promptly directed to a Kroll fraud specialist. The fraud specialist is able to consult with the Eligible Member to help further identify the nature of the potential issue and will further advise about resources, processes, and next steps for the Eligible Member's identity recovery work. Kroll's fraud specialists will be available to answer questions regarding identity theft and fraud issues from 7am to 7pm Central Time, Monday through Friday excluding major holidays.

Identity Theft Restoration Services - In instances of suspected identity theft, Kroll will recommend to the Activated Member that a case be opened for Identity Theft Restoration Services. Kroll's Fraud Specialists can perform the bulk of the restoration work required to attempt to restore the Activated Member's identity to pre-theft status.

B. Fee Structure

Excluding interest and penalties or expenses or fees incurred by Kroll in collecting delinquent payments, the total sum of costs, fees, and expenses to be paid by Client under this Agreement shall not exceed $15,000.00 without prior written approval from Client.

Data Breach Notification & Communications Support	**Fee[1]**
Set up Fee	$500
Data Breach Notification - First-Class Mail, four page (2 sheet), duplex, black & white letter[2] *(Per Eligible Member, up to 5 letter versions)*	$1.35
Call Center[1] *(Per Eligible Member)*	$.67
PDF copies of notification letters (Optional)	$500.00 + $0.01 per person
Extended Data Processing *(per data file after initial two (2))*	$300.00
Data Destruction Fee *(per letter printed)*	$0.18
LOCATOR Address Find (Optional) [3] (*Per individual record, per search provided ($500.00 minimum fee))*	$.75

Consumer Identity Monitoring & Restoration	**Fee[1]** ***12 Months***	**Fee[1]** ***24 Months***
1 Bureau Credit Monitoring[4] *(Per Activated Member)*	$8.75	$17.50
3 Bureau Credit Monitoring[4] *(Per Activated Member)*	$35.85	$71.70
Fraud Consultation and Identity Theft Restoration Services (*Per Eligible Member)*	Included	
Offline Management Fee[5] (*Per request processed.)*	$4.75	

[1] Call Center fees will be billed to the Client in month one. Fees for all other services rendered will be billed to Client monthly as services are delivered.

[2] Clients requiring more than 5 letter versions will be subject to a $300.00 fee per additional letter version.

[3] Locator Services only available in conjunction with Notification services.

[4] Consultation Services are provided at no additional cost to Eligible Members who are not considered part of a Special Population.

[4] Restoration Services are provided at no additional cost to Activated Members.

[5] Regardless of package selected, offline Eligible Members can only receive 1 Bureau Credit Report, 1 Bureau Credit Monitoring, 3 Bureau Credit Monitoring, and $1M Identity Fraud Loss Reimbursement as offline services. All other services are available exclusively online.

C. Service Exclusions

Credit Services Exclusions

- Minors and deceased individuals are excluded from receiving credit reports and monitoring services through this program.
- Credit services are based upon consumer credit activity occurring in the United States of America ("U.S.").
- U.S. citizens who live abroad (expatriates) and no longer have a U.S. residential address are typically unable to receive or validate credit reports and monitoring alerts.
- Prior to receiving any credit services, including credit reports provided with Identity Theft Restoration Services, Activated Members must create an account with Kroll to verify their identity.

Restoration Services Exclusions

- *Legal Remedy* – Any stolen identity event where the Activated Member is unwilling to prosecute or otherwise bring a civil or criminal claim against any person culpable or reasonably believed to be culpable for the fraud or its consequences.
- *Dishonest Acts* – Any dishonest, criminal, malicious or fraudulent acts, if the Activated Member(s) that suffered the fraud personally participated in, directed or had knowledge of such acts.
- *Financial Loss* – Any direct or indirect financial losses attributable to the stolen identity event, including but not limited to, money stolen from a wallet, unauthorized purchases of retail goods or services online, by phone, mail or directly.
- *Pre-existing Stolen Identity Event Limitations* – Any circumstance wherein the Activated Member had knowledge of, or reasonably should have had knowledge of a pre-existing stolen identity event based on information provided to them prior to enrollment in the program.
- *Business* – The theft or unauthorized or illegal use of any business name, DBA or any other method of identifying business (as distinguished from personal) activity.
- *Third Parties not Subject to U.S. or Canadian Law* – Restoration services do not remediate issues with third parties not subject to United States or Canadian law that have been impacted by an individual's stolen identity event, such as financial institutions, government agencies, and other entities.

D. Data File Requirements

File Requirements	
1	A "Primary Group" column and a "Secondary Group" column are used to differentiate populations where Kroll's services may differ by demographic distinction.
2	The "Primary Group" column is a required field and should only contain the following values: Adult, Minor, Deceased, International, and Canada. The "Secondary Group" column is not required and any arbitrary value may occupy this field.
3	Client must provide a single, comprehensive data file containing full first name and last name and residential mailing address for each individual, with a separate field for each piece of data (i.e., first name, last name, street address, city, state, zip code).
4	International addresses must be provided in a mail-ready format to expedite file processing and speed to mail.
5	Kroll may analyze the file formatting prior to enrollment and return any exceptions for clarification.

Helpful Hints	
1	Residential addresses are preferred, but notifications can be sent to individuals with "care of", post office boxes or business addresses. In order to access credit services, notification recipients must provide a residential address at time of enrollment in credit services.
2	Please do not include business names; Kroll can only provide services to individuals not business entities, unless notification only is to be provided to the business.
3	Enrollment data must fit within the specified field lengths for each column.

Helpful Hints	
4	Review data for common mistakes such as duplicate records, invalid zip codes, mislabeled international addresses and incomplete first/last names.
5	Also review data to confirm no duplicate records exist between/among various subgroups.

E. Additional Terms & Conditions

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Availability of Services - To the extent that any section in the Information Security Services Agreement is inconsistent with the following, the Parties expressly agree that the following paragraph will supersede and control with regard to the Availability of Services:

In the event any of the services provided through third parties become unavailable or inaccessible to Kroll for any reason, Kroll may elect to discontinue providing such services. Kroll will provide prompt written notice to Client of such discontinuation of services. Kroll may, in its sole discretion, replace discontinued services with an equal or greater valued offering. In the event services cannot be replaced and are discontinued, Client is entitled to a prorated return of fees calculated based on the time remaining for services not yet rendered that have been discontinued.

ACCEPTED AND AGREED:

MULLEN COUGHLIN LLC

_____
Name:
Title:
Date:

KROLL INFORMATION ASSURANCE, LLC

_____
Name:
Title:
Date:

BOARD OF BENTON COUNTY COMMISSIONERS

_____
Name:
Title:
Date:

Adam Morasch

From: Reid Hay
Sent: Tuesday, November 10, 2020 3:52 PM
To: Adam Morasch
Subject: Approval as to Form

Adam,

I have reviewed the Information Security Services Agreement with Kroll with an effective date of November 5, 2020, which includes our outside counsel Mullen Coughlin, LLC as a third party, and it is approved as to form. I have also reviewed the Kroll Statement of Work for Data Breach Services, also including our outside counsel as a third party, and it is approved as to form.

-- Reid

Reid Hay
Deputy Prosecuting Attorney
Benton County Prosecuting 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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/24/2020
Subject:	WTSC Interagency Agreement for Grant Funding for Seat Belt Emphasis
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

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) Region 14, which is made up of 9 local law enforcement agencies and partners, outlining overtime funding to BCSO for the purpose of conducting enforcement activities with the emphasis on seat belt usage.

Seat Belt 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 $17,000 amongst Region 14 agencies, with Benton County's estimated budgeted grant funding of $2,250

Fiscal Impact

This is a reimbursable grant, with no cash match requirements and has been included in the 21/22 budget

Recommendation

The Board of Benton County Commissioners hereby 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 amount up to $2,250 to provide straight time or overtime funding for seat belt enforcement and education as further outlined in the attached from October 1, 2020 – September 30, 2021.

