Jerome Delvin
District 1
Shon Small
District 2
Will McKay
District 3

Board of County Commissioners

Jerrod MacPherson
County Administrator

Matt Rasmussen
Deputy County Administrator

To view items in detail, click on highlighted areas.

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

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

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

AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, February 23, 2021

9:00 AM **Call to Order**
Approval of Minutes
- ❖ **Feb 9, 2021**

Review Agenda
Consent Agenda

Auditor
a. Line Item Transfer, Fund No. 0111-101, Dept. 000
b. Update to Cash Drawers

Capital Project
c. Line Item Transfer, Fund No. 0305-101, Dept. 000

Clerk
d. Agreement w/CI Support for Records Retention

Corrections
e. Line Item Transfer, Fund No. 0000-101, Dept. 120

Facilities
f. Contract w/Baker Commodities, Inc., for Jail Grease Trap Pumping & Cleaning Project
g. Second Amended Agreement w/Johnson Controls for HVAC Services

h. Ratifying Change Order No. 2 w/Chervenell Construction for the Courtroom Audio Visual Upgrade

Human Resources

i. Line Item Transfer, Fund No. 0000-101, Dept. 127

Human Services

j. Agreement w/Community Action Committee for Homeless Housing Plan
k. Benton County Criminal Justice Treatment Account Panel County Plan

Information Technology

l. Purchase of One Laptop, Docking Station & Two Monitors for Prosecuting Attorney's Office From Dell
m. Purchase of One Laptop, Docking Station & Two Monitors for Human Resources Dept. From Dell

Office of Public Defense

n. Superior Court Public Defense Services Agreement w/Judy Chang
o. District Court Public Defense Services Agreement w/B Myles
p. Revised Termination Contract Date for Megan Whitmire; Rescinding Resolution 2021-094

Prosecuting Attorney

q. Line Item Transfer, Fund No. 0000-101, Dept. 117

Public Safety

r. Line Item Transfer, Fund No. 0148-101, Dept. 115
s. Line Item Transfer, Fund No. 0148-101, Dept. 117
t. Line Item Transfer, Fund No. 0148-101, Dept. 136

Public Works

u. Line Item Transfer, Fund No. 0101-101, Dept. 500
v. Line Item Transfer, Fund No. 0501-101, Dept. 650
w. Agreement w/Benton County Noxious Weed Control Board for Equipment Services
x. Agreement w/City of Benton City for Equipment Services
y. Agreement w/Columbia Irrigation District for Equipment Services
z. Authorization for Advertisement & Bid Process for Crushing and Stockpiling

Purchasing Department

aa. Purchase of Inmate & Detention Supplies, Solutions & Services From Bob Barker Co.

Risk Management

bb. Contract w/Columbia Safety, LLC for First Aid, CPR & AED Training

Sheriff

cc. Federal Equitable Sharing Agreement and Certification Report
dd. Contract w/Cascade Engineering Services for Diagnostics, Recalibration & NIST Traceable Certifications of Radar & Speed Measuring Devices
ee. Contract w/Watch Systems for Sex Offender Notification Mailings & Alerts

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

Scheduled Business

Position Requests/Changes:

- Facilities Re-Organization ~ J Jones & L Wingfield
- Information Technology - Systems Analyst ~ R Heard & L Wingfield

- Human Services - Two Temporary Housing Program Navigators ~ K Sullivan & L Wingfield
- Clerk's Office - Employee Training ~ J Delvin

Discussion and Direction Regarding Jail Medical Services ~ Cdr. J Shelton

Rural County Capital Fund Disbursement Agreement & Program Update ~ A Fyall

Other Business

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Tuesday, February 9, 2021, 9:00 a.m.
Meeting provided by Video Live-Broadcast and Telephonically

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

Benton County Employees Present During All or a Portion of the Meeting: Deputy County Administrator Matt Rasmussen (via/WebEx); Robert Heard, IT Manager; Cristina Woods, Public Works, (via/WebEx); and Robert Blain, Operations & Capital Programs.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of February 2, 2021 were approved.

Review Agenda

The following items were added to the agenda:

- Executive Session to plan or adopt a strategy regarding a grievance position
- Change Order No. 7 with Banlin Construction
- Commissioner McKay requested consent agenda items "c" and "s" be pulled for discussion.

Consent Agenda

MOTION: Chairman Delvin moved to approve the consent agenda items "a" through "x" pulling "c" and "s" for discussion. Commissioner McKay seconded and upon vote, the Board approved the following:

Commissioners

a. Contract w/Visit Tri-Cities for Production & Marketing Associated with Public Outreach Campaign
b. Amended Contract w/Washington State Military Department for E911

Human Services

d. Contract w/Debra Chapman for Transition Specialist Services
e. Coding Correction

Information Technology

f. Renewal of Microsoft Enterprise Agreement for Licensing Software from SHI International
g. Purchase of Justice AV Solutions IRecord IP Recording System from Justice AV Solutions for the Sheriff's Office
h. Purchase of Forensic Software License from Grayshift for the Sheriff's Office

Office of Public Defense

i. District Court Public Defense Services Contract w/Joseph White

Planning

j. Final Plat of Grace Estates – SUB 2020-010

Public Works

k. Acceptance of River Crest Place for Maintenance as a Rural Access Road
l. Vacation of a Portion of County Right-of-Way Abutting SR 397
m. Granting Franchise to Broadview Water Association to Place Pipeline System & Facilities
n. Construction Plans for Mt. View Meadows Phase 2 for Kendall Road
o. Award of BST Area 5 & Edge Repair to Central Washington Asphalt
p. Purchase of One Alamo Mantis Mower from Alamo Industrial
q. Purchase of Herbicides from Helena Chemical Co., Wilbur-Ellis Co., & Nutrien Ag Solutions
r. Contract w/Qal-Tek for Calibration of Density Gauges
t. Purchase of Two Ford F250 Pickups, Two Ford Explorers & Four Ford Escapes from Columbia Ford

Purchasing Department

u. Rejection of Bids for Pistol & Associated Accessories, Bid No. CB 20-37
v. Purchase of Uniforms & Accessories from Galls; Rescinding Resolution 2019-829

Risk Management

w. Contract w/WA State Military Department for Reimbursement for COVID-19 Response

Treasurer

x. Agreement w/Master's Touch for Formatting, Printing & Mailing of Property Tax Statements

Public Comment

None.

Consent Agenda Item "c" - Payment Authorization to Coffey Refrigeration

Commissioner McKay asked for clarification on this invoice and who would be paying for it since it went over budget.

Mr. Blain explained this was a call out back in November when the tilt skillet went down. He said they were in transition with a new Facilities Manager, and the amount was beyond what was

authorized for the contract, not over budget. Additionally, it will be paid from the Facilities/Jail subsection of the budget.

Consent Agenda Item "s" - Third Amended Contract w/HDR Engineering for Design of the Moderate Risk Waste Facility

Commissioner McKay expressed concern regarding this amendment, as he saw it was a mistake by HDR since it should not be 100% until the City had stamped the drawings. Additionally, he did not agree with the amount being charged and Benton County was paying HDR to know this information and Benton County should not have to pay for their mistake.

Robert Blain explained that during the process of design and permitting, they were told they would be able to pull out of the lower canal. However, they became aware they would not be able to do that and needed to go a different route. They did 100% design complete and then had a change in the permitting process and were asking HDR to go back and re-design.

Mr. Blain discussed the process and said as far as construction and long-term maintenance, there was a savings, but there was a cost in the design and to get these drawings out to bid.

Commissioner McKay said he did not want to affect the timing of this project and would agree to move forward but did not agree with how HDR was saying it was 100% design complete.

MOTION: Commissioner Small moved to approve consent agenda items "c" and "s" as presented. Commissioner McKay seconded and upon vote, the motion carried.

Public Hearing – City of West Richland Franchise Renewal

Cristina Woods submitted the application by the City of West Richland to renew a Non-Exclusive Franchise Order and Agreement for water and sewer system lines and associated facilities from the City of West Richland within Benton County road right of way. She said the Public Works Department recommended approval, subject to the listed conditions.

As there was no one present telephonically to testify, public testimony was closed.

MOTION: Commissioner Small moved to approve the franchise order and agreement with City of West Richland subject to the six items listed in the report to the Commissioners. Commissioner McKay seconded and upon vote, the motion carried.

Other Business

Change Order No. 7 – Banlin Construction

Robert Blain presented Change Order No. 7 with Banlin Construction for the new Administration Building project. The change order consisted of the following:

- Trench design to modify layout in the service yard and rearrange lines coming of the buildings - $135,403.25
- Expanding service yard wall – additional equipment manufacturers requirement - $33,745.97
- 3rd floor revisions to office and conference - $20,915.21
- Additional concrete to foundation to support tip-up - $20,156.67
- Total cost is $210,221.00 plus WSST for a total contract cost of $13,814,127.28 plus WSST; these changes will add 42 days to the contract

Mr. Blain reiterated to the Board the bulk of the previous changes were owner initiated. He said they were getting close to the 10%, but 7% were owner initiated.

Heidi Pierce, MMEC Architecture & Interiors (via/WebEx), discussed the changes and said they needed to add some equipment to the service yard; they had designed it to bury and changed to trench design for easier access.

Commissioner Small discussed his concern about having to pay to fix a design mistake and Ms. Pierce said that concern was understandable, and errors were going to occur. However, they wanted to work with the county to make sure everything was resolved; they had a 3% errors and omissions and had not hit that amount yet.

Mr. Blain discussed a change order that would be coming because they were originally going to bid separately for the security and access points but decided to bid as part of this contract. Additionally, with the additional 42 days, they were looking at the end of August for completion and the end of September for occupation.

MOTION: Commissioner McKay moved to approve Change Order No. 7 with Banlin Construction LLC for the New Administration Building project as presented. Commissioner Small seconded and upon vote, the motion carried.

Meeting Cancellation

Mr. MacPherson reminded the Board there would not be a meeting on Tuesday, February 16, 2021 due to the holiday on Monday.

Executive Session – Plan or Adopt Strategy – Grievance Position

The Chairman and County Administrator announced at 9:25 a.m. the Board would go into executive session for up to 15 minutes to plan or adopt a strategy regarding a grievance position. The Board briefly recessed to reconvene in the Executive Conference Room.

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

The Board came out at 9:37 a.m. No decisions were made in executive session.

Resolutions

2021-138: Contract w/Visit Tri-Cities for Production & Marketing Associated with Public Outreach Campaign
2021-139: Amended Contract w/Washington State Military Department for E911
2021-140: Contract w/Debra Chapman for Transition Specialist Services
2021-141: Coding Correction – Human Services and the Homeless Housing Fund
2021-142: Renewal of Microsoft Enterprise Agreement for Licensing Software from SHI International
2021-143: Purchase of Justice AV Solutions IRecord IP Recording System from Justice AV Solutions for the Sheriff's Office
2021-144: Purchase of Forensic Software License from Grayshift for the Sheriff's Office
2021-145: District Court Public Defense Services Contract w/Joseph White
2021-146: Final Plat of Grace Estates – SUB 2020-010
2021-147: Acceptance of River Crest Place for Maintenance as a Rural Access Road
2021-148: Vacation of a Portion of County Right-of-Way Abutting SR 397
2021-149: Granting Franchise to Broadview Water Association to Place Pipeline System & Facilities
2021-150: Construction Plans for Mt. View Meadows Phase 2 for Kendall Road
2021-151: Award of BST Area 5 & Edge Repair to Central Washington Asphalt
2021-152: Purchase of One Alamo Mantis Mower from Alamo Industrial
2021-153: Purchase of Herbicides from Helena Chemical Co., Wilbur-Ellis Co., & Nutrien Ag Solutions
2021-154: Contract w/Qal-Tek for Calibration of Density Gauges
2021-155: Purchase of Two Ford F250 Pickups, Two Ford Explorers & Four Ford Escapes from Columbia Ford
2021-156: Rejection of Bids for Pistol & Associated Accessories, Bid No. CB 20-37
2021-157: Purchase of Uniforms & Accessories from Galls; Rescinding Resolution 2019-829
2021-158: Contract w/WA State Military Department for Reimbursement for COVID-19 Response
2021-159: Agreement w/Master's Touch for Formatting, Printing & Mailing of Property Tax Statements
2021-160: Authorizing Payment to Yoder Inc. dba Coffey Refrigeration – Jail Kitchen Equipment
2021-161: Approving the Third Amendment to the Professional Services Contract Between Benton County and HDR Engineering – Moderate Risk Waste Facility
2021-162: Approving Contract Change Order No. 7 with Banlin Construction – New Administration Building

There being no further business before the Board, the meeting adjourned at approximately 9:38 a.m.