Suggested Motion

Approve as part of the Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY SHERIFF TO SIGN THE INTERAGENCY AGREEMENT BETWEEN BENTON COUNTY SHERIFF'S OFFICE AND WASHINGTON TRAFFIC SAFETY COMMISSION (WTSC) REGION 14 PROVIDING STRAIGHT TIME OR OVERTIME FUNDING TO CONDUCT ENFORCEMENT ACTIVITIES WITH THE EMPHASIS ON SEAT BELT USAGE

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) Region 14, which is made up of 9 local law enforcement agencies and partners, outlining overtime funding to BCSO for the purpose of conducting law enforcement activities with the emphasis on seat belt usage; and

WHEREAS, said seat belt safety 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 $17,000 amongst Region 14 agencies, with Benton County's estimated budgeted grant funding as follows:

- Seat Belt Funding: $2,250

WHEREAS, the Benton County Sheriff recognizes the importance of increasing seat belt use and prevent crashes to reduce traffic related deaths and serious injuries through increased enforcement and recommends approving the Interagency Agreement to accept the estimated budgeted grant funding from WTSC for an estimated amount of $2,250; and

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 to provide straight or overtime funding for seat belt enforcement and education as further outlined in the attached Agreement; and

BE IT FURTHER RESOLVED, the term of this Interagency Agreement is October 1, 2020 through September 30, 2021.

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 20.616 for traffic safety grant project **2021-AG-4151-Focused Allied Agency Seatbelt– Benton Franklin** specifically to provide funding for the law enforcement agencies in WTSC Region 14 to conduct enforcement activities (which may be done on straight time or overtime) with the emphasis on seat belt usage as outlined in the Statement of Work (SOW).

Grant project **2021-AG-4151-Focused Allied Agency Seatbelt– Benton Franklin** was awarded to the **Region 14** to support collaborative efforts to increase seat belt use through a combination of enforcement and public education. By signing this agreement, the SUB-RECIPIENT is able to seek reimbursement for approved expenses incurred as a participant in the region's 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:

GOAL: To increase seat belt use and prevent 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 six 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. 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.

5. Local media are highly involved in the effort to reach communities in which HVE will occur.

6. 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 six 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. To utilize all available media platforms it has available (website, email newsletters, social media etc...) to the fullest extent to publicize the HVE events.
4. 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 six critical elements, and the additional requirements of all HVE events, the SUB-RECIPIENT agrees to all of the following requirements.

Grant project **2021-AG-4151-Focused Allied Agency Seatbelt– Benton Franklin** is specifically focused on increasing seat belt use in WTSC Region 14. Participating law enforcement officers should make as many contacts as they can during their patrol in the spirit of changing driving behavior. Other activities, such as collision investigations or emergency response that are not initiated through emphasis patrol contact WILL NOT be reimbursed. Seat belt enforcement events must take place at predetermined locations approved by the project coordinator. It is highly recommended that enforcement activities use a team approach with a designated spotter(s). The project coordinator will determine enforcement dates throughout the year, but participation in the following periods is required.

a. Click It or Ticket: November 9-29, 2020
b. Click It or Ticket: May 17- June 6, 2021

3.1. MILESTONES AND DELIVERABLES

Mobilization	**Dates**
Click It or Ticket – November 2020	November 9-29, 2020
Click It or Ticket – May 2021	May 17-June 6, 2021
Other seat belt focused HVE style events	Ongoing throughout FFY2021

3.2. COMPENSATION

3.2.1. Compensation for the straight time and 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 activity 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 an allowable expense for this project 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 expenses at the officer's normal hourly rate plus the benefits listed below or 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 funds may not be used for any work required to maintain a law enforcement commission including recertification trainings like firearm qualification. Comp time is not an allowable expense for reimbursement under this agreement. The funding for this project is reserved for the actual activity of patrolling and comp time or any other type of leave will not be reimbursed.

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 regular or 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.

3.2.6. The law enforcement agency involved will not schedule individual officer 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.

3.2.7. 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 **$17,000** to the **Region 14 Traffic Safety Task Force** for the purpose of conducting coordinated seat belt enforcement activities. By signing this agreement, the SUB-RECIPIENT is able to seek reimbursement for approved expenses incurred as a participant in this grant. All activity must be coordinated by the project coordinator (Region 14 Target Zero Manager) in order to be eligible for reimbursement.

The funding for **Region 14** is as follows:

EMPHASIS PATROL

Seat Belt Enforcement (Section 405b, CFDA 20.616)	$17,000.00

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 Contact for WTSC is:**
Katie Gillies, CFO 7122 W. Okanogan Pl. Bldg A Kennewick, WA 99336 Katie.gillies@co.benton.wa.us	Jerry Noviello WTSC Program Manager jnoviello@wtsc.wa.gov 360-725-9897

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.

Benton County Sheriff's Office	**WASHINGTON TRAFFIC SAFETY COMMISSION**
Signature	Signature

Jerry Hatcher Printed Name	Printed Name
Sheriff Title	Title
11/13/2020 Date	Date

Approve as to form

Ryan Lukson

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	24 November 2020
Subject:	Amendment to Historic Preservation Grant Agreement – Benton County Museum
Presenter:	
Prepared By:	B Romine
Reviewed By:	AJ Fyall

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

This action would result in extension of an existing contract by one year.

Benton County has a small historic preservation grant program that is funded through recording fees. Each year, about half-a-dozen grants are awarded, totaling around $50,000 for the whole program. Several such grants have been awarded for 2020. These are typically one-year grants (calendar year).

Due to delays, complications, and other challenges wrought by the COVID pandemic, Benton County has offered to extend 2020 grants for another year, and several of our 2020 grantees have taken this option.

The attached amendment is for the Benton County Museum and Historical Society, which would like to extend its 2020 contract through 2021. This action affects only the termination date of the agreement (from Dec 31, 2020 to Dec 31 2021), and does not affect the award amount ($8,500.00) or the scope of the grant. The amendment has been approved for form and has been signed by BCMHS.

Fiscal Impact

None, the original budget remains the same.

Recommendation

Staff recommends amending the original agreement.

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE AMENDING A BENTON COUNTY HISTORIC PRESERVATION GRANT PROGRAM AGREEMENT FOR THE BENTON COUNTY MUSEUM AND HISTORICAL SOCIETY

WHEREAS, Benton County awards small grants each year as part of the "Historic Preservation Grant Program"; and,

WHEREAS, several grants were awarded for calendar year 2020, including one for the Benton County Museum and Historical Society ("BCMHS"); and,

WHEREAS, grantees have endured numerous unforeseen delays, complications, and other challenges and shifts of priorities during 2020 due to the COVID-19 pandemic, making it more difficult for them to complete their projects within original timeframes; and,

WHEREAS, the County has wanted to provide relief for its grantees in the form of extending the 2020 Historic Preservation Grant Program awards for another full calendar year; and,

WHEREAS, the County and BCMHS have agreed to this course of action for BCMHS's 2020 grant; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of County Commissioners that the Chairman is hereby authorized to sign the *First Amendment to Historic Preservation Grant Agreement Between Benton County and Benton County Museum and Historical Society's Textile Repair, Document Storage, Exhibit Construction, and Improvements Project* by and between Benton County and the BCMHS, extending the termination date of the agreement by one year from December 31, 2020 to December 31, 2021.

Dated this _____ day of _____ , 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

orig: Shyanne Palmus
cc: Benton County Museum and Historical Society, Auditor

Prepared by: A.J. Fyall

FIRST AMENDMENT TO HISTORIC PRESERVATION GRANT AGREEMENT BETWEEN BENTON COUNTY AND BENTON COUNTY MUSEUM AND HISTORICAL SOCIETY'S TEXTILE REPAIR, DOCUMENT STORAGE, EXHIBIT CONSTRUCTION AND IMPROVEMENTS PROJECT

THIS FIRST HISTORIC PRESERVATION GRANT AGREEMENT AMENDMENT, is made and entered into by and between **BENTON COUNTY**, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "GRANTOR"), and **BENTON COUNTY MUSEUM AND HISTORICAL SOCIETY**, a Washington Public Benefit Corporation, with its principal offices at 1000 Paterson Road, Prosser, WA 99350(hereinafter "GRANTEE").

RECITALS

WHEREAS, GRANTOR and GRANTEE entered into a Historic Preservation Grant Agreement per Resolution 2020-007 dated January 7, 2020 (hereinafter "Agreement") regarding funds awarded pursuant to RCW 36.22.170(1)(a) for the promotion of historical preservation and/or historical programs in Benton County; and

WHEREAS, this First Amendment to the Agreement is necessary to revise the Agreement termination date to allow additional time for the GRANTEE to complete the awarded project, due to delays caused by the COVID-19 pandemic; and

WHEREAS, both parties have agreed to amend the Agreement termination date; and

WHEREAS, all other terms and conditions of the Agreement will remain the same; and

NOW, THEREFORE, in consideration of the provisions and agreements set forth herein, the parties agree that all provisions of their original Contract shall remain in effect except the below section, which is amended as follows:

a) Section 8. TERMINATION - Unless otherwise terminated, this Agreement shall begin January 1, 2020 and shall expire December 31, 2021. If either party hereto fails to comply with the terms and conditions of this Agreement, which includes compliance with the proposal set forth by GRANTEE in the extension request Exhibit A attached hereto, the other party may pursue such remedies as

are legally available including, but not limited to the termination of the Agreement in the manner specified herein.

IN WITNESS WHEREOF, the Parties to this Agreement Amendment have executed this Amendment to take effect upon the last date signed.

Dated: _____

Benton County Board of Commissioners

_____
Chairman

Constituting the Board of County Commissioners of Benton County, Washington.

Attest: _____
Clerk of the Board

Approved as to Form:

_____
Civil Deputy Prosecuting Attorney

Dated: 11.2.2020

Benton County Museum and Historical Society

Alys Means
Signature

Museum Director - Curator
Title

Alys Means
Printed Name

EXHIBIT A

Bobbi Romine

From: Alys Means <prossermuseum@hotmail.com>
Sent: Tuesday, August 18, 2020 5:20 PM
To: Historic Preservation; Shyanne Palmus
Subject: [EXTERNAL] Extension Request, 2020 HPG Grant

CAUTION: This email originated from outside of Benton County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Shyanne,

A portion of our 2020 HPG grant provided funds with which to complete a new shrub steppe exhibit, which will be prominently featured in the Benton County Museum's new foyer. However, I've just learned the foyer construction must be postponed until 2021 due to construction schedules that have been disrupted by COVID work stoppages earlier this year.

Consequently, I request an extension for our 2020 HPG grant in the amount of $3750. Specifically, the museum plans to spend (for the new shrub steppe exhibit) $2000 on wallpaper murals, $500 on wallpaper installation and $1250 on custom shelving. The remaining grant amount ($4750) will be spent before December 31, 2020.

For your information, here's the Benton County Museum HPG grant details.

ITEM	HPG CONTRIBUTION
Extra Large Wallpaper Photo Murals (2)	3000
Wallpaper Photo Mural Professional Installation	750
Custom Shelving for Shrub Steppe Exhibit	1250
Historic Photo Enlargements on Foam Board	750
Prosser Record-Bulletin Storage Shelf	1750
Historic Quilt Repair and Stabilization	1000
TOTAL	**$8500**

Thank you!

-Alys Means, Benton County Museum Curator, (509) 832-0336

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24th, 2020
Subject:	Broadview Water Association; New Franchise
Presenter:	Cristina Woods, Public Works
Prepared By:	Cristina Woods, Public Works
Reviewed By:	Douglas D'Hondt, County Engineer

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☒ Public Hearing	☐ Decision / Direction	☐ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

Benton County has received an application for a Franchise Order and Agreement for a private domestic water pipeline from Broadview Water Association.

Fiscal Impact

None

Recommendation

Benton County Public Works recommends the Commissioners approve the Franchise Order and Agreement with Broadview Water Association, subject to the 6 items listed in the report to the Commissioners.

Suggested Motion

Move to approve Franchise Order and Agreement with Broadview Water Association, subject to the 6 items listed in the report to the Commissioners.

Public Works Department

PO Box 1001
Prosser, WA 99350
PHONE (509) 786-5611
www.co.benton.wa.us

November 24th, 2020

BOARD OF COUNTY COMMISSIONERS
Benton County Courthouse
Prosser, WA 99350

RE: Application for Franchise: Broadview Water Association

Commissioners:

Broadview Water Association has filed a petition for a nonexclusive franchise to have a private domestic water pipeline within Benton County road right of way.

This office has reviewed the request and based upon our current franchise requirements recommends approval of the request subject to the following conditions:

1. The term of the franchise be for a ten (10) year period.

2. The Grantee shall carry liability insurance with Benton County named as an insured with a minimum limit of $1,000,000.00. A copy of the proof of insurance is to be provided to Benton County.

3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way.

4. Should Benton County require utility relocation work because of road reconstruction, maintenance, or any other reason, said work shall be at the Grantee's expense.

5. The franchise is nonexclusive.

6. The Grantee sign the Order and Agreement for Nonexclusive Franchise, which will be prepared based upon the requirements set forth at the public hearing.

If you have any questions, please contact this office.

Sincerely,

Douglas D'Hondt, P.E.
County Engineer

BEFORE THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPLICATION OF
BROADVIEW WATER ASSOCIATION FOR A
(Please print name of company exactly as it will appear in franchise)
NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE USE REPAIR, AND IF NECESSARY REPLACE A
PRIVATE DOMESTIC WATER PIPELINE WITHIN THE COUNTY OF
(Please print exact wording as it will appear in franchise)
BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED CITY OR TOWN.

(County use:)

No. _____
APPLICATION FOR FRANCHISE
PURSUANT TO RCW 36.55.040.

TO THE HONORABLE BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON:

BROADVIEW WATER ASSOCIATION, duly authorized to transact business in the State of Washington (Grantee), hereby applies for the authority and a nonexclusive franchise, to be granted to said Grantee to locate, construction, maintain, operate, use, repair, and, if necessary, remove facilities upon, over, under, along and across any and all Benton County roads, highways, streets, alleys and bridges of which all or portions thereof are physically located in the Sections, Townships, and Ranges within the County of Benton, State of Washington, as set forth in the schedule marked "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, any portions thereof which are within the corporate limits of any incorporated city or town, but including all portions which are within any unincorporated town or community.