_____ _____

Clerk of the Board Chairman

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN ELECTION RESERVE FUND NUMBER 0111101 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: B. Chilton; File; IT

L. Roe

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Election Reserve | Fund Nbr: 0111101

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

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
514.401	3101	Supplies	$725	514.401	3503	Computer Software	$725
TOTAL			$725	TOTAL			$725

Explanation:

Purchase two licenses for the program InDesign for the creation of voter pamphlets which are now a requirement of the county to produce and no longer the State of Washington. As per Res. 2020-900 board approval is required.

Prepared by: Lorene Roe | Date: 2/3/21

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

Pricing Proposal
Quotation #: 19961529
Created On: 1/22/2021
Valid Until: 2/22/2021

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

Tyler Henderson
290 Davidson Ave
SomersetNJ, 08873
Phone: 732-529-2148
Fax:
Email: tyler_henderson@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	Adobe InDesign CC for teams - Team Licensing Subscription New (monthly) - 1 user - GOV - Value Incentive Plan - level 1 (1-9) - Win, Mac - Multi North American Language Adobe - Part#: 65304051BC01A12 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: 06016 Coverage Term: – 11/30/2021 **Note:** VIP #B244669C5E65C3704EDA	2	$330.23	$660.46

Subtotal	$660.46
*Tax	$56.80
Total	$717.26

*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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2-23-2021
Subject:	Deposit of Funds
Presenter:	
Prepared By:	Shawn Bohlinger
Reviewed By:	Brenda Chilton/Lorene Roe

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

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

Summary / Background Information

The Prosser Auditor's Office has established there is no longer a need for a 4th workstation cash drawer.

Fiscal Impact

none

Recommendation

These funds of $400.00 from Workstation 4 (WS4) of the Prosser Auditor's Office shall be deposited with the County Treasurer.

Suggested Motion

Approve as part of the consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON IN THE MATTER OF COUNTY FUNDS, RE: UPDATE TO CASH DRAWERS

WHEREAS, the Auditor's office currently has multiple cash drawers established for use in the Licensing and Recording Divisions of the Department; and

WHEREAS, the previously established cash drawer of Workstation 4 (WS4) of the Prosser Office of the Auditor is no longer necessary; and

WHEREAS, the Auditor recommends the funds of $400.00 from WS4 should be deposited with the Treasurer as the funds are no longer needed; **NOW, THEREFORE;**

BE IT RESOLVED, that the funds of $400.00 from Workstation 4 (WS4) of the Prosser Office of the Auditor shall be deposited with the County Treasurer; and

BE IT FURTHER RESOLVED, for memorialization purposes, the current balances of cash in the Benton County Auditor's Office is updated as follows:

Kennewick	Current WS Total	New WS Total
WS1	$400.00	$400.00
WS2	$400.00	$400.00
WS3	$400.00	$400.00
WS4	$400.00	$400.00
WS5	$400.00	$400.00
WS6	$400.00	$400.00
Prosser	Current WS Total	New WS Total
WS1	$400.00	$400.00
WS2	$400.00	$400.00
WS3	$400.00	$400.00
WS4	$400.00	$0.00
Office	Current R/L Bank Balance Total	New R/L Bank Balance Total
Kennewick Bank Account	$500.00	$500.00
Prosser Bank Account	$500.00	$500.00
Total Cash	$5000.00	$4600.00

CC: B. Chilton, Auditor, Treasurer S. Bohlinger

Dated this _____day of _____, 2021

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

CC: B. Chilton, Auditor, Treasurer S. Bohlinger

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS, RE: TRANSFER OF FUNDS WITHIN CAPITAL PROJECTS FUND 0305-101, 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 23rd day of February, 2021.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

D Calhoun

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Capital Projects | Fund Nbr: 0305101

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
594.200	4103	Professional Services	3,338,370	518.400	1028	Contract Coordinator	16,400
				518.400	2102	Social Security (FICA)	1,225
				518.400	2103	Medical Insurance	3,661
				518.400	2104	Retirement	2,060
				518.400	2119	Paid Family Leave Act	24
				518.200	1037	ENGINEERING TECHNICIAN II	10,527
				518.200	2102	Social Security (FICA)	786
				518.200	2103	Medical Insurance	2,350
				518.200	2104	Retirement	1,322
				518.200	2119	Paid Family Leave Act	15
				594.180	6430	Capital Software	3,300,000
TOTAL			$3,338,370	TOTAL			$3,338,370

Explanation:

Create lines for Contract Coordinator & Engineering Tech II in Road Department to code time related to Capital Projects. $38,370
This does not create a new position and will eliminate Road billing Capital Projects for employees time.

Move Financial Software upgrade amount in CIP. $3.3M

Prepared by: Debbie Calhoun | Date: 10-Feb-2021

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	CI Information Management Company contract
Presenter:	
Prepared By:	Josie Delvin
Reviewed By:	

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

Type of Agenda Item:	**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

We are requesting the contract extension be approved.

Fiscal Impact

None – funds are already budgeted by departments to fund storage of records.

Recommendation

Pass the resolution allowing the contract extension.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF CONTINUING AN INFORMATION MANAGEMENT SERVICE AGREEMENT BETWEEN CI SUPPORT, LLC, DBA CI INFORMATION MANAGEMENT COMPANY AND BENTON COUNTY, WASHINGTON

WHEREAS, Benton County Offices and Departments use Local Government Common Records Retention Schedules (CORE) along with other approved schedules for the destruction and or transfer of public record documentation to scan, toss, and archive; and

WHEREAS, while there has been an on-going effort to scan, toss and archive records, there are still years of records boxed and stored with CI Information Management Company; and

WHEREAS, the Board of Benton County Commissioners signed an agreement in 2016 (2016 194) for a three year period to be extended in one (1) year increments for an additional four (4) years; and

WHEREAS, the original resolution (2016-194) was extended in 2019 for one year (2019-151) and expired on March 15, 2020; and

WHEREAS, this agreement was extended in 2020 for one year (2020-189) and expires on March 15, 2021;

WHEREAS, the existing resolution expires on March 15, 2021; **NOW THEREFORE**

BE IT RESOLVED, that this agreement shall be extended for 1 year to expire on March 15, 2022.

Dated this ..... day of ....., 2021.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Orig.: File – J Delvin
cc: Auditors; Sonia Godinez

J. Delvin

CI Information Management

P.O. Box 7346 - Kennewick, WA 99336 - 509-586-6090

Information Management Service Agreement

This Information Management Agreement ("Agreement") is entered into as of this 15, day of March, 2016 ("Effective Date") by and between CI Support, LLC, dba CI Information Management (Company), having a place of business at 900 S. Dayton, Kennewick, WA 99336 ("Company") and Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 ("Client").

I. RECORDS MANAGEMENT SERVICES - Company hereby agrees to accept for storage and to service under its management system such materials (Stored Material) as Records, Media, and/or Materials Client requests, subject to all terms and conditions herein, including those incorporated as attachments hereof. Client agrees to pay Company for its services according to Company's current rate schedule, or any revisions thereto. The attached Schedule A- Information Management and Document Destruction Fee Schedule, Schedule B- Standard Storage & Operating Procedures, Schedule C- "FACT Act" or "FACTA" Affidavit, Schedule E- "HIPPA" or Business Associate Agreement, are incorporated herein and made a part hereof. Unless modified by specific provisions set forth in Schedule A, B, C, or E the following terms and conditions shall apply to this Agreement.

I.1. STORED MATERIAL - From and after the effective date for the time period set forth in Section IV.1, the Company shall store Client's marked boxes at a secure storage facility located in Kennewick WA 99336 and service the Stored Records, Media and/or Material as set forth herein as identified on Client's Intake Transmittal Form. Client and Company may modify or add to the record materials included in the Schedule of Stored Materials. Such additional Stored Material shall, unless otherwise agreed in writing, be deemed to be held under the same terms and conditions as the Stored Material.

I.2. ACCESS TO STORED MATERIAL -

a. Stored Material and information contained in said Stored Material shall be delivered only to Client's Authorized Representatives as stated in Client's Authorized Representative form which may be amended at any time by mutual agreement of the parties. Client represents that the Authorized Representatives have full authority to personally access Stored Material at Company's facility, order any service for the removal of the Stored Material, and to deliver and receive such. Such order may be given via telephone, electronically, fax, or in writing.

b. When any Stored Material is ordered out, a reasonable time shall be given to the Company to carry out said instructions; and if it is unable to do so (or to provide any other service herein contemplated) because of acts of God or public enemy, seizure or legal process, strikes, lockouts, riots and civil commotions, extreme weather or other reason beyond the Company's control, or because of loss or destruction of goods for which the Company is not liable, or because of any other excuse provided by law, the Company shall not be liable for failure to carry out such instructions or services.

c. The Company reserves the right to deny access to or delivery of Stored Material until such time as Client has cured any default under this Agreement.

d. Authorized representatives of Client shall have the right at reasonable times and upon reasonable notice to examine the records and/or media and compilations of data of the Company which pertain to the performance of the provisions of the Agreement.

e. The Company shall not be liable for damage to Client materials in transit, or to items which may receive sudden and accidental damage, pursuant to conditions specified in Section III.

f. The Company shall have no liability to Client by granting access to any Records to any person authorized under this Section, unless the Company receives prior notice revoking the authorization.

I.3. DECLARATION OF EXCESS VALUATION - Client declares that the valuation of deposits made hereunder is $2.00 per carton, container, disk, tape, or disk pack and agrees to pay an additional monthly rate of $_____ per $1000.00 of declared Excess Valuation, of which payment shall be made simultaneously with the normal monthly rate specified herein. The Company may, at its discretion, elect to repair, replace or restore lost or damaged property up to the valuation declared by the Client, whether the property is lost in whole or in part. Client shall cause its insurers of deposits to waive any right of against the Company.

_____ 3-15-2016

(Client Signature) (Date)

I.4. DISPOSAL OF RECORDSI.4.1. FACTA - This Agreement adopts the standard of proper disposal set forth in the Federal Trade Commission's Rule, "Disposal of Consumer Report Information and Records" (16 CFR Part 682), hereinafter referred to as the "FTC Disposal Rule", (Schedule C). At the time of signing this Agreement Client shall sign, or designate an Authorized Representative of the Client to sign a copy of the attached Fair and Accurate Credit Transactions Act ("FACT Act" or "FACTA") Affidavit (Schedule C).

I.4.1. PROCEDURE - Upon written instruction from the Client or its Authorized Representatives, the Company may facilitate proper disposal of Stored Material. The Client releases the Company from all liability by reason of the destruction of such Stored Material pursuant to such authority or notice. The Company shall facilitate such proper disposal in accordance with the FTC Disposal Rule requirements in effect at the time of the final disposition by means of shredding at the rates set forth in Schedule A.