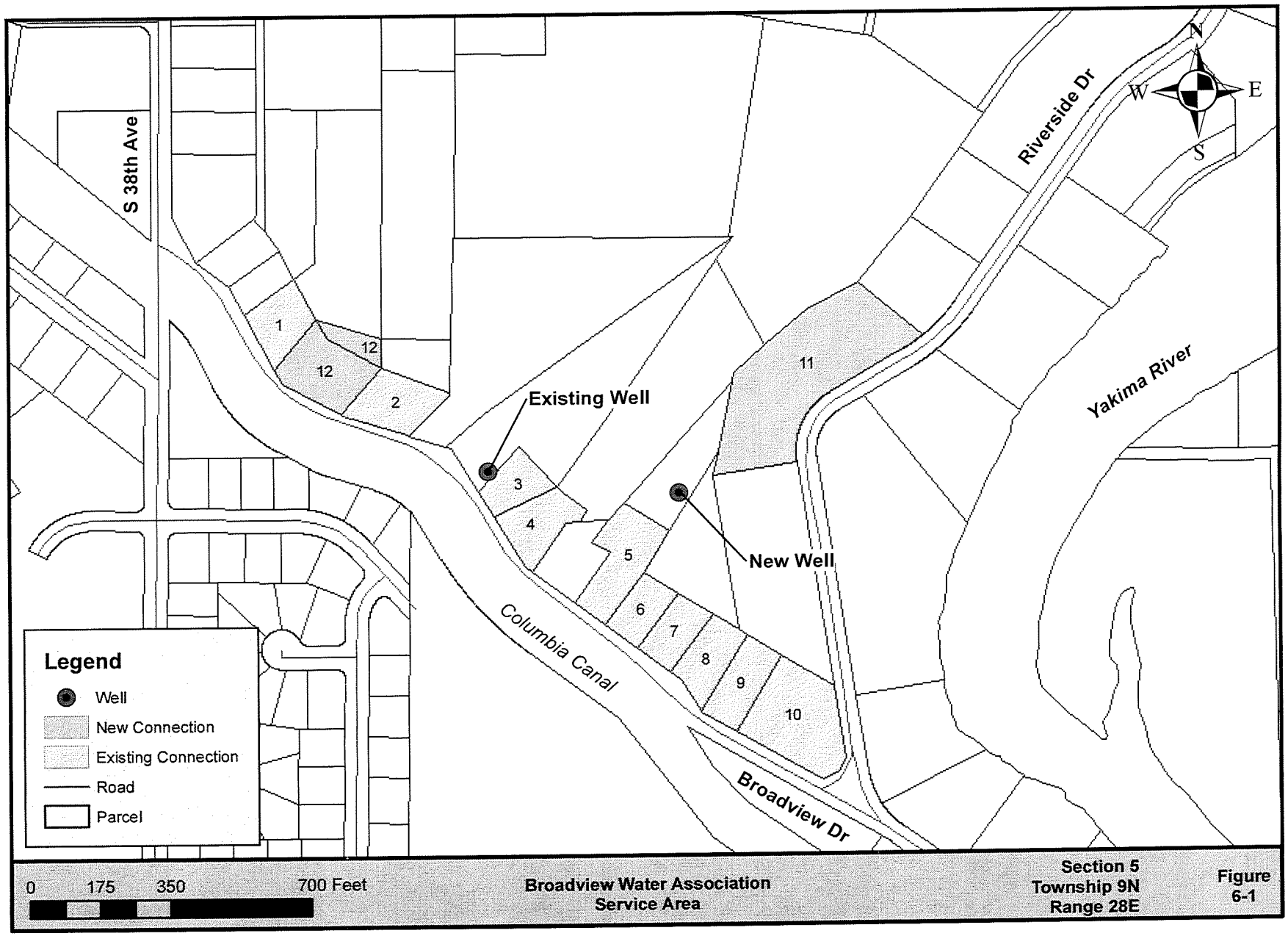
Grantee requests that the Board of County Commissioners fix a time and place for hearing this application, and cause the County Engineer of Benton County to give public notice of said hearing at the expense of said applicant, by posting notices of said hearings in three (3) public places in the county seat of said Benton County, at least fifteen days before the day fixed for said hearing, and also cause to be published a like notice, at the expense of said applicant, two (2) times in the official newspaper of the Benton County, the last publication of such notice to be not less than five (5) days before the day fixed for said hearing; which notice shall state the name of the applicant, shall describe the Benton County roads, highways, streets, alleys, bridges or portions thereof within said Benton County to be included in the franchise for which this application is made by reference to the Sections, Townships, and Ranges in which they are physically located, and shall show the time and place fixed for said hearing.

The Franchise Application fee in the amount of $500.00, in the form of Check (cash or check), accompanies this application and is non-refundable. Upon approval, the franchise term will be for a period of ten (10) years.

Dated this 13 day of OCTOBER, 2020

Respectfully submitted by:

TOM AUTREY	(509) 539-7814
Name of Authorized Agent PLEASE PRINT	Phone Number of Applicant
Signature of Authorized Agent	FAX Number of Applicant
1222 BROADVIEW DRIVE	
Address of Applicant	2nd Name of Authorized Agent PLEASE PRINT (if required)
WEST RICHLAND WA 99353	
City State Zip	2nd Signature of Authorized Agent (if required)
tom.autrey@pnnl.gov	
E-mail address	


S 38th Ave
Riverside Dr
N
W
E
S
Yakima River
Existing Well
New Well
Columbia Canal
Broadview Dr
1
12
12
2
3
4
5
6
7
8
9
10
11
Legend
Well
New Connection
Existing Connection
Road
Parcel
0
175
350
700 Feet
Broadview Water Association
Service Area
Section 5
Township 9N
Range 28E
Figure
6-1

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24th, 2020
Subject:	Badger Mountain Irrigation District; Renew Franchise
Presenter:	Cristina Woods, Public Works
Prepared By:	Cristina Woods, Public Works
Reviewed By:	Douglas D'Hondt, County Engineer

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☒ Public Hearing	☐ Decision / Direction	☐ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

Benton County has received an application for a Franchise Order and Agreement for a domestic and irrigation water transmission and distribution lines from Badger Mountain Irrigation District.

Fiscal Impact

None

Recommendation

Benton County Public Works recommends the Commissioners approve the Franchise Order and Agreement with Badger Mountain Irrigation District, subject to the 6 items listed in the report to the Commissioners.

Suggested Motion

Move to approve Franchise Order and Agreement with Badger Mountain Irrigation District, subject to the 6 items listed in the report to the Commissioners.

Public Works Department

PO Box 1001
Prosser, WA 99350
PHONE (509) 786-5611
www.co.benton.wa.us

November 24th, 2020

BOARD OF COUNTY COMMISSIONERS
Benton County Courthouse
Prosser, WA 99350

RE: Application for Franchise: Badger Mountain Irrigation District

Commissioners:

Badger Mountain Irrigation District has filed a petition for a nonexclusive franchise to have a domestic and irrigation water transmission and distribution lines within Benton County road right of way.

This office has reviewed the request and based upon our current franchise requirements recommends approval of the request subject to the following conditions:

1. The term of the franchise be for a ten (10) year period.

2. The Grantee shall carry liability insurance with Benton County named as an insured with a minimum limit of $1,000,000.00. A copy of the proof of insurance is to be provided to Benton County.

3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way.

4. Should Benton County require utility relocation work because of road reconstruction, maintenance, or any other reason, said work shall be at the Grantee's expense.

5. The franchise is nonexclusive.

6. The Grantee sign the Order and Agreement for Nonexclusive Franchise, which will be prepared based upon the requirements set forth at the public hearing.

If you have any questions, please contact this office.

Sincerely,

Douglas D'Hondt, P.E.
County Engineer

BEFORE THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPLICATION OF)
BADGER MOUNTAIN IRRIGATION DISTRICT FOR A)
(Please print name of company exactly as it will appear in franchise))
NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN,)
OPERATE USE REPAIR, AND IF NECESSARY REPLACE)
DOMESTIC & IRRIGATION WATER TRANSMISSION & DISTRIBUTION LINES WITHIN THE COUNTY OF)
(Please print exact wording as it will appear in franchise))
BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG)
AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR)
PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED)
CITY OR TOWN.)

(County use:)

No. _____
APPLICATION FOR FRANCHISE
PURSUANT TO RCW 36.55.040.

TO THE HONORABLE BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON:

BADGER MOUNTAIN IRRIGATION DISTRICT, duly authorized to transact business in the State of Washington (Grantee), hereby applies for the authority and a nonexclusive franchise, to be granted to said Grantee to locate, construction, maintain, operate, use, repair, and, if necessary, remove facilities upon, over, under, along and across any and all Benton County roads, highways, streets, alleys and bridges of which all or portions thereof are physically located in the Sections, Townships, and Ranges within the County of Benton, State of Washington, as set forth in the schedule marked "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, any portions thereof which are within the corporate limits of any incorporated city or town, but including all portions which are within any unincorporated town or community.

Grantee requests that the Board of County Commissioners fix a time and place for hearing this application, and cause the County Engineer of Benton County to give public notice of said hearing at the expense of said applicant, by posting notices of said hearings in three (3) public places in the county seat of said Benton County, at least fifteen days before the day fixed for said hearing, and also cause to be published a like notice, at the expense of said applicant, two (2) times in the official newspaper of the Benton County, the last publication of such notice to be not less than five (5) days before the day fixed for said hearing; which notice shall state the name of the applicant, shall describe the Benton County roads, highways, streets, alleys, bridges or portions thereof within said Benton County to be included in the franchise for which this application is made by reference to the Sections, Townships, and Ranges in which they are physically located, and shall show the time and place fixed for said hearing.

The Franchise Application fee in the amount of $500.00, in the form of CHECK (cash or check), accompanies this application and is non-refundable. Upon approval, the franchise term will be for a period of ten (10) years.

Dated this 1st day of OCTOBER, 2020.

Respectfully submitted by:

COLBY GETCHELL - DISTRICT MANAGER
Name of Authorized Agent PLEASE PRINT

Signature of Authorized Agent

87525 E REATA ROAD
Address of Applicant

KENNEWICK, WA 99338
City State Zip

bmid@badgermountainirrigation.com
E-mail address

509.628.0777
Phone Number of Applicant

509.628.0112
FAX Number of Applicant

2nd Name of Authorized Agent PLEASE PRINT (if required)

2nd Signature of Authorized Agent (if required)

Revised 08-06-2013

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS CERTIFYING THE CURRENT EXPENSE LEVY FOR 2021 COLLECTION

WHEREAS, the Board of Benton County Commissioners has properly given notice of the public hearing held November 24, 2020 to consider Benton County's 2021 property tax levy for the Current Expense budget pursuant to RCW 36.40 et. seq. and RCW 84.55.120; and,

WHEREAS, the Board of Benton County Commissioners, after hearing, and after duly considering all relevant evidence and testimony presented, has determined that Benton County's Current Expense fund for 2021 – 2022 requires sustainability in property tax revenue from the previous year, in addition to that resulting from the addition of new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made, in order to discharge the expected expenses and obligations of Benton County's Current Expense fund for 2021 - 2022; and,

WHEREAS, the rate of inflation based on the percentage of change in the Implicit Price Deflator (IPD), as defined in RCW 84.55.005(1), published in the Bureau of Economic Analysis' September 2020 *Survey of Current Business* is .602%; and,

WHEREAS, under RCW 84.55.005(2)(c), the limit factor for a taxing district with a population of 10,000 or over is the lesser of 101% or 100% plus inflation; and,

WHEREAS, the Board of Benton County Commissioners has determined, that to provide funding adequate funding for general operations and maintenance expenses in the years 2021 and thereafter, there is a substantial need for the establishment of a limit factor of 101% for 2021 to ensure sustainable funding in future years and to levy necessary property taxes for 2021; and,

WHEREAS, the previous year Current Expense highest lawful levy was $25,225,894.90; and,

WHEREAS, the previous year Current Expense levy base was $24,217,507.53, which is the previous years actual levy of $24,217,507.53 less administrative refund of $0.00; **NOW THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners has determined that the property tax regular levy shall not be decreased and that an increase in the levy base of the 2021 regular property tax levy in the amount of $0.00 (which includes a State mandated $0.025/$1,000 for mental health and $0.0113/$1,000 for veterans' assistance), is appropriate and authorized for the 2021 Current Expense levy, and that this is a percentage increase of 0.00% from the previous year; and,

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners has decided to bank the 1.00% to help ensure adequate funding is available in future years; and,

BE IT FURTHER RESOLVED, that the above described increase is exclusive of additional revenues resulting from the County administrative refund levies for 2021; and,

BE IT FURTHER RESOLVED, that the above described increase is exclusive of additional revenues resulting from new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made; and,

BE IT FURTHER RESOLVED, the Clerk is hereby directed to certify a copy of this resolution and forward the same to the Benton County Assessor so that the levies set herein can be extended upon the assessment roll of the County in the manner and at the time set forth by law.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Assessor; Auditor; Treasurer; file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS CERTIFYING THE COUNTY ROAD LEVY FOR 2021 COLLECTION

WHEREAS, the Board of Benton County Commissioners has properly given notice of the public hearing held November 24, 2020 to consider Benton County's 2021 property tax levy for the County Road budget pursuant to RCW 36.40 et. seq. and RCW 84.55.120; and,

WHEREAS, the Board of Benton County Commissioners, after hearing, and after duly considering all relevant evidence and testimony presented, has determined that Benton County's Road fund for 2021 - 2022 requires sustainability in property tax revenue from the previous year, in addition to that resulting from the addition of new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made, in order to discharge the expected expenses and obligations of Benton County's Road fund for 2021 - 2022; and,

WHEREAS, the rate of inflation based on the percentage of change in the Implicit Price Deflator (IPD), as defined in RCW 84.55.005(1), published in the Bureau of Economic Analysis' September 2020 *Survey of Current Business* is .602%; and,

WHEREAS, under RCW 84.55.005(2)(c), the limit factor for a taxing district with a population of 10,000 or over is the lesser of 101% or 100% plus inflation; and,

WHEREAS, the Board of Benton County Commissioners has determined, that to provide adequate funding for the road projects expected in years 2021 and thereafter, there is a substantial need for the establishment of a limit factor of 101% for 2021 to ensure sustainable funding in future years and to levy necessary property taxes for 2021; and,

WHEREAS, the previous year County Road highest lawful levy was $7,788,620.67; and,

WHEREAS, the previous year County Road levy base of $6,820,493.77 which is the previous years actual levy of $6,825,514.01 less administrative refund of $5,020.24; **NOW THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners has determined that the property tax road levy shall not be decreased and that an increase in the levy base of the 2021 road property tax levy in the amount of $0.00, is appropriate and authorized for the 2021 County Road levy, and that this is a percentage increase of 0.00% from the previous year; and,

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners has decided to bank the 1.00% to help ensure adequate funding is available in future years; and,

BE IT FURTHER RESOLVED, that the above described $0 increase is exclusive of additional revenues resulting from the County administrative refund levies for 2021; and,

BE IT FURTHER RESOLVED, that the above described $0 increase is exclusive of additional revenues resulting from new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made; and,

BE IT FURTHER RESOLVED, the Clerk is hereby directed to certify a copy of this resolution and forward the same to the Benton County Assessor so that the levies set herein can be extended upon the assessment roll of the County in the manner and at the time set forth by law.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Public Works; Assessor; Auditor; Treasurer; file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS MAKING A DECLARATION OF SUBSTANTIAL NEED OR PURPOSES OF SETTING THE LIMIT FACTOR FOR THE REGULAR PROPERTY TAX LEVY FOR 2021

WHEREAS, RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property; and

WHEREAS, under RCW 84.55.005(2)(c), the limit factor for a taxing district with a population of 10,000 or over is the lesser of 101% or 100% plus inflation; and,

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage of change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the Federal Department of Commerce in September of the year before taxes are payable; and

WHEREAS, "inflation" for September is .602 percent and the limit factor is 100.602 percent, meaning the maximum amount of property taxes Benton County could levy in 2020 for collection in 2021 would, absent a finding of substantial need, decrease except for the amount resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property; and

WHEREAS, regardless of extremely low or negative inflation, RCW 84.55.0101 provides for use of a limit factor of up to 101 percent with a finding of substantial need by two out of three County Commissioners; and

WHEREAS, in consideration that department requests were not approved and making further cuts difficult and the need to provide adequate funding for general maintenance and operation expenses, the Board of Benton County Commissioners determined a finding of substantial need; and

BE IT RESOLVED, the Board of Benton County Commissioners finds substantial need under RCW 84.55.0101, and the limit factor shall be set at 101 percent for the regular property tax levy for 2021.

cc: Assessor; Auditor; Treasurer; file

Prepared by: L. Ivey

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Assessor; Auditor; Treasurer; file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF CERTIFYING BUDGETED TAXES FOR COLLECTION IN THE YEAR 2021 FOR BENTON COUNTY

WHEREAS, the Board of Benton County Commissioners has properly given notice of the public hearing held November 24, 2020 to consider Benton County's 2021 property tax levy pursuant to RCW 36.40 et. seq. and RCW 84.55.120; **NOW THEREFORE**,

BE IT RESOLVED, pursuant to RCW 84.52.070, the Board of Benton County Commissioners hereby certifies the following estimated levy amounts for Benton County for 2021 collection as estimated in the County's budget, which will be adopted following a public hearing scheduled to be held on November 24, 2020:

Current Expense*	$24,995,223.00
Including: Mental Health	$ 591,067.99
Veteran's Assistance	$ 267,162.73
County Road	$ 6,980,063.00
Including: Diverted Road	$ 589,340.05
Administrative Refunds:	
Current Expense	$ 48,414.16
County Road	$ 0
Veterans' Assistance	$ 476.73
Mental Health	$ 1,054.60

BE IT FURTHER RESOLVED, the actual levy amounts should be as requested and allowed by Resolutions _____ and _____.