II. RATES - Client agrees to pay Company for its services according the attached Schedule A with the exception of the following services provided to Client within 90 days of execution: (1) Client, through the Benton County Prosecutor's Office (including the Child Support Division), will be provided by Company with the equivalent of 1500 1.2cf boxes worth of Initial Intake Records Services free of charge with the exception of a $100 delivery truck fee per pickup; (2) Client, through the Benton County Clerk's Office, will be provided by Company with the equivalent of 2500 1.2cf boxes worth of Initial Intake Records Services free of charge with the exception of a $100 delivery truck fee per pickup. For purposes of this section Initial Intake Records Services includes all fees incurred by Company associated with the initial intake of records, including but not limited to, providing boxes for storage, removal of boxes and bins from the Client's premises, transportation to Company records storage facility, receiving, verifying, and shelving boxes, providing bar code labels for each box, as well as importing Client's inventory supply list. Furthermore, all fees set forth in Schedule A associated with the viewing and access of records shall not apply to records stored by Company for Client, through the Benton County Prosecutor's Office (with the exception of records stored for the Child Support Division which will be charged pursuant to Schedule A), while Company is performing scanning services pursuant to a separate agreement. Said waiver of fees by Company is up to a maximum of five (5) hours of viewing time at Company's secure storage facility per month by the Benton County Prosecuting Attorney's Office (excluding the Child Support Division), and no more than twenty-five (25) boxes accessed during those five (5) hours, with no more than fifteen (15) boxes delivered to Client next day delivery once a month free of charge. Said waiver of fees is contingent on Client entering into a separate scanning agreement with Company for the scanning of all boxes stored for the Benton County Prosecuting Attorney's Office (excluding records stored for the Child Support Division), and lasts until the full performance of scanning services by Company at which time the fees associated with the viewing and access of records set forth in Schedule A will go into effect. Client and Company believe execution of, and commencement of operations under the scanning agreement referenced in this section will be completed within 90 days of execution of this storage agreement. If the separate scanning agreement is not executed within 90 days of this agreement's execution the fees set forth in Schedule A will immediately go into effect thereafter. Fees may increase, and will be accepted by Client up to three percent (3%) per year. Monthly storage/retention charges shall be due in advance. For Stored Material received during a month or stored for a portion of a month, charges will be assessed according to Schedule A. Company reserves the right to request amendment of Schedule A in the event of an unexpected and severe increase in vendor-driven operating expenses which are beyond the control of Company. Additional service charges and late payment fees, if any, shall be paid simultaneously with the monthly storage/retention charges. If the Client fails to pay the charges when due, Client shall be liable for late charges at the rate of 5% per annum.

III. LIMITATIONS OF LIABILITY

III.1. STORED MATERIAL – The Company shall not be liable for any loss or damage to Stored Material, however caused, unless such loss or damage resulted from the failure by the Company to exercise such care in regard thereto as a reasonably careful person would exercise in like circumstances. The Company is not responsible for the repair, replacement or restoration of lost or damaged property, subject to the conditions and limitations imposed by this Agreement. Company's liability if any, for loss damage, or destruction to part or all of the Stored Material stored hereunder shall be limited to $2.00 per carton, cubic foot, container, X-ray, disk, tape, disk pack or hard drive which amount Client declares to be the value of Stored Materials, unless Client declares an excess valuation and pays an additional monthly charge for said excess valuation, as provided in Section I.3. In such case, Company liability shall be limited to the amount of the excess valuation per carton, cubic foot, container, X-ray, disk, tape, disk pack or hard drive. Such limitation of liability shall apply irrespective of the cause of loss, damage, or destruction of the Stored Material. The Company accepts no liability for the deterioration of media in storage. Client shall cause its insurers of deposits to waive any right of subrogation against the Company.

III.2. CLAIMS FOR LOSS - Claims by the Client for loss, damage, or destruction must be presented in writing to the Company within a reasonable time and in no event longer than one hundred eighty (180) days after Client is notified by the Company or otherwise receives notice that loss, damage or destruction to part or all of the Stored Material has occurred.

III.3. COMMON CARRIER - Although some ancillary transportation may be furnished in connection with the delivery and pickup of Stored Material and other services, the Company is not and shall not be deemed a contract or common carrier, and the limitations on liability and claims procedure in this Agreement shall apply to any such ancillary transportation services.

IV. TERM AND TERMINATION

IV.1. TERM AND RENEWAL - The Initial Term of this Agreement shall commence as of the Effective Date first set forth above and continue for three (3) years. After the Initial Term, the term shall be automatically extended and be renewed for no more than four successive periods of one year each (a "Renewal Term") unless either party gives notice to the other of termination, in writing, at least sixty (60) days in advance of expiration of the Initial Term or Renewal Term. Upon giving such notice, this Agreement shall terminate at the end of the then current term. Such notice of termination shall specify an address for delivery of the Stored Materials.

IV.2. TERMINATION - In the event of termination, all amounts due for services rendered to date and storage fees through the effective Initial or Renewal Term shall become due and payable in accordance with Schedule A. If, without notification of termination, substantially all of the Stored Items are withdrawn from storage, this withdrawal will be considered a Termination. On termination or expiration of this Agreement, Client shall promptly return any property belonging to Company (such as keys, containers, etc.) and Company shall remove and deliver all Stored Material and other property in Company's possession or Premises, at Client's expense, to Client at Client's designated address.

V. DEFAULT

V.1. The occurrence of any one or more of the following events shall constitute Events of Default:

a. Failure to pay any sum due hereunder within thirty (30) days of invoice date; or
b. Breach of any provisions of this Agreement; or
c. Company's failure to deliver the services to Client as set forth herein; or
d. Either party becomes insolvent or files, or has filed against it, any proceeding in federal or state court seeking debtor relief.

V.2. Upon the occurrence of any of the Events of Default, Company, or Client as applicable, at their sole option, may exercise any or all of the following remedies:

a. Demand payment in advance by certified check, cashier's check, money order, or wire transfer prior to the performance of any services on behalf of the Client.
b. Upon 60 days' notice to Client, Company may demand in writing that Client pick up the Stored Material; or deliver the Stored Material to the Delivery Address, if none specified, to the Client Address.
c. Terminate this Agreement, whereupon Company or Client shall recover all damages suffered by reason of such termination, including reasonable attorneys' fees.

V.3. In the event Company or Client takes any action pursuant to this Section, it shall have no liability to Company or Client or anyone claiming through Client. The exercise by Company or Client of any one or more of the remedies provided in this Agreement shall not prevent the subsequent exercise by Company or Client of any one or more of the other remedies herein provided. All remedies provided for in this Agreement are cumulative and may, at the election of Company or Client, be exercised alternatively, successively or in any other manner and are in addition to any of the rights provided by law. Company or Client shall be entitled to include all reasonable attorneys' fees and costs incurred in connection with the enforcement of this Agreement.

VI. OWNERSHIP WARRANTY - The Client warrants that it is the owner or legal custodian of the Stored Material, or otherwise has full authority to store or destroy said record material in accordance with the terms of this Agreement. Client shall reimburse Company

for any expenses reasonably incurred by Company (including reasonable legal fees) by reason of Company complying with its obligations under this Agreement to destroy or store such materials in the event of a dispute concerning the handling of the materials provided by Client to Company.

VII. INDEMNIFICATION - Unless caused by the negligence or intentional acts of the Company or its subcontractors, the Client agrees to fully indemnify and hold harmless the Company, its officers, employees and agents for any liability, cost or expense, including reasonable attorneys' fees, that the Company may suffer or incur as a result of claims, demands, costs or judgments against it arising out of its services under this Agreement.

VIII. RULES AND RESPONSIBILITIES

VIII.1. OPERATING PROCEDURES - The Client agrees to comply with the attached Schedule B-Standard Storage and Operating Procedures.

VIII.2. RIGHT TO RELY ON INSTRUCTIONS - Company may act in reliance upon any instruction, instrument, or signature reasonably believed by Company to be genuine, and may assume that any of Client's employees or any employee of Client's affiliates or subsidiaries giving any written notice, request, or instruction has the authority to do so.

VIII.3. COMPLIANCE WITH CONTRACTS, LAWS AND REGULATIONS - Client shall be responsible for, and warrant compliance with, all contractual restrictions and all applicable laws, rules and regulations, including but not limited to environmental laws and contractual restrictions and laws governing the confidentiality, retention and disposition of information contained in any materials delivered to Company. Company shall comply with applicable laws, statutes, regulations and ordinances.

VIII.4. COOPERATION AND ASSISTANCE - Client shall cooperate with Company with regard to the performance of the Services, subject to normal security requirements and in a manner that is not unnecessarily disruptive to Client's business operations, by providing to Company such information, data, access to premises, management decisions and approvals as may be reasonable to permit Company to perform the Services hereunder.

VIII.5. DISALLOWED ITEMS - The Client shall not, at any time, store with the Company, any narcotics, materials considered to be highly flammable, explosive, toxic, radioactive, organic material which may attract vermin or insects, or any other materials which are otherwise illegal, dangerous and unsafe to store or handle in an enclosed area. The Company reserves the right to open and inspect any record materials tendered from storage and refuse acceptance of any record materials which fail to comply with the Company's storage restrictions and guidelines. Client shall not store negotiable instruments, jewelry, check stock, ticket stock or other items which have intrinsic market value. In the event of the accidental or negligent custodial transfer of hazardous or regulated waste, including bio-hazard, Client agrees to arrange to appropriately, safely and legally assume custody of such hazardous materials at their expense and further to indemnify the Company from any property damage or personal injury resulting from such transfer of material.

VIII.6. MATERIAL VARIANCES TO DESCRIPTIONS - Itemized lists or descriptions of contents of materials submitted by the Client to the Company shall be generally considered for recordkeeping, reconciliation, and reference purposes only, and are not to be considered proof that said documents contained on such lists and descriptions are in fact contained in the materials accepted. Company will make provision for validation of such document contents in advance and under special terms and fess at the request of the Client.

VIII.7. ACCEPTANCE - In the absence of an executed Agreement, the act of tendering said material for storage and/or other services by Company constitute acceptance by Client to the terms, conditions and rates of this Agreement.

VIII.8. INVENTORY SHORTAGE - Unless the Company is contracted by the Client to inventory the contents of all materials stored, the Company shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods; and the Company shall not be liable for such loss unless the Client establishes such loss occurred because of the Company's failure to exercise the care required under Section III, above.

IX. CONFIDENTIALITY - The Company shall exercise the same degree of care in safeguarding Stored Material entrusted to it by

Client which a reasonable and careful Company would exercise with respect to similar records of its own provided; however, that liability of the Company to Client shall be limited as set forth in Section III above. Company shall not access Client's records without express authorization from an Authorized Representative. The Company may comply with any subpoena or similar order related to the stored records, provided that the Company notifies Client promptly upon receipt thereof, unless such notice is prohibited by law. Client shall pay Company's reasonable charges, including attorneys' fees, for such compliance.

X. DISPUTE RESOLUTION - Should the parties be unable to resolve any differences resulting from the interpretation or administration or alleged breach by either party of this Agreement, or relating in any way to Stored Material, the same shall be finally resolved by binding arbitration within the City of Kennewick, Benton County, Washington, conducted by the American Arbitration Association before a panel of one arbitrator pursuant to the Commercial Arbitration Rules then in effect. Each party shall bear one-half (½) of the expense of the arbitrator. Each party shall bear its own expenses and attorneys' fees related to the arbitration. Any award or decision by the arbitrator(s) shall be final and binding between the parties and enforceable by any court of competent jurisdiction. During any arbitration proceedings, Company shall continue to provide Services, and Client shall continue to make payments to Company, in accordance with this Agreement. The fact that arbitration is or may be allowed shall not impair the exercise of any termination rights under this Agreement.

XI. MISCELLANEOUS

XI.1. ENTIRE AGREEMENT - This Agreement constitutes the entire agreement between Company and Client with respect to the subject matter of this Agreement. No change, waiver, or discharge of this Agreement shall be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. This Agreement may be amended only by an amendment in writing signed by Client and Company. No waiver of any right or remedy shall be effective unless in writing and nevertheless, shall not operate as a waiver of any other right or remedy on a future occasion. The term "Agreement" as used herein shall be deemed to include all such schedules. All words and phrases in this Agreement shall be construed to include the singular or plural number, and the masculine, feminine or neuter gender, as the context requires.

XI.2. BINDING NATURE AND ASSIGNMENT - This Agreement shall be binding on the parties and their respective successors and assigns. Company shall have the right of assignment to successor with one hundred eighty (180) days written notification to Client.

XI.3. INVALIDITY - Every provision of this Agreement is intended to be severable. If any term or provision is illegal, invalid or unenforceable, there shall be added automatically as part of this Agreement, a provision as similar in terms as necessary to render such provision legal, valid and enforceable. This Agreement shall be constructed in accordance with the laws of Washington State without giving effect to its conflict of laws or principles. In addition, the Company shall have, and may exercise, all rights granted to warehousemen by the Uniform Commercial Code as adopted in Washington State. All Schedules, if any, attached hereto are hereby incorporated by reference and made a part hereof.