*Note: The collections for Mental Health is to be collected at $0.025/$1,000 of assessed value and Veterans' Assistance is to be collected at $0.0113/$1,000 of assessed value.

Dated this . . . . . day of . . . . . , 20 . . . .

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Public Works; Assessor, Auditor, Treasurer, file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ADOPTING THE FINAL 2021 - 2022 BENTON COUNTY BUDGETS

WHEREAS, after notice given pursuant to RCW 36.40 et. seq. the public hearing on the 2021 - 2022 budgets was held on November 24, 2020 for the purpose of fixing the final budgets; **NOW THEREFORE,**

BE IT RESOLVED, the 2021 – 2022 Benton County budgets are adopted by the Board of Benton County Commissioners at the following levels:

- Depreciation, amortization, other decreases in fund resources and transfers-out (0000's) – category level within each department.

- Salary (1000's) – category level within each department, however, line item transfers to or from overtime, temporary help, and holiday pay will need Board approval.

- Benefits (2000's) – category level within each department, however, employee payroll benefits for social security, retirement, paid family medical leave, and medical insurance cannot be used for employee benefits such as uniforms & accessories (2105), and uniform laundry (2106) without Board approval.

- Supplies (3000's) – category level within each department.

- Services and pass-through payments (4000's) – category level within each department.

- Capital outlays (6000's) – category level within each department.

- Debt service principal and debt service interest and issuance costs (7000s and 8000s) - category level within each department.

- Interfund payments (9000's) – line item level within each department with the exception of the County Road Fund (0101101) which is at the object code level.

BE IT FURTHER RESOLVED, line item transfers from other categories, that are meant to create a new position in Salary (1000's) and/or Benefits (2000's), are to be brought before the Board of Commissioners under scheduled business for review and approval; and

BE IT FURTHER RESOLVED, line item transfers between categories within each department will need Board approval with the exception of line item transfers between Supplies (3000's) and Services (4000's) will not need Board approval, excluding line items listed below, which will need Board approval:

- Line item transfers for Supplies (3000's) for:
  - 3508 Computer replacement
  - 3507 Non-replacement computers
  - 3503 Computer software
- Line item transfers for Services (4000's) for line items assessed by other intergovernmental type services for:
  - 4724 Bi-Pin
  - 4728 Secomm
  - 4727 EDC 800 Mhz User Fees
  - 4733 800 MHZ System Upgrades

BE IT FURTHER RESOLVED, line item transfers **to** an Interfund payment (9000's) line item from a Supplies (3000's) or Services (4000's) line item within each department will not need Board approval, excluding transfers **from** the line items listed below which will need Board approval:

- Line item transfers for Supplies (3000's) for:
  - 3508 Computer replacement
  - 3507 Non-replacement computers
  - 3503 Computer software
- Line item transfers for Services (4000's) for line items assessed by other intergovernmental type services for;
  - 4724 Bi-Pin
  - 4728 Secomm
  - 4727 EDC 800 Mhz User Fees
  - 4733 800 MHZ System Upgrades

BE IT FURTHER RESOLVED, Benton County will reduce wages & benefits for 21 positions in the Corrections Department beginning January 1, 2020. The appropriated Benton County budget in the amount of $3,669,438 is transferred from Current Expense, Department 120 Corrections, to Department 115 Non-Departmental at the execution of the 2021-2022 budget; and

BE IT FURTHER RESOLVED, each department is required to account for expenditures and revenues within the prescribed BARS-assigned account numbers as detailed by each departmental budget; and

BE IT FURTHER RESOLVED per the detailed attachments to this resolution, the Benton County budgets for 2021 - 2022 are hereby adopted:

Total Current Expense Revenues	$142,287,932
Total Current Expense Expenditures	$142,293,541
To Balance	$ 5,609
Total Road Fund Revenues	$ 33,577,421
Total Road Fund Expenditures	$ 37,839,862
To Balance	$ 4,262,441
Total Other Funds Revenues	$108,832,265
Total Other Funds Expenditures	$181,323,359
To Balance	$ 72,491,094
Total Revenues	**$284,697,618**
Total Expenditures	**$361,456,762**
To Balance	**$ 76,759,144**

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: All Dept; State Auditor; Journal; file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF RESCINDING RESOLUTION 2020-602, REQUIRING APPROVAL BEFORE POSTING AND FILLING VACANT POSITIONS, EFFECTIVE JANUARY 1, 2021.

WHEREAS, on September 1, 2020, Benton County adopted Resolution 2020-602 requiring approval before posting and filling vacant positions; and,

WHEREAS, although being fiscally conservative, particularly during the pandemic, remains important, with the adoption of the new budget approval for posting and filling vacancies is no longer necessary; and

WHEREAS, it is still expected that Department Managers and Elected Officials will review each vacancy and make a determination, taking into account ongoing expenditure and revenue projections for their department, if that position needs to be filled or not; **NOW THEREFORE**,

BE IT RESOLVED the Benton County Board of Commissioners rescind Resolution 2020-602 effective January 1, 2021.

Dated this_____ day of _____, 2020.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: All Offices/Department L. Wingfield

RESOLUTION 2020 602

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF REQUIRING APPROVAL BEFORE POSTING AND FILLING VACANT POSITIONS.

WHEREAS, Benton County is examining ways to be financially prudent during the ongoing pandemic and finds that a large portion of the budget is made up of salaries and benefits; and,

WHEREAS, continuing Benton County's high level of service while maintaining financial stability is important and therefore, the Benton County Board of Commissioners will require prior approval for posting and filling vacant positions based on the position being essential to continued County services; and,

WHEREAS, there currently are 82 vacant and funded positions including full time, part time, and temporary help positions, not all of these positions are actively hiring; **NOW THEREFORE**,

BE IT RESOLVED the Benton County Board of Commissioners require prior approval before positing and hiring vacant positions effective immediately; and,

BE IT FURTHER RESOLVED the Benton County Board of Commissioners authorizes the following positions, due to their current step in the hiring process, to hire in accordance with the chart below:

Department	Position Title	Hiring Authorization
Auditor	Accounting Assistant II	1 Employee
Auditor	Temp Election Help	Auditor discretion
Clerk	Legal Process Assistant II	1 Employee
District Court	Legal Process Assistant III	1 Employee
Human Services	Housing Program Navigator	1 Employee
Juvenile	Legal Process Assistant III	1 Employee
Juvenile	Juvenile Detention Officer	1 Employee
Public Works	Accounting Support Specialist	1 Employee
Sheriff's Office	Deputy	1 Employee
Treasurer	Accounting Assistant II	1 Employee

Dated this 1st day of September, 2020.

cc: All Offices/Departments

L. Wingfield

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....
Clerk of the Board

cc: All Offices/Departments

L. Wingfield

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	BC 11/24/20
Subject:	Approval Request to Post and Fill Legal Secretary IV and Backfill Legal Process Assistant III
Presenter:	Darryl Banks
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

Resolution No. 2020-602 states board approval is required to post and fill positions that are currently vacant including full time, part time and temporary help.

The Legal Processing Unit will have a full-time Legal Secretary IV position which will be vacated on 12/4/20, and if the Legal Secretary IV is filled in-house, we are requesting to backfill the subsequent open position of a Legal Processing Assistant III. Both positions are essential to maintaining court functions that contribute to the efficient office operations within the Juvenile Justice Center, plus responsible for other clerical support services.

Fiscal Impact

None

Recommendation

We recommend that the Board of Commissioners of Benton County authorize the Juvenile Department to post and fill Legal Secretary IV and backfill Legal Processing Assistant III position if Legal Secretary IV is filled in-house.

Suggested Motion

I move to authorize the Juvenile Justice Center to post and fill Legal Secretary IV and backfill Legal Processing Assistant III position.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/24/2020
Subject:	Community Development Department Re-Organization
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

With the creation of the Community Development Department and with recent retirements in vital positions, a re-organization and request to fill a position is recommended. The first step is to adopt the Director of Community Development job description. A re-organization opportunity is recommended to continue to provide high level Building Department services, including the Building Official responsibilities which are a required function of the County. In order to maintain meeting the needs of Benton County citizens, the department has been assessed and it is recommended to change the Plans Examiner/Building Inspector classification into an Assistant Building Manager classification.

Resolution 2020-602 required Benton County Board of Commissioners approval prior to posting and filling vacant positions. Canine Control is a department of 2 and with the recent promotion of the current Canine Control Officer II to the Canine Control Supervisor after a retirement, it is imperative that the Canine Control Officer is hired.

Fiscal Impact

No supplement required.

Recommendation

Pass resolutions and motion for the Community Development Department re-organization.

Suggested Motion

I move to approve the resolution to create the Director of Community Development job description.

I move to approve the resolution to create the Assistant Building Manager job description.

I move to approve the resolution placing the Assistant Building Manager as a grade 16 on the non-bargaining salary schedule.

cc: HR, Auditor, Community Development **Prepared by: L. Wingfield**

I move to approve the LIT to change the Plans Examiner/Building Inspector to an Assistant Building Manager.

I move to authorize position 1181, Canine Control Officer II, to be filled as a Canine Control Officer I.

cc: HR, Auditor, Community Development **Prepared by: L. Wingfield**

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING A DIRECTOR OF COMMUNITY DEVELOPMENT CLASSIFICATION DESCRIPTION.

WHEREAS, the County Administrator has expressed a need to create a Director of Community Development classification description;

WHEREAS, the Human Resources Manager worked with the County Administrator to create a job classification description for a Director of Community Development, **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the recommended Director of Community Development classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....
Clerk of the Board

cc: HR, Auditor, Community Development

Prepared by: L. Wingfield

TITLE: Director of Community Development

DEPARTMENT: Community Development Department

REPORTS TO: County Administrator and Deputy County Administrator

SUPERVISES: All Personnel in Planning, Building and Canine Control

FLSA: Exempt

SUMMARY:

Plans, organizes and directs the Community Development Department, including the Planning, Building, and Canine Control divisions and their functions for the County.

EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Provides short and long-term strategic direction and develops and implements policies, procedures, programs, and related technology and support systems to achieve related goals and objectives for the department.

Provides leadership, guidance, technical advice, professional opinion, information, research, and support regarding community development, planning, building, and canine control to the County Administrator, Board of Commissioners, and other organizations and public.

Directs department operations to achieve goals within budgeted funds and available personnel; coordinates with Managers and Supervisors to plan and organize workloads and staff assignments, reviews progress, directs changes in priorities and schedules as needed to assure work is completed in an efficient and timely manner in accordance with related codes, ordinances, regulations, laws, and County guidelines, ensuring work is completed in a safe, efficient, and timely manner.

Responsible for assuring that proper policies and procedures are followed within all divisions under their direction.

Stays current with planning, building, and canine related issues and topics as well as the changing needs of the community. Assure the department's philosophy and mission is relevant and practiced throughout the organization.

Directs and coordinates the Managers and/or Supervisors of the Planning, Building, and Canine Control Divisions to ensure consistent and timely delivery of services.

Participates in the development of policies regarding planning, building, and canine control related matters including but not limited to comprehensive planning, zoning, enforcement, building enforcement, fire code and regulation updates.

Provides managerial leadership and directs the selection, supervision and evaluation of staff, including but not limited to disciplinary action when required and performance evaluations. Plans, organizes, and directs work assignments and schedules, evaluates progress, and shifts priorities for the programs, plans, requirements, and administration of services for the department in accordance with related codes, ordinances, regulations, laws, and County guidelines, ensuring work is completed in a safe, efficient, and timely manner.

Provides leadership and direction in developing current and long-range plans, development regulations, goals and objectives for the County, including the Comprehensive Plan; evaluates existing local, state and federal regulations and develops, recommends and implements modifications to existing ordinances and procedures.

Establishes policies, procedures, work rules, and performance standards to assure the efficient and effective operation of the Community Development Department in compliance with County standards and federal, state and local laws.

Develops, administers, and monitors an accurate, realistic, and fiscally sound department budget and fiscal operations, including payroll, of the departments. Approves, monitors and manages expenditures, revenues, and costs in a timely manner, ensuring compliance with approved budget and in accordance with department goals, objectives, and County standard practices.

Analyzes and recommends improvements to existing services and operating systems of the departments.

Coordinates department programs with other County departments and other governmental agencies.

Makes presentations regarding department proposals and activities to the Commissioners, civic groups and the general public.

Directs the resolution of the most sensitive or complex inquiries, complaints, or problems, or emergencies affecting the availability or quality of services.

Performs other duties as assigned.

KNOWLEDGE, SKILLS AND ABILITIES:

Knowledge of practices, principles and procedures of current and long range land use planning.

Knowledge of legal requirements, regulations and laws applicable to the operation of the department.

Knowledge of current canine welfare issues.

Knowledge of principles and practices of governmental fiscal management, including budget preparation, expenditure control, grant writing and record keeping.

Knowledge of current building and fire code regulations.

Ability to perform research and write comprehensive reports on planning, zoning and related matters.

Ability to plan, organize and oversee assigned work programs, including monitoring work schedules and evaluating the work of subordinates.

Ability to develop departmental goals and objectives and to conduct and implement department activities.

Ability to analyze and evaluate operations and develop and implement corrective action to resolve problems.

Ability to establish and maintain effective working relationships with employees, County Commissioners, other agencies and the general public.

Ability to communicate effectively both orally and written with individuals and groups regarding complex or sensitive issues or regulations.

Proficient in Microsoft Word and GIS systems.

EDUCATION/EXPERIENCE:

Bachelor's degree in Planning, Building or related field; Master's degree preferred. Eight (8) years of professional level planning, building, or related experience including managerial and supervisory responsibility.

LICENSES/CERTIFICATES/OTHER REQUIREMENTS:

Valid Washington State Driver's License

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING AN ASSISTANT BUILDING MANAGER CLASSIFICATION DESCRIPTION.

WHEREAS, the County Administrator has expressed a need to create an Assistant Building Manager classification description;

WHEREAS, the Human Resources Manager worked with the County Administrator to create a job classification description for an Assistant Building Manager, **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the recommended Assistant Building Manager classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....
Clerk of the Board

cc: HR, Auditor, Community Development

Prepared by: L. Wingfield

TITLE: Assistant Building Manager

DEPARTMENT: Building Department

REPORTS TO: Building Manager

SUPERVISES: Building Department personnel

FLSA: Non-Exempt

SUMMARY:

To perform professional and technical level work in the building code enforcement field by the review of plans, specifications, and calculations to verify their conformance to the building construction related codes adopted by Benton County; examine construction drawings and specifications; provide information concerning zoning, building, and local codes to verify compliance with approved plans and issue counter permits. Assist the Building Manager in planning, organizing, and directing building department functions. Performs the county's Building Official duties.

EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Conduct site inspections as necessary. Inspect, approve, or disapprove each stage of building construction, mobile home placement, alteration or repair.

Receives technical and administrative direction from the Building Manager.

Technical review of construction plans, specifications, and calculations to verify that structural elements of buildings will safely resist the forces of wind, snow, and the dead and live loads noted in the codes; safely resist the shear and torsion imposed by expected seismic forces.

Technical review of plans to verify the code compliance of the life safety features of buildings such as; exits, stairs, handrails, guardrails, corridors, pathway lighting, door types and operation, materials of construction, allowable first floor areas, buildings heights, etc.

Work with the county Fire Marshal in the technical review of plans to verify code compliance of required fire alarm and suppression features; evaluate fire resistive rating of materials and equipment; and analyze fire resistive rating and levels of alternate materials and methods of construction.

Technical review of plans to verify the code compliance of required health and welfare features of buildings such as minimum light and ventilation, heating and cooling equipment, air handling equipment, water distribution systems, waste drainage systems, etc.

Meet with architects, engineers, contractors, developers, and other permit applicants to assist them in understanding the code requirements; research into the intent of code

requirements to assist people in their attempt to comply with such requirements.