XI.4. FORCE MAJEURE - Each party shall be excused from any delay or failure in performance under this Agreement for any period if and to the extent that such delay or failure is caused by acts of God, governmental actions, labor unrest, riots, unusual traffic delays or other causes beyond its control.

XI.5. RELATIONSHIP OF PARTIES - Company is acting as an independent contractor hereunder and has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by Company under this Agreement. Nothing in this Agreement shall be deemed or construed to constitute or create a partnership, association, joint venture, agency or fiduciary relationship between the parties hereto.

XI.6. EXCLUSIVITY - Client agrees to retain Company on an exclusive basis at all facilities covered by this Agreement for the term of this Agreement.

XI.7. NOTICES - All notices under this Agreement shall be in writing. Unless delivered personally, all notices shall be addressed to the appropriate addresses noted herein, or as otherwise noted in writing in accordance with this provision. Notices shall be effective upon receipt unless mailed by certified or registered mail, in which event notices shall be deemed to have been received as of the third business day after the date of posting.

XI.8. PUBLIC RECORDS ACT - Company hereby acknowledges that the Client is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 *et seq*. Accordingly, Company understands that to the extent a proper request is made, the Client may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in Company's possession. This may include records that Company might regard as confidential or proprietary. To the extent that Company provides any records to the Client that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. Company also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of Client's release of records covered under the Public Records Act. Client agrees to take all reasonable steps to notify Company in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by Company as confidential or proprietary, so that Company may seek a judicial order of protection if necessary.

IN WITNESS WHEREOF, each of the parties have caused this Agreement to be executed by their duly constituted legal representatives as of the Effective Date first set forth above. Upon execution, this Agreement replaces any and all previous agreements between Client and Company for the same services.

Benton County
By
Shon Small, Benton County Commissioner

7122 West Okanogan Place, Building "A"
Street Address

Kennewick, WA 99336
City, State, Zip Code

3-15-2016
Date

CI Information Management
By
Jeff Thompson, Director of Operations

900 S. Dayton
Street Address

Kennewick, WA 99336
City, State, Zip Code

3-10-16
Date

X
Approved as to form
Ryan J. Lukson

CI Information Management and Document Destruction Fee Schedule

Schedule 'A'

Benton County Date 3-15-2016

ADF	Add Document to Existing File	$4.00	per occurance
ANF	Add New File to Existing Cont	$4.00	per occurance
ARI	Admin Removal/Deletion from Locator System	$2.50	per occurance
BX1	Purchase Std LLT Cont	$2.50	per occurance
CPY	Photocopy Per Page	$1.00	per occurance
CRF	Client Pick Up File/Tape 8a-5p	$10.00	per occurance
CTR	Client Pick-Up Cont 8a-5p	$10.00	per occurance
CVR	Client Viewing Room Rental (per hour)	$10.00	per occurance
DBS	Shredding Destruction (per cu ft)	$2.32	per occurance
DPL- ZONE 1	Del/Pick Up Lrg Truck (71-480 cf)	$100.00	per occurance
DPL- ZONE 2	Del/Pick Up Lrg Truck (71-480 cf)	$200.00	per occurance
DPL- ZONE 3	Del/Pick Up Lrg Truck (71-480 cf)	$275.00	per occurance
DPL- ZONE 4	Del/Pick Up Lrg Truck (71-480 cf)	$375.00	per occurance
DPL- ZONE 5	Del/Pick Up Lrg Truck (71-480 cf)	$475.00	per occurance
DST	Retrieval of Cont. for Certified Dest.(per cu ft)	$2.92	per occurance
FAX	Facsimile Per Page	$1.00	per occurance
FFC	File Found In Chart	$1.00	per occurance
FNF	File Not Found	$3.50	per occurance
FRC	File Retrieval	$3.00	per occurance
IBI	Initial Box Intake/Data Entry (per cu ft)	$2.08	per occurance
IF1	Index File 1-3 Fields	$0.50	per occurance
IF2	Index File 4-6 Fields	$0.75	per occurance
IF3	Index File 7+ Fields	$1.00	per occurance
LID	Replace Unstable Lid	$1.50	per occurance
MIN	Stg Cont- Min Monthly	$25.00	per occurance
MLR	Misc Labor Charge/ Hr	$40.00	per occurance
OSB	Convert Open Shelf Files to Boxes (+carton)	$3.00	per occurance
PRF	Perm Remove File to Client	$4.00	per occurance
PRM	Perm Remove Container (per cu ft)	$2.92	per occurance
PRR	RUSH Perm Remove File (Within Normal Business Hours)	$8.00	per occurance
RBA	Cont Retrieval EMERGENCY AFTER HOURS (per cu ft)	$22.92	per occurance
RBR	RUSH Cont Retrieval 8a-5p (per cu ft) (Within Normal Business Hours)	$3.75	per occurance
RFA	File Retrieval EMERGENCY AFTER HOURS	$70.00	per occurance
RFR	RUSH File Retrieval 8a-5p	$8.00	per occurance
RFX	RUSH Fax per page (Within Normal Business Hours)	$2.00	per occurance
RNF	RUSH File Not Found (Within Normal Business Hours)	$11.00	per occurance
ROD	RUSH Scan on Demand per page ($18 minimum up to 100 pgs- then $0.18 a page)	$0.18	per occurance
RTF	File Refiled	$4.00	per occurance
RTN	Container Returned to Shelf (per cu ft)	$2.08	per occurance
RUC	Repack Unstable Cont (+ carton cost)	$6.00	per occurance
SCR	Stnd Cont Retrieval (per cu ft)	$2.08	per occurance
SOD	Scan on Demand per page ($12 minimum up to 100 pgs- then $ 0.12 a page)	$0.12	per occurance
SR1	Stg Cont- Std (1.2 cu ft)	$0.35	monthly
SR2	Stg Cont - LLT (2.4 cu ft)	$0.35	monthly
SR3	Stg Cont -Legal (3.6 cu ft)	$0.35	monthly
SR6	Stg Cont - Odd Size/Quote (cu.ft.) (get measurements)		monthly
SSF	Special Shipping Fee (+ postage)	$5.00	per occurance
SSR	Search Fee-Per Special Request	$9.00	per occurance

CI Information Management and Document Destruction Fee Schedule

Schedule 'A'

Benton County Date 3-15-2016

STR	Staircase Charge per Trip with 1.2 cu ft box	$1.00	per occurance
TFS	Fuel Surcharge	$1.20	per occurance
TR1	Handling Each Add'l Item (files each) (boxes by cu ft)	$1.25	per occurance
TR2	Handling Each Add'l Item (each 2.4 cu ft container)	$2.50	per occurance
TR3	Handling Each Add'l Item (each 3.6 cu ft container)	$3.75	per occurance
TRA- ZONE 1	EMERGENCY AFTER HOURS Trip Charge	$125.00	per occurance
TRA- ZONE 2	EMERGENCY AFTER HOURS Trip Charge	$250.00	per occurance
TRA- ZONE 3	EMERGENCY AFTER HOURS Trip Charge	$375.00	per occurance
TRA- ZONE 4	EMERGENCY AFTER HOURS Trip Charge	$525.00	per occurance
TRA- ZONE 5	EMERGENCY AFTER HOURS Trip Charge	$650.00	per occurance
TRO- ZONE 1	Trip Charge Standard (0-70 CF)	$19.00	per occurance
TRO- ZONE 2	Trip Charge Standard (0-70 CF)	$55.00	per occurance
TRO- ZONE 3	Trip Charge Standard (0-70 CF)	$85.00	per occurance
TRO- ZONE 4	Trip Charge Standard (0-70 CF)	$125.00	per occurance
TRO- ZONE 5	Trip Charge Standard (0-70 CF)	$175.00	per occurance
TRR- ZONE 1	RUSH Trip Charge w/in 3 hrs -Normal business hours	$29.00	per occurance
TRR- ZONE 2	RUSH Trip Charge w/in 3 hrs -Normal business hours	$97.00	per occurance
TRR- ZONE 3	RUSH Trip Charge w/in 3 hrs -Normal business hours	$145.00	per occurance
TRR- ZONE 4	RUSH Trip Charge w/in 3 hrs -Normal business hours	$245.00	per occurance
TRR- ZONE 5	RUSH Trip Charge w/in 3 hrs -Normal business hours	$325.00	per occurance
TRX	Trip No Charge	$0.00	per occurance
VAD	Verify & Auth for Cert Destruction	$1.25	per occurance

Burbank	Benton City	Boardman	Pendleton	Wenatchee
Finley	Hermiston	Grandview	Selah	Ellensburg
Kennewick	Lowden	Granger	Toppenish	Leavenworth
Pasco	Prosser	Milton-Freewater	Yakima	
Richland	Touchet	Sunnyside		
West Richland	Umatilla	Walla Walla		
		Wapato		

CI Information Management

Benton County

Schedule 'B' - Standard Storage and Operating Procedures

OBJECTIVE:
The purpose of this document is to provide both parties with a set of procedures and rules for our mutually successful partnership. These procedures are intended to allow us to manage the day-to-day workflow in an efficient manner so that we may provide superior customer service at a reasonable price. The ordering/authorization procedures are required as part of our commitment to manage your vital records with the highest levels of security.

OPERATING HOURS:
1. Regular operating hours are 8:00 AM to 4:30 PM Monday through Friday.
2. Holidays are: New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, and Christmas Day.
3. All orders requiring retrieval and/or delivery outside of regular operating hours are subject to After Hours retrieval and/or delivery charges.

REGULAR ORDERS:
1. Orders placed before 10:00 am will generally be delivered the next business day.

RUSH ORDERS:
1. RUSH retrievals/deliveries will be delivered within three Operating Hours, and will be charged at RUSH retrieval and delivery rates.
2. RUSH requests that cause the 3-hour delivery window to fall outside of normal operating hours will be charged the After Hours rates.

ORDERING:
1. Faxed requests on CIIM forms are preferred, with full details of material being requested, including container name and number or CIIM's Barcode Number as provided in your regular reports. Requests must be signed by an Authorized Individual, with the specified delivery address that has been designated by an Authorized Management Representative.
2. Telephoned requests must be followed by a faxed request, thereby generating an acceptable audit trail, preferably on an CIIM Form, if a CIIM form is not available, then faxes must be sent on company letterhead or company fax form, with all required information.
3. All RUSH requests must be made by an Authorized Individual by a telephone call, relating what material is being requested to assure timely receipt of the request. A confirming fax must be sent for all RUSH requests.

AUTHORIZATIONS:
1. Orders will be processed only if requested by a Management Authorized Individual.
2. Items will only be delivered to an authorized location, and delivery receipts being signed by a Management Authorized Individual.
3. Exceptions to the authorized list will only be made with a written request on company letterhead, and signed by an Authorized Management Individual.

STORAGE CHARGES:
1. Odd sized items (other than the standard record storage cartons) will be charged based on volume of cubic feet displacement in the storage facility, or by the linear foot.
2. Unstable Record Storage Cartons will be repacked at Client expense, at the current rate for Repacking an Unstable Container.

All files retrieved from inside cartons will be indexed by CIIM at the then current indexing fee.
Media Tapes will be retrieved from inside containers only if CIIM has previously indexed the tapes in the container.

Any exceptions to these rules and procedures shall be noted below and signed by the same individual that signed the *Information Management Agreement.*

Signature of Client	Date	Signature of CI Information Management
	3-15-2016	

CIIM V4.07.14

Benton County

Schedule 'C' - Fair and Accurate Credit Transactions Act ("FACT Act" or "FACTA") Affidavit

This affidavit is designed to facilitate compliance with the rule of the Federal Trade Commission, "Disposal of Consumer Report Information and Records" (16 CFR Part 682), hereinafter referred to as the "FTC Disposal Rule". The initial FTC Disposal Rule is attached as an appendix to this affidavit. Any future amendments to this rule's duties and obligations are automatically incorporated in the definition of "FTC's Disposal Rule". The FTC Disposal Rule was promulgated pursuant to the FACT Act, and it sets for the standard for proper disposal as follows:

"Any person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal." 16 CFR § 682.3(a)

"'Consumer information' means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data." 16 CFR § 682.1(b)

In signing this attachment to the Service Agreement, **Benton County** ("THE CLIENT") acknowledges that *CI Information Management* ("THE COMPANY") has made THE CLIENT aware of its obligation to properly dispose of "consumer information".

In order to facilitate compliance with the FACT Act, THE CLIENT hereby certifies that its records and information materials provided to THE COMPANY for offsite information management on **March 9, 2016**[date] ("Stored Material") comply with one of the following conditions indicated below:

____ I hereby certify that NO Stored Material contains any "consumer information" as defined in 16 CFR § 682.1(b).

____ I hereby certify that all Stored Material which contains "consumer information" as defined in 16 CFR § 682.1(b) has been identified clearly. **THE CLIENT** further directs THE COMPANY to facilitate proper disposal of all identified "consumer information" at its final disposition date, in accordance with the FTC Disposal Rule.

X I hereby certify that, because it is not known whether all Stored Material does or does not contain "consumer information" as defined by 16 CFR § 682.1(b), **THE CLIENT** directs THE COMPANY to facilitate proper disposal of all information owned by **THE CLIENT** for which THE COMPANY is custodian at its final disposition date, in accordance with the FTC Disposal Rule.

I, the undersigned, certify that I have read the information contained in this Addendum to the Service Agreement and have informed THE COMPANY of the true condition of the records owned by **THE CLIENT**.

Representing **THE CLIENT**,

Name (Signature) — Title

Name (Print) — Date: 3-15-2016

Appendix

16 CFR Part 682—Disposal of Consumer Report Information and Records

§ 682.1 Definitions.

(a) In general. Except as modified by this part or unless the context otherwise requires, the terms used in this part have the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(b) "Consumer information" means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(c) "Dispose", "disposing", or "disposal" means:

(1) The discarding or abandonment of consumer information, or

(2) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

§ 682.2 Purpose and scope.

(a) Purpose. This part ("rule") implements section 216 of the Fair and Accurate Credit Transactions Act of 2003, which is designed to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information.

(b) Scope. This rule applies to any person over which the Federal Trade Commission has jurisdiction, that, for a business purpose, maintains or otherwise possesses consumer information.

§ 682.3 Proper disposal of consumer information.

(a) Standard. Any person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

(b) Examples. Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with the rule in this part.

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.

(3) After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule. In this context, due diligence could include reviewing an independent audit of the disposal company's operations and/or its compliance with this rule, obtaining information about the disposal company from several references or other reliable sources, requiring that the disposal company be certified by a recognized trade association or similar third party, reviewing and evaluating the disposal company's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the potential disposal company.

(4) For persons or entities who maintain or otherwise possess consumer information through their provision of services directly to a person subject to this part, implementing and monitoring compliance with policies and procedures that protect against unauthorized or unintentional disposal of consumer information, and disposing of such information in accordance with examples (b)(1) and (2) of this section.

(5) For persons subject to the Gramm-Leach-Bliley Act, 15 U.S.C. 6081 et seq., and the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR part 314 ("Safeguards Rule"), incorporating the proper disposal of consumer information as required by this rule into the information security program required by the Safeguards Rule.

§ 682.4 Relation to other laws.

Nothing in the rule in this part shall be construed:

(a) To require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or

(b) To alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

§ 682.5 Effective date.

The rule in this part is effective on June 1, 2005.

Benton County

Schedule 'E' – Business Associate Addendum to Records Storage and Service Agreement – "HIPAA"

This Addendum to Records Storage and Service Agreement ("Addendum") dated 3-15-16 is made a part of the Records Storage and Service Agreement, including the Schedules (exhibits) thereto, between CI Information Management and **Benton County**, dated 3-15-16 ("Agreement"). Any inconsistency between the Agreement and this Addendum shall be governed by this Addendum.

Section I. Definitions

a. Breach. "Breach" shall have the same meaning as the term "breach" in 45 CFR § 164.402.

b. Business Associate. "Business Associate" shall mean CI Information Management

c. Covered Entity "Covered Entity" shall mean **Benton County**

d. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

f. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

g. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

h. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

i. Security Rule. 'Security Rule' shall mean the Standards for Security of Individually Identifiable Health Information at 45 CFR part164, subparts A and C).

j. Storage and Service Agreement. Prior agreement signed between Covered Entity and Business Associate in which the Business Associate regularly Uses and/or Discloses protected health information in its performance of services for the Covered Entity.

k. Unsecured Protected Health Information. "*Unsecured Protected Health Information*" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the Use of a technology or methodology specified by the Secretary in guidance issued under section 13402(h)(2) of Public Law 111–5 .

Capitalized terms Used but not otherwise defined in this Agreement shall have the same meaning as ascribed to those terms in 45 *CFR* Parts 160 and 164.

Section II. Obligations and Activities of Business Associate

a. Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this Agreement, the Records Storage and Service Agreement and the HITECH Act, or as Required By Law. Business Associate may Use and Disclose Covered Entity's PHI only if such Use or disclosure is in compliance with each applicable requirement of the Privacy Rule's Business Associate Contract standard [sec. 164.504(e)].

b. Business Associate agrees to Use appropriate safeguards to prevent Use or Disclosure of the Protected Health Information other than as provided for by this Agreement or the Record Storage and Service Agreement or to carry out other legal responsibilities of Business Associate.

c. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Privacy Rule, Security Rule, and HITECH Act.

d. Business Associate recognizes that, as of February 18, 2010, the administrative, physical, and technical standards and implementation specifications of the Security Rule apply to Business Associate in the same manner that they apply to Covered Entity.

e. Business Associate agrees to report to Covered Entity any Use or Disclosure of the Protected Health Information not provided for by this Agreement or the Records Storage and Service Agreement of which it becomes aware. Such notice shall be given promptly, and in any event within the timeframe required by 45 CFR 164.410.

f. Business Associate shall, following the discovery of a Breach, notify the Covered Entity of such breach promptly and in any event within sixty (60) days after the Breach was discovered or should have been discovered. Such notice shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or Disclosed during such breach if Business Associate knows such information.

g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same privacy and security restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

h. If PHI is in a Designated Records Set, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner agreed by both parties, to Protected Health Information in such Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.

i. If PHI is in a Designated Records Set, Business Associate agrees to make any amendment(s) to Protected Health Information in such Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner agreed by both parties.

j. Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with the Privacy Rule and the HITECH Act. Business Associate agrees to provide to Covered Entity, in time and manner consistent with terms in the Records Storage and Service Agreement, information collected to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with the Privacy Rule and the HITECH Act.

k. Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the Use and Disclosure of Protected Health Information created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner consistent with the terms of the Records Storage and Service Agreement or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, Security Rule, or the HITECH Act.

l. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner consistent with the terms and conditions of the Records Storage and Service Agreement, information collected in accordance with Section II. of this Agreement, to permit Covered Entity to respond to a request by an

Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

Section III. Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions

a. Services

Business Associate provides services for Covered Entity that involve the Use and Disclosure of Protected Health Information, which services are described in the Storage and Services Agreement. Except as otherwise specified herein, the Business Associate may make any and all Uses of Protected Health Information necessary to perform its obligations as set forth in the Records Storage and Service Agreement . Additionally, Business Associate may Disclose Protected Health Information for the purposes authorized by this Agreement only (a) to its employees, subcontractors and agents, in accordance with Section I-VI, or (b) as directed by the Covered Entity, if such Use or Disclosure of Protected Health Information would not violate the Privacy Rule or HITECH Act

Section IV. Specific Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

a. Except as otherwise limited in this Agreement, Business Associate may Disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

b. Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

Section V. Obligations of Covered Entity

a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or disclosure of Protected Health Information.

c. Covered Entity will not ask the Business Associate to undertake any acts inconsistent with the Security Rule, the Privacy Rule or the HITECH Act.

d. Covered Entity agrees to provide Business Associate with information about Disclosures requested by individuals.

e. Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, and the HITECH Act to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

Section VI. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the Security Rule, Privacy Rule or the HITECH Act if done by Covered Entity unless these activities are permitted under Section IV. of this Agreement. Covered Entity shall reimburse Business Associate for any damages, costs, fines or penalties incurred by reason of actions taken by Business Associate pursuant to Covered Entity instructions that are in breach of this provision.

Section VII. Term and Termination

a. Term. The Term, Termination and Effects of Termination of this Agreement shall be the same as the terms and conditions identified in the Records Storage and Service Agreement. The obligations of Business Associate shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in the Records Storage and Service Agreement.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall first:

    1. Provide a reasonable opportunity, in no case less than 60 days, for Business Associate to cure the breach or, at the discretion of Business Associate, end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity and by this section;
    2. Immediately terminate this Agreement, subject to the remainder of the terms of the Records Storage and Service Agreement, if Business Associate has breached a material term of this Agreement and cure is not possible; or
    3. If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination.

    1. Except as provided in the Records Storage and Service Agreement and paragraph (2) of this section, upon termination of this Agreement in accordance with the provisions of this agreement and the Records Storage and Service Agreement, Business Associate shall return all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
    2. In the event that Business Associate determines that returning the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make returning infeasible. Upon the Covered Entity's acceptance that returning of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return infeasible, for so long as Business Associate maintains such Protected Health Information. Business Associate shall be entitled to compensation for continued maintenance of Protected Health Information as provided for in Schedule B of the Records Storage and Service Agreement.

Miscellaneous

a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and regulations issued thereunder, unless such requirements would be not commercially reasonable or would cause a Party to be out of compliance with its legal obligations..

c. Survival. The respective rights and obligations of Business Associate under Section 7. Term of this Agreement shall survive the termination of this Agreement.

d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the HITECH Act.

Signature:	Signature:
Name: SHON SHALL	Name: Jeff Thompson
Title: Commissioner	Title: Director of Operations
Date: 2-15-2016	Date: 3-10-16

Cami McKenzie

From: Josie Delvin
Sent: Friday, March 01, 2019 8:37 AM
To: Cami McKenzie
Subject: Fw: contact
Attachments: CI resolution 2019-151.pdf

Cami:

Here is the mail string from CI

Thank you
Josie Delvin
Benton County Clerk

From: Josie Delvin
Sent: Thursday, February 28, 2019 1:28:09 PM
To: Jeff Thompson
Subject: RE: contact

Jeff:

I have attached the resolution extending for another year until 3/15/2020. I have to do them in 1 year increments.

Thank you
Josie Delvin
Benton County Clerk
7122 West Okanogan Place, Bldg. A
Kennewick, WA 99336

CONFIDENTIALITY NOTICE: This electronic mail transmission may contain legally privileged, confidential information. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking any action based on the contents of this electronic mail is strictly prohibited. If you received this in error, please contact the sender and delete all copies.

From: Jeff Thompson <jefft@columbiaindustries.com>
Sent: Wednesday, January 9, 2019 3:34 PM
To: Loretta SmithKelty <Loretta.SmithKelty@co.benton.wa.us>
Cc: Josie Delvin <Josie.Delvin@co.benton.wa.us>
Subject: RE: contact

Just curious, any word on the 3 year resolution?

Jeff Thompson | *Director of Operations and Business Development*
(O) 509.582.4142 x116 | (C) 509.948.8210
900 S. Dayton Street | Kennewick, WA | 99336

Columbia Industries Website | Facebook

Columbia Industries supports and empowers people with disabilities and other barriers, helping them achieve personal success and community engagement. We champion the development of essential vocational and life skills, meaningful social involvement and access to critical resources.

CONFIDENTIALITY NOTICE: The information contained in this message is attorney privileged and confidential information intended only for the use of the individual or entity above named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender and delete this message from your mailbox. Thank you.

From: Loretta SmithKelty <Loretta.SmithKelty@co.benton.wa.us>
Sent: Monday, November 26, 2018 11:43 AM
To: Jeff Thompson <jefft@columbiaindustries.com>
Cc: Josie Delvin <Josie.Delvin@co.benton.wa.us>
Subject: RE: contact

Jeff: just reviewed the resolution language and Benton County will need to draft another resolution for BOCC signature for the next 3 years. This is an internal process nothing is required on your part. Once signed I will send you an electronic version for your files.

Thanks for bringing this to my attention.
Loretta

From: Jeff Thompson <jefft@columbiaindustries.com>
Sent: Monday, November 26, 2018 11:26 AM
To: Loretta SmithKelty <Loretta.SmithKelty@co.benton.wa.us>
Subject: contact

Jeff Thompson | *Director of Operations and Business Development*
(O) 509.582.4142 x116 | (C) 509.948.8210
900 S. Dayton Street | Kennewick, WA | 99336

Columbia Industries Website | Facebook

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RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 120.

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Cindi Kane

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Corrections Dept Nbr: 120

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
523.620	3109	Jail Clothing	$3,000
TOTAL			$3,000

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
523.620	3508	Computer Replacement	$3,000
TOTAL			$3,000

Explanation:

Allocate funds for computer replacement requests. Request includes the replacement of a failing laptop that is not due for replacement.

Prepared by: Cindi Kane Date: 12-Feb-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Contract w/ Baker Commodities for the Pumping of the Jail Grease Trap
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

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

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

Summary / Background Information

The Benton County Jail has a 20,000-gallon grease trap that needs to be pumped and cleaned out.

The City of Kennewick has a list of five (5) authorized vendors for this type of service. County staff was able to receive only two (2) quotes from that list.

- Baker Commodities Inc. – $8,800.00
- River City Environmental Inc. – $13,340.00

After reviewing the quotes in detail, it was determined that Baker Commodities, Inc. was the lowest responsible bidder.

Fiscal Impact

Amount: $8,800.00 plus WSST

Fund: Fund # 0000-101 – Facilities Department

Recommendation

It is recommended by the Procurement & Contract Coordinator that the Board concurs and awards the contract to Baker Commodities, Inc. and authorizes the Chairman to sign the contract.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING A CONTRACT TO BAKER COMMODITIES, INC, GRANDVIEW, WASHINGTON FOR JAIL GREASE TRAP PUMPING & CLEANING PROJECT AND AUTHORIZING THE CHAIRMAN TO SIGN SAID CONTRACT

WHEREAS, the Procurement & Contracts Coordinator solicited the following quotes, from a list of authorized vendors from the City of Kennewick, for the pumping & cleaning of the Jail Grease Trap

Baker Commodities, Inc. (BAKERCI888L8) Grandview WA	$ 8,800.00
River City Environmental, Inc. (RIVERCE981BT) Portland, OR	$ 13,340.00

WHEREAS, the Procurement & Contracts Coordinator reviewed the quotes for completeness and recommends awarding the said project to Baker Commodities, Inc., Grandview, WA as the lowest responsible bidder; and

WHEREAS, a contract has been prepared, and reviewed and approved as to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division, and has been executed by Baker Commodities, Inc.; and

WHEREAS, the Procurement & Contracts Coordinator recommends the Chairman sign said contract; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Procurement & Contracts Coordinator's recommendation and awards the Jail Grease Trap Pumping & Cleaning Project to Baker Commodities, Inc. in the amount not to exceed $8,800.00 excluding WSST; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract to Baker Commodities, Inc.; and

BE IT FURTHER RESOLVED, the contract shall begin on the date last signed and shall expire on March 12, 2021.

Dated this 23rd day of February 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Facilities
C: Auditors

P. Schut

BENTON COUNTY
PUBLIC WORKS CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **BAKER COMMODITIES, INC.**, a corporation organized under the laws of the State of Delaware with its principal offices at 4020 Bandini BLVD, Vernon, CA 90058 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Quote;
b. Exhibit B – Prevailing Wage Information; and

2. DURATION OF CONTRACT

The term of this Contract shall begin upon execution by both parties and shall expire on March 12, 2021. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall pump & clean the grease trap at the Benton County Jail. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, “Quote", which is attached hereto and incorporated herein by reference.

b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in conjunction with the other contractor. In the event that the requested work requires, under State or local law, the

issuance of a building or other permit, CONTRACTOR shall be responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.

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

d. The COUNTY does not guarantee utilization of the "As needed Service" portion this contract. The COUNTY may award contracts to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the COUNTY.

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

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

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Sylvia Baggerly
Address:	150 Bridgeview Rd Grandview, WA 98930
Phone:	509-837-8686
Email:	sbaggerly@bakercommodities.com

b. For COUNTY:

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

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat rate fee of eight thousand eight hundred dollars and zero cents ($8,800.00) excluding Washington State Sales Tax (W.S.S.T)

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed eight thousand eight hundred dollars and zero cents ($8,800.00), excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. The CONTRACTOR shall inform the COUNTY promptly in writing if the CONTRACTOR's cumulative accounts receivable attributable to the COUNTY, pursuant to this Contract, reaches eighty percent (80%) of the maximum total amount payable so that budgeting and approval of additional amounts may be obtained (if appropriate). Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.

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

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

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

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

6. INVOICING

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

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

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

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

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

7. AMENDMENTS AND CHANGES IN WORK

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

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

8. HOLD HARMLESS AND INDEMNIFICATION

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

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

b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR’S obligations under this Section 8 shall survive termination and expiration of this Contract.**

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR or the CONTRACTOR'S employees, agents, or subcontractors. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into this Contract, are reflected in the CONTRACTOR’s compensation, and have been mutually negotiated by the parties.

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

   $2,000,000 General Aggregate

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

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 8. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

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

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

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

d. **Other Insurance Provisions**:

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY and its elected and

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

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

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

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a

pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

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

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

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

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

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

3. All written notices under this Section 9 and notice of

cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

10. PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to one hundred percent (100%) of the contract sum as security for the performance by the contractor of this Contract and payment of all the persons performing labor and supplying materials pursuant to this Contract. PROVIDED that the CONTRACTOR may elect, in lieu of the bonds, to allow the COUNTY to retain ten percent (10%) of the contract amount either for a period of thirty (30) days after the date of final acceptance, or until all necessary releases from the Washington State Department of Revenue, the Washington State Department of Labor and Industries, and the Employment Security Department have been received and any liens filed under chapter 60.28 RCW have been settled, whichever is later. Proof of the performance and payment bonds, or written notification of the CONTRACTOR'S desire to elect the alternative to the bonds (described above), must be received by COUNTY within ten (10) days following the execution of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S

own activities in providing the agreed services in accordance with the specifications set out in this Contract.

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

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

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

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

13. INSPECTION OF BOOKS AND RECORDS

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

14. CHOICE OF LAW AND JURISDICTION

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

15. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR

each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

16. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

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

18. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors

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

19. DISPUTES

Disputes over the CONTRACTOR’s performance shall be promptly addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

The CONTRACTOR shall perform the services under this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior written consent of the COUNTY.However, subcontracting is allowed for Parking Lot Cleaning, Side Walk Cleaning, and Brush Mowing Services Only.

21. ENTIRE AGREEMENT

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

22. NOTICES

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

23. SEVERABILITY

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

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

24. LITIGATION HOLD NOTICE

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

25. PUBLIC RECORDS ACT

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

virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

26. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, provisions for: indemnification; insurance; non-waiver; inspection of books and records; choice of law; compliance with laws; litigation hold; and the Public Records Act.

27. CONFIDENTIALITY

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

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

Date: _____

BENTON COUNTY

_____
Chairman
Benton County Board of County Commissioners

Approved as to Form:

_____
Civil Deputy Prosecuting Attorney

Date: 2/16/2021

BAKER COMMODITIES, INC.

_____
Signature

Branch Manager
Title:

Chuck Curtiss
PRINTED NAME

Exhibit A

Baker Commodities Inc.
Recycling for Life.

1/19/2021

Benton County Jail

Quote for grease trap pumping

First pumping:

20000 gal trap $.44 per gal = $8800.00 + tax if you pay tax

This will have to be done in 2 days

If put on 4 month schedule we will drop price per gal to $.41 and only charge for gals pumped.

EXHIBIT B

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

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

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

> The Department of Labor & Industries prevailing wage rate website is http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm
>
> The publication date to use is January 19 2021.
>
> The public works project is located in Benton County.

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

The Purchasing Department will mail a hard copy of the wage rates upon request. We can be reached at (509)737-3943 or by email at Procurement@co.benton.wa.us

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Contract Amendment # 2 w/Johnson Controls
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

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

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

Summary / Background Information

Due to higher than expected as needed maintenance costs for HVAC repairs County-Wide, the current contract with Johnson Controls has ran out of money. The additional funds requested is expected to get us through the end of the current contract period when we will be going out to bid for a new multi-year contract.

Fiscal Impact

Amount: $110,000

Fund: Current Expense - Facilities Department (0000-101.110)

Recommendation

Approve Contract Amendment with Johnson Controls, Inc. to increase the dollar amount of the contract from $551,629.94 to $661,629.94.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ENTERING INTO THE SECOND AMENDMENT TO THE PUBLIC WORKS AGREEMENT BETWEEN BENTON COUNTY AND JOHNSON CONTROLS, INC.

WHEREAS, on June 1, 2018, via Resolution 2018-383, Benton County entered into an agreement with Johnson Controls, Inc. for HVAC preventative maintenance and as-needed repairs;

WHEREAS, on June 2, 2020, via Resolution 2020-355, Benton County signed the first contract amendment that increased the contract amount from $451,629.94 to $551,629.94; and

WHEREAS, due to an unforeseen increase in as-needed repair costs, the Contract did not have sufficient funds to pay the Contractor; and

WHEREAS, the proposed Second Amendment to the Public Works Agreement increases the dollar amount of the total Contract from $551,629.94 to $661,629.94; **NOW, THEREFORE,**

BE IT RESOLVED that the attached Second Amendment to the Public Works Agreement between Benton County and Johnson Controls is hereby approved; and

BE IT FURTHER RESOLVED, the total amount of the Contract is increased to $661,629.94;

BE IT FURTHER RESOLVED, all other terms of the Contract remain the same.

Dated this 23rd day of February 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: Purchasing
c: Auditor; Facilities

P Schut

SECOND CONTRACT AMENDMENT

BENTON COUNTY
PUBLIC WORKS CONTRACT

THIS SECOND CONTRACT AMENDMENT (hereinafter "First Amendment") is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **JOHNSON CONTROLS, INC**, a corporation organized under the laws of the State of Washington, with its principal offices at 9718 W. Flight Drive, Spokane, WA 99224 (hereinafter "CONSULTANT").

WHEREAS, per Benton County Resolution No. 2018-383, the parties entered into an Public Works Contract, beginning June 1, 2018 and ending May 31, 2021 (hereinafter the "CONTRACT"), whereby CONTRACTOR agree to provide HVAC preventative and repair services; and

WHEREAS, per Benton County Resolution No. 2020-355, signed on June 2, 2020, the parties agreed to the First Contract Amendment that increased the Total Contract amount from 451,629.94 to $551,629.94

WHEREAS, this Second Amendment is necessary to increase the not to exceed amount from $551,629.94 to $661,629.94; and

NOW THEREFORE, the parties agree that all provisions of the CONTRACT remain in full force and effect, except for the following amendments:

2. **COMPENSATION** Section 5. of the CONTRACT, "COMPENSATION" is amended by replacing Sections a. and b. with the following:

   a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates stipulated in each work order which shall be based on the rates set forth in Exhibit B, Compensation, which is attached hereto and incorporated herein by reference excluding W.S.S.T.

   b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Six Hundred Sixty-One Thousand Six Hundred Twenty-Nine Dollars and Ninety-Four Cents ($661,629.94), excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. The CONTRACTOR shall inform the COUNTY promptly in writing if the CONTRACTOR' s cumulative accounts receivable attributable to the COUNTY, pursuant to this Contract, reaches eighty percent (80%) of the maximum total amount payable so that budgeting and approval of additional amounts may be obtained (if appropriate) . Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract

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

Dated:_____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest:_____
Clerk of the Board

Approved as to Form

_____
Eric Andrews, Civil Deputy Prosecuting Attorney

Dated: 2/10/21

FOR: JOHNSON CONTROLS, INC

_____
Signature

AREA SERVICE MANAGER
Title:

ERIC MCKINLEY
Print Name

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Ratification of Change Order No. 2 to Chervenell Contract for the Courtroom Audio Visual Upgrade Project
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

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

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

Summary / Background Information

On September 29, 2020, the Board of County Commissioners approved Resolution 2020-687 and ratified a contract with Chervenell Construction Company for the Courtroom Technology Upgrade project in the amount of $4,042,465.00 plus WSST.

On November 3, 2020, the Board of County Commissioners approved Resolution 2020-797 and ratified Change Order #1 for the Courtroom Technology Project in the amount of $21,723.33 plus WSST.

Six modifications are included in Change Order No. 2.

The first change consists of running additional fiber optic runs. The cost of this change is $5,956.24

The second change consists of adding power to the Judge's bench in Prosser to accommodate the equipment called out in the plans. This was an oversite from the designer. The cost of this change is $941.63

The third change consists of fixing a leak found in the fire sprinkler line in Pod 205. The cost of this change is $608.02

The fourth change consists of doing additional work on the fire alarms for Pod 205 & 206. The cost of this change is $1,425.89.

The fifth change consists of deducting the web cameras that were meant for witness stands. This was a request from the County. The cost of this change is -$5,274.48

The sixth change consists of adding a speaker and microphone hook up for Media Room in Courtroom B. The cost of this change is $2,421.34

All these changes are combined into Change Order No. 2 with a total cost of $6,078.64 plus WSST.

Fiscal Impact

Amount: $6,078.64 plus WSST

Fund: Current Expense – Department 139 CARES Act

Recommendation

Approve the Chairman to sign Change Order No. 2.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF RATIFYING CONTRACT CHANGE ORDER NO. 2 WITH CHERVENELL CONSTRUCTION COMPANY FOR THE COURTROOM TECHNOLOGY UPGRADE PROJECT

WHEREAS, on September 29, 2020 the Board of County Commissioners approved Resolution 2020-687 and executed a contract with Chervenell Construction Company for the Courtroom Technology Upgrade project in the amount of $4,042,465.00 plus WSST; and

WHEREAS, on November 3, 2020 the Board of County Commissioners approved Resolution 2020-797 and ratified Change Order #1 for the Courtroom Technology Project in the amount of $21,723.33 plus WSST; and

WHEREAS, unforeseen items have arisen that require changes in the work in order to complete the project; and

WHEREAS, the Director of Operations and Capital Programs has negotiated a fair and reasonable price for Change Order No. 2 in a total amount of $6,078.64 plus WSST; and

WHEREAS, the Deputy County Administrator authorized Change Order No. 2 under the authority of the emergency declaration; and

WHEREAS, the Deputy County Administrator and Director of Operations and Capital Programs recommends that Change Order No. 2 be ratified; **NOW THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners hereby ratifies Change Order No. 2 with Chervenell Construction Company for the Courtroom Technology Upgrade project attached hereto; and

BE IT FURTHER RESOLVED, the contract time will increase 0 days with a final completion date of January 31, 2021; and

BE IT FURTHER RESOLVED, the total contract amount will increase $6,078.64 plus WSST, to be paid to Chervenell Construction Company for a new contract amount not to exceed $4,070,266.97 plus WSST.

Dated this 23rd day of February 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: Facilities
c: Auditor

P. Schut

Chervenell Construction Company
7511 W Arrowhead Ave, Suite B
Kennewick, WA 99336
Ph : 509-735-3377

Change Order

Project:
20-88 Benton Co Courthouse Tech Upgr
7122 W Okanogan Place
Kennewick, WA 99336

Change Order: 2
Date: 12/29/2020
Architect's Project:

To Contractor:
Chervenell Construction Company
7511 W Arrowhead Ave, Suite B
Kennewick, WA 99336

The Contract is changed as follows:
CPR 6, 10, 11, 14, 15, 16

6	Additional Fiber Run Distance	$5,956.24
10	Prosser Power Requirements	$941.63
11	Fire Sprinkler Line	$608.02
14	Fire Alarm Work in 205 & 206	$1,425.89
15	Webcam Deduct	$-5,274.48
16	Install Speaker and Microphone in Media Room behind Courtroom B	$2,421.34
	Total:	$6,078.64

The original Contract Amount was	$4,042,465.00
Net change by previously authorized Change Orders	$21,723.33
The Contract Amount prior to this Change Order was	$4,064,188.33
The Contract will be increased by this Change Order in the amount of	$6,078.64
The new Contract Amount including this Change Order will be	$4,070,266.97

The date of Substantial Completion as of the date of this Change Order therefore is

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACT AND OWNER.

Meier Architecture & Engineer	Chervenell Construction Company	Benton County Kennewick
ARCHITECT	CONTRACTOR	OWNER
12 W. Kennewick Ave	7511 W Arrowhead Ave, Suite B	7122 W Okanogan Place
Kennewick, WA 99336	Kennewick, WA 99336	Kennewick, WA 99336
(Signature)	*(Signature)*	*(Signature)*
By	By Brandon Mayfield	By Matt Rasmussen
Date	Date 12/30/2020	Date 1/4/2021

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 127.

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 _____, 2021

_____
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: L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Personnel Resources Dept Nbr: 127

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: / TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.100	4103	Professional Services	$3,000	518.100	3508	Computer Replacement	$3,000
TOTAL			$3,000	TOTAL			$3,000

Explanation:

New workstation for HR Generalist

Prepared by: L. Wingfield Date 14-Feb-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Execute Agreement #2021-HHAA-CAC with Benton Franklin Community Action Committee
Presenter:	
Prepared By:	Mari Clark, DHS Contract Manager
Reviewed By:	Kyle Sullivan, DHS Manager

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Benton County Department of Human Services would like to contract with Benton Franklin Community Action Committee to assist the County with meeting the goals of the Five-Year Homeless Housing Plan for Benton County to reduce homelessness.

The program will provide Direct Service Vouchers, a short-term financial assistance program, and Supportive Services, consisting of case management specific tasks.

Fiscal Impact

There is no impact on the current expense budget. All revenues and expenditures are from the Fund 0154101 Homeless Housing and Assistance Fund, for a consideration amount of $150,000.00.

Recommendation

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

Suggested Motion

Consent Agenda

RESOLUTION

Benton County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTING GRANT AGREEMENT #2021-HHAA-CAC BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND BENTON FRANKLIN COMMUNITY ACTION COMMITTEE, TO ASSIST THE COUNTY WITH MEETING THE GOALS OF THE FIVE-YEAR HOMELESS HOUSING PLAN TO REDUCE HOMELESSNESS

WHEREAS, Benton County Department of Human Services would like to contract with Benton Franklin Community Action Committee to assist the County with meeting the goals of the Five-Year Homeless Housing Plan for Benton County to reduce homelessness; and

WHEREAS, the program shall serve the County's homeless residents, or those at risk thereof, who reside in Benton County and who are found to have met the program's eligibility and documentation requirements; and

WHEREAS, the program consists of providing overnight shelter for homeless individuals; NOW THEREFORE,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed Grant Agreement; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign, on behalf of Benton County, Grant Agreement #2021-HHAA-CAC between Benton County Department of Human Services and Benton Franklin Community Action Committee, to assist the County with meeting the goals of the Five-Year Homeless Housing Plan for Benton County to reduce homelessness, for a consideration amount of $150,000.00; and

BE IT FURTHER RESOLVED, the term of the attached Grant Agreement commences on January 1, 2021 and shall expire on December 31, 2022.

Dated this . . . .day of . . . . . , 2021

_____
Chair

_____
Member

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

Attest: _____
Clerk of the Board

cc: Human Services; Benton County Commissioners

M Clark

Benton County
DEPARTMENT OF HUMAN SERVICES
Grant Agreement #2021-HHAA – CAC

This Grant Agreement, hereinafter referred to as the "Agreement", is executed by and between **Benton County**, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, by and for the **Benton County Department of Human Services**, with its principal offices at 7102 West Okanogan Place, Suite 201, Kennewick, WA 99336 (hereinafter collectively referred to as "County") and **Benton-Franklin Community Action Committee**, a non-profit corporation, with its principal offices at 720 W. Court Street, Pasco, WA 99301, (hereinafter "Contractor").

County's Contact Information/Authorized Representative:
Kyle Sullivan, Manager
Benton County
Department of Human Services
7102 W. Okanogan Place, Suite 201
Kennewick, WA 99336
Phone: (509) 783-5284
Fax: (509) 783-5981
E-Mail: Kyle.Sullivan@co.benton.wa.us

Contractor's Contact Information/Authorized Representative:
Judith Gidley, Executive Director
Benton Franklin Community Action
Committee
720 W. Court Street
Pasco, WA 99301
Phone: (509) 545-4042
Fax: (509) 545-9691
E-Mail: jgidley@bfcac.org

Agreement Start Date ..... January 1, 2021
Agreement End Date..... December 31, 2022
Unless this Agreement is terminated sooner as set forth herein.

Consideration..... Benton County $150,000.00

Exhibit A..... Budget
Exhibit B..... Partnership Participation Agreement
Exhibit C ..... Housing Resource Center Guidelines

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

For the Contractor:

Judith A Gidley

Title: Executive Director Date 1/20/2021

For Benton County:

Benton County Commissioners Date

Attest: Clerk of the Board

Approved as to Content:

Department of Human Services

Approved as to Form:

Benton County Prosecutor's Office

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DEFINITIONS

1. DEFINITIONS

1.1. **Annual Point in Time Count or Washington Homeless Census** means an annual countywide census conducted as a collaborative effort by towns, cities, counties, community-based organizations, and state agencies, with the technical support and coordination of the Dept. of Commerce, to count and collect data on all homeless individuals in Washington.

1.2. **Benton County Resident** means an individual who has resided for ninety days, prior to applying for assistance within Benton County.

1.3. **Benton-Franklin HMIS Collaborative or the HMIS Collaborative** means a County administered, cooperative agreement of 2163 Homeless Housing and Assistance fund recipients and homeless service providers obtaining, sharing, and utilizing data for input into the Washington State HMIS operated by the Dept. of Commerce.

1.4. **CFR** means Code of Federal Regulations. All references in this Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation.

1.5. **Client or clients** means individuals who are eligible for services under this Agreement.

1.6. **Compliance With Fair Market Rent (FMR) and Occupancy Standards**: Contractor agrees to comply with all FMR and occupancy standards set forth herein. FMR and occupancy standards are defined as gross rent estimates provided annually by HUD. They include the shelter rent plus the cost of all tenant-paid utilities, except telephones, cable or satellite television service, and internet service. HUD sets FMR to ensure that a sufficient supply of rental housing is available to housing program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many low-income families as possible. Occupancy standards are set by Benton County Department of Human Services according to Public Housing and HUD requirements and determine the size of a housing unit a household may occupy.

1.7. **Dept. of Commerce** means the Washington State Department of Commerce.

1.8. **Eligible Activities** for Homeless Housing and Assistance funds, as set forth in RCW 43.185C.050(2), are as follows:

- rental and furnishing of dwelling units for the use of homeless persons;
- costs of developing affordable housing for homeless persons, and services for formerly homeless individuals and families residing in transitional housing or permanent housing and still at risk of homelessness;
- operating subsidies for transitional housing or permanent housing serving formerly homeless families or individuals;
- services to prevent homelessness, such as emergency eviction prevention programs including temporary rental subsidies to prevent homelessness;
- temporary services to assist persons leaving state institutions and other state programs to prevent them from becoming or remaining homeless;
- outreach services for homeless individuals and families;
- development and management of local homeless plans including homeless census data collection; identification of goals, performance measures, strategies, and costs and evaluation of progress towards established goals;
- rental vouchers payable to landlords for persons who are homeless or below thirty percent of the median income or in immediate danger of becoming homeless; and

- other activities to reduce and prevent homelessness as identified for funding in the Benton and Franklin Counties' 5-Year Homeless Housing and Assistance Plan.

1.9. **Eligibility for Assistance – Definition of Homeless**: Households are homeless if they are unsheltered or residing in a temporary housing program, as defined below.

a. Living outside or in a place that is not designed for, ordinarily used as a regular sleeping accommodation for human beings, including a vehicle, park, abandoned building, bus or train station, airport or campground;

b. Fleeing or attempting to flee violence, dating violence, sexual assault, stalking, human trafficking, or other dangerous or life-threatening conditions that relate to violence against the household's members(s), including children, that have either taken place within the household's primary nighttime residence or has made the household member(s) afraid to return to their primary nighttime residence;

c. Residing in a temporary housing program including shelters, transitional or interim housing, and hotels and motels paid for by charitable organization or government programs;

d. Exiting a system of care of institution where they resided for 90 days or less AND who resided in an emergency shelter or place not meant for human habitation immediately before entering that system of care or institution;

e. Residing in a trailer or recreational vehicle that is parked illegally or in a location that is not intended for long-term stays (i.e. parking lots).

f. At imminent Risk of Homelessness: Households are at imminent risk of homelessness if they will lose their primary nighttime residence (including systems of care or institutions) within 14 days of the date of application for assistance, AND no subsequent residence has been identified, AND the household lacks the resources or support networks needed to obtain other permanent housing.

1.10. **Eligibility Verification and Documentation** means all agencies that receive funds provided under this Agreement are required to maintain adequate documentation of clients' homelessness status to determine the eligibility of persons being served. The documentation is obtained from the participant or a third party at the time of the referral, entry, or intake. A self-declaration can be obtained if no third-party documentation is easily available. A copy of the documentation shall be maintained in the client file and shall be provided to County upon request.

a. Short-term Shelter and/or Services Provided to Persons Living on the Street. In this case, it is sufficient for the service provider to confirm and document that the persons served indeed reside on the street or are otherwise homeless.

b. Long-term Emergency Shelter/Transitional Housing Provided to Persons Living on the Street or in Short-term Emergency Shelter. Information shall be obtained verifying the client is living on the street or in a short-term emergency shelter. This information may include the names of organizations or outreach workers who have assisted the person in the past, whether the client receives any general assistance checks, and where the checks are delivered.

If a person is coming from transitional housing for homeless persons, the Contractor shall obtain written verification from the transitional housing facility, as well as written verification that the person was homeless prior to living in the transitional housing facility (see above for required documentation).

For persons from a short-term stay (up to 30 consecutive days) in an institution, who previously resided on the street or in an emergency shelter, the Contractor shall obtain written verification from the institution's staff that the participant has been residing in the institution for less than thirty-one (31) days and information on the previous living situation.

If a person is being discharged from a longer stay in an institution, the Contractor shall obtain evidence from the institution's staff that the client was being discharged within the week before receiving homeless assistance. The Contractor shall also obtain information on the income of the person, what efforts were made to obtain housing, and why, without the homeless assistance, the person would be living on the street or in an emergency shelter.

For persons fleeing violence, Contractor shall obtain written verification from the participant that he or she is fleeing a violent situation. If the person is unable to provide verification, the service provider may prepare a written statement about the person's previous living situation for him or her to sign and date.

1.11. **Family or Families** means individuals, of any age, living together in the same household and related by blood, marriage, adoption, or as a result of sharing legal custody of a minor child.

1.12. **HIPAA** means the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8, and regulations enacted pursuant to its provisions, successor law, and/or regulation.

1.13. **Homeless Housing Plan** means the Benton and Franklin Counties' Five-Year Homeless Housing Plan.

1.14. **Household** means a person or people, related or not, who occupy a housing unit or would occupy a housing unit if one were available.

1.15. **Housing Resource Center (HRC)** is a system that facilitates efficient connections to individuals with the best and most appropriate resources to prevent and decrease homelessness. The HRC uses a uniform intake and basic assessment tool that includes: collection of required HMIS data; evaluation of client housing and service needs; maintenance of current housing inventory and space availability; maintenance of a comprehensive waitlist, as needed; and eligibility screening for all partner agency housing and services.

1.16. **HUD** means the United States Department of Housing and Urban Development.

1.17. **Income Eligibility** means Only Benton County Residents, who are homeless or at risk (as that term is defined herein) and whose household qualifies as extremely low-income with an income at or below thirty (30) percent of the average area median incomes as established by HUD annually, or with an income at or below fifty (50) percent of the average area median incomes for families with children, are eligible to receive services under this Agreement.

1.18. **Long-term private or public housing** means subsidized and unsubsidized rental or owner-occupied housing in which there is no established time limit for habitation of less than two years.

1.19. **Monitoring** means a contractual review to determine compliance with the terms and conditions of this Agreement.

1.20. **Partner Agency Committee (PAC)** consists of all the HRC Partner Agencies. The PAC will meet on a quarterly basis to provide feedback on the program, resolve issues and conflicts, and suggest improvements for the program.

1.21. **Personal Information** is information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social

security numbers, driver's license numbers, other identifying numbers, and any financial identifiers.

1.22. **RCW** means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. The RCW can be accessed at http://app.leg.wa.gov/rcw/.

1.23. **Shall** means compliance is mandatory.

1.24. **Single Audit** means an audit that encompasses the entirety of the financial operations of the Contractor and which meets the requirements prescribed by Federal Office of Management and Budget (OMB) guidelines. The OMB may be accessed at http://www.whitehouse.gov/omb/.

1.25. **Subcontractor** means any person, partnership, corporation, association, or organization, not in the employment of the Contractor, who has a subcontract agreement directly with the Contractor or a subsequent tier subcontract agreement with an intermediate subcontractor.

1.26. **Transitional housing** means a project that facilitates the movement of homeless individuals and families to permanent housing within a reasonable amount of time (usually 24 months). Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

1.27. **USCA** means the United States Code Annotated. All references in this Agreement to USCA chapters or sections shall include any successor, amended, or replacement regulation.

1.28. **Use as it relates to HIPAA or HMIS compliance** means, with respect to individually identifiable health or personal information, the sharing, employment, application, utilization, examination, or analysis of such information by an entity that maintains such information.

1.29. **Vulnerable Adult** means a person:

- Who is sixty (60) years of age or older and has the functional, mental, or physical inability to care for himself or herself or has been found to be incapacitated under Chapter 11.88 RCW; or
- Who has a developmental disability, as defined under RCW 71A.10.020; or
- Who has been admitted to a licensed facility, including boarding homes, nursing homes, adult family homes, residential habilitation centers, or any other facility licensed by the Washington State Department of Social and Health Services; or
- Who is receiving services from home health, hospice, or home care agencies licensed or required to be licensed under Chapter 70.127 RCW; or
- Who is receiving services from an individual provider, as defined under RCW 74.34.020.

1.30. **WAC** means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. The WAC can be accessed at http://app.leg.wa.gov/wac/.

1.31. **Washington homeless census** means an annual statewide census conducted as a collaborative effort by towns, cities, counties, community-based organizations, and state agencies, with the technical support and coordination of the Dept. of Commerce, to count and collect data on all homeless individuals in Washington.

1.32. **Washington State Homeless Management Information System (HMIS)** means a database of information about homeless individuals in the state used to coordinate resources to assist homeless clients to obtain and retain housing and reach greater levels of self-sufficiency or economic independence when appropriate, depending upon their

individual situations. The Dept. of Commerce is responsible for operating the statewide HMIS for counties that do not operate their own compliant system.

STATEMENT OF WORK

2. STATEMENT OF WORK

2.1. Benton County Homeless Housing and Assistance Program – Description:
In consideration for the funding awarded in this Agreement, the Contractor agrees to assist the County with meeting the goals of the Five-Year Homeless Housing Plan for Benton and Franklin Counties to reduce homelessness as set forth below. The Contractor's activities are limited to those eligible activities identified in RCW 43.185C.050(2), and will be funded by the revenue source provided to the County pursuant to RCW 36.22.179(1).

This Program shall serve the County's homeless residents, or those at risk thereof, who have resided in Benton County or Franklin County at least one night prior to applying for services, and who are found to have met the program's eligibility and documentation requirements. The funding awarded in this agreement is broken down into two sections:

- Crisis and Emergency Shelter and Operations
- Rapid Rehousing for Shelter Households

2.2 CRISIS AND EMERGENCY SHELTER AND OPERATIONS

a. Program Overview:
This program consists of providing overnight shelter for homeless households by providing immediate response to basic human needs, including safe cover at night until homeless households have access to decent and safe housing. This program will provide support services including; meals, personal items, structured programs including activities and educational experiences. Crisis / Emergency Shelter vouchers for temporary, emergency, short-term rental assistance may not exceed 90 days. The Contractor may request an exemption to this guideline by submitting a written request to Benton and Franklin Counties Department of Human Services for up to 14 additional days. The request for exemption must outline the extraordinary circumstance. Families may be screened through the Housing Resource Center (HRC) and referred to the Second Chance Center for further intake or screened by the Second Chance Center in coordination with the HRC to alleviate undue burden on families experiencing homelessness and in need of immediate services provided by the crisis / emergency shelter.

b. Eligible expenses include:
- Case management. The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible.
- Shelter operations. Eligible costs are the costs of maintenance (including minor or routine repairs), rent/lease security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the crisis /emergency shelter.
    - When the trailers are at full occupancy, hotel vouchers may be issued to house homeless households in need of the crisis/emergency shelter.
- Case management, outreach, intake, eligibility determination and documentation, assessing, arranging and coordinating, and monitoring the delivery of individual services for the shelter clients.

c. Component services and activities consist of:
- Using the centralized or coordinated assessment system

- Counseling;
- Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- Monitoring and evaluating program participant progress;
- Providing information and referrals to other providers;
- Developing an individualized housing and service plan, including planning a path to permanent housing stability;
- Help families increase their financial literacy scores and develop and use family budgets; Families will utilize the Second Chance Center to develop job application documents such as cover letters and resumes.

2.3 RAPID REHOUSING FOR SHELTER HOUSEHOLDS

a. **Program Overview:**
This program consists of providing shelter clients with rapid rehousing services to help get them transitioned to living on their own. Eligible shelter clients must reside in Benton County for a minimum of ninety (90) days prior to applying for rapid rehousing assistance.

b. **Eligible expenses include:**
- Any combination of first and last month's rent
- Security Deposit for moving into a new unit
- Monthly rent at fair market rent (FMR) using progressive engagement not to exceed six months
- Application fees/background check fees that are payable to the landlord
- Utility deposit
- Lot rent for RV or manufactured homes

3. **DUPLICATION OF SERVICES:** None of the work done pursuant to this Agreement may duplicate, in form or function, any work or services already being done or provided by the Contractor pursuant to any other contract or agreement Contractor has in place with any governmental or quasi-governmental local, state, nation, or international entity.

PERFORMANCE GOALS AND OUTCOMES

4. **PERFORMANCE GOALS:** The performance goals for the Benton County Homeless Housing and Assistance funds are:
   - to provide supportive services to eligible Benton County clients;
   - to support County efforts in meeting the goals of the Benton and Franklin Counties Five-Year Homeless Housing Plan; and
   - to decrease homelessness in Benton County.

5. **OUTCOME EVALUATION:** Program outcomes will be monitored and tracked against the HMIS database reports with the monthly billing.

REPORTING AND DELIVERABLES

6. **THE WASHINGTON STATE HMIS:** The Contractor shall provide client information on an ongoing basis, and with each monthly bill submitted on or before the 10th of each month, provide a HMIS print-out of clients served. The Contractor will participate in the HMIS Collaborative and the Data Sharing Agreement and allow the County access to client level data. The Contractor will enter all client information into the HMIS on an ongoing basis. The Contractor will exit client information from the HMIS on a timely basis.

7. **MONTHLY REPORTING:** The Contractor shall provide the following written reports, in a format prescribed or approved by the County, to the County on or before the 10th of the month following each month of service delivery:

7.1. Supportive Service Report:

- HMIS documentation submitted with monthly billing

SPECIFIC TERMS AND CONDITIONS

8. ACCESS TO CHILDREN, DISABLED PERSONS, AND VULNERABLE ADULTS: The Contractor shall prohibit any staff or volunteers with a criminal conviction set forth in RCW 43.43.830 from having access to children, developmentally disabled persons, or vulnerable adults in the course of providing the services under this Agreement. The Contractor must conduct a background check for all applicants for staff or volunteer positions who have unsupervised access to children, developmentally disabled persons, or vulnerable adults. The