Analyze building, fire electrical, mechanical, and plumbing codes for specific code requirements for particular types of buildings; confer with supervision, building inspectors, and other technical sources to determine the appropriate interpretation of code items.

Receive, review and process applications for permits; apply applicable policies and procedures in determining completeness of applications; assess fees and charges based on requests for service.

Input, retrieve, and update data and text information relating to building permits and plan checks. Follow up with contractors, engineers, and architects regarding plan file status.

Issue counter and building permits in accordance with all applicable codes. Answer questions by telephone, in person, or in the field regarding construction, plumbing, mechanical, structural, insulation plan requirements and handicap requirements; interpret, apply and explain code requirements and ordinances.

Communicate with various departments and Personnel, including Planning, Fire Marshal, Health Department and Public Works.

Attend seminars and meetings and maintain current knowledge of code requirements and related County ordinances.

Must be able to perform the duties as required of a Building Inspector.

Must perform all tasks associated with being the Building Official.

Assists in directing department operations to achieve goals within budgeted funds and available personnel.

Perform related duties as assigned.

WORKING CONDITIONS:

Work is performed in both the office environment and on-site environment may entail exposure to dust and noise, walking, climbing, stooping, crawling and light lifting.

KNOWLEDGE, SKILLS, AND ABILITIES:

Uniform Building, Mechanical, Fire, Plumbing Code and related ordinances of Benton County.

National and industry standards and specifications for materials of construction and their proper use.

Operation, services and activities of the building construction code enforcement process.

Legal and administrative principles and techniques of building inspection and plan review process.

Principles of structural design and engineering mathematics.

Methods of construction of materials generally used for building construction.

Modern office methods, practices, procedures and computer equipment.

Apply technical knowledge in examining plans to identify materials, construction processes, or concepts that may not comply with the code requirements.

Complete/review mathematical computations rapidly and accurately.

Enforce necessary regulations fairly with firmness and tact. Resolve conflicts in a positive manner.

Establish and maintain cooperative working relationships with the professional community, general public and fellow workers; both orally and written.

Ability to work independently with little direction, read and interpret codes and plans, good organizational skills and maintenance of records.

Ability to independently determine when very complex structural systems require someone with more advanced knowledge and proactively seek supervisor' guidance.

EDUCATION AND EXPERIENCE:

High School Diploma and at least five (5) years with building inspection experience or two (2) years Building Inspector experience, or one (1) year of actual plan review experience; or any equivalent combination of training and experience which would provide the applicant with the desired skills, knowledge, and ability required to perform the job.

LICENSES, CERTIFICATES, & OTHER REQUIREMENTS:

Valid driver’s license required.

International Conference of Building Officials (or equivalent) Plans Examiner Certification.

International Conference of Building Officials Certification in Building, Plumbing, and Mechanical required. All certifications must be maintained in current status while employed.

Chief Building Official Certification preferred.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING A SALARY GRADE FOR AN ASSISTANT BUILDING MANAGER.

WHEREAS, a job description has been created and approved for an Assistant Building Manager position;

WHEREAS, there has been a review of current Benton County job classification's placement on the Benton County Non-Bargaining salary schedule, **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the recommended placement of the Assistant Building Manager on the Benton County Non-Bargaining salary schedule at a grade 16; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....
Clerk of the Board

cc: HR, Auditor, Community Development

Prepared by: L. Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PROTECTIVE INSPECTION SERVICES FUND NUMBER 0149101, 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

L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Protective Inspection Services | Fund Nbr: 0149101

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
524.200	1203	Plans Examiner	$5,492	524.200	1203	Assistant Building Manager	$5,492
TOTAL			$5,492	TOTAL			$5,492

Explanation:

Effective December 1, 2020, title change from Plans Examiner to Assistant Building Manager; resolutions approving the job description and updated salary schedule are on the 11/24/2020 Commissioners meeting

Prepared by: L. Wingfield | Date 15-Nov-2020

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	24 November 2020
Subject:	Benton County Noxious Weed Control Board 2021-2022 Operating Budget
Presenter:	Konrad Kauer
Prepared By:	K Kauer / AJ Fyall
Reviewed By:	AJ Fyall

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

Since 2016 when the Benton County Noxious Weed Control Board formally separated from the County, there has been a stipulation that they must bring their biennial operating budget before the Board of Commissioners for approval.

The Weed Board has had a change in management, and this is the first time for the new administration to be going through this process. County has offered assistance, not in preparing the Weed Board budget, but in the Commissioners approval process. To that end, staff has prepared an adopting resolution (attached) and these notes, and assisted with scheduling.

Konrad Kauer, the new Weed Board director, will give a short presentation to Commissioners introducing himself and his staff, discussing focus and projects for the coming biennium, and presenting the proposed budget (attached). This budget has already been approved by the Weed Board itself after being heard publicly on October 28, 2020.

Commissioners should discuss with Mr. Kauer and ask questions about whatever they think is appropriate in regards to the budget or the Board's operations.

Staff has only been a facilitator for this meeting and has no recommendations. This is entirely a Weed Board item.

Fiscal Impact

None.

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE 2021-2022 OPERATING BUDGET FOR THE BENTON COUNTY NOXIOUS WEED CONTROL BOARD

WHEREAS, Resolution 2015-441 established the Benton County Noxious Weed Control Board as an independent and distinct agency subject to rules, regulations, provisions, and oversight as set forth in Chapter 17.10 RCW; and,

WHEREAS, per RCW 17.10.240, the Benton County Noxious Weed Control Board shall submit an operating budget to the Benton County Board of Commissioners for approval; and,

WHEREAS, on October 28, 2020, a public hearing was held by the Benton County Noxious Weed Control Board to review the 2021-2022 operating budget; and,

WHEREAS, the Benton County Noxious Weed Control Board of Directors unanimously approved the 2021-2022 operating budget as presented in Resolution 181017 WB – Exhibit A; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approve the 2021-2022 operating budget for the Benton County Noxious Weed Control Board as presented in Resolution 181017 – Exhibit A.

Dated this _____ day of _____, 2020.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

cc: Benton County Noxious Weed Control Board

Prepared by: A.J. Fyall

Benton County Noxious Weed Control Board
1841 Terminal Dr. Richland, WA 99354
(509)943-6005
bcnwcb@frontier.com

Exhibit "A" Resolution 181017 WB

Benton County Noxious Weed Control Board
Budget Years 2021-2022

Projected Expense	
Salary & Medical Stipend	$ 404,000.00
Employee Expense/Benefits	$ 90,554.00
Employee Education	$ 4,000.00
Operating Supplies	$ 39,000.00
Professional Services	$ 8,500.00
Essential Services	$ 140,800.00
Other Expense	$ 35,000.00
Total Expense	$ 721,854.00
Projected Income	
Assessment Funds	$ 700,000.00
Additional Income	$ 37,300.00
Total Income	$ 737,300.00
Net Income	$ 15,446.00
Estimated Value Expected January 1, 2021	
Capital Account	$ 75,000.00
Reserve Account	$ 75,000.00
Unencumbered Cash	$ 38,500.00
	$188,500.00

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 24, 2020
Subject:	Feasibility study results for transforming the old Trios Hospital into a Behavioral Health Recovery Center
Presenter:	Lee Kerr, Two Rivers Health District
Prepared By:	Kyle Sullivan
Reviewed By:	Kyle Sullivan

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A Discussion only

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

On February 4, 2020 Gary Long with the Kennewick Public Hospital District (now known as the Two Rivers Health District) presented to the BOCC. In collaboration with the Benton Franklin Recovery Coalition they requested the County assist in paying for a part of a feasibility study to determine the financial and operational potential of transforming the old Trios Hospital building on Auburn street in Kennewick into a Behavioral Health Recovery Center that includes treatment for mental health, substance use disorders, crisis services, residential treatment, etc., making it a "one stop" treatment center. Benton County agreed to assist with paying for the study and contributed $12,500.00. The feasibility study has been completed and the results will be presented to the BOCC.

Fiscal Impact

There is no impact to current expense.

Recommendation

No recommendation at this time. The purpose of this presentation is to provide the information from the feasibility study and answer any questions.

Suggested Motion

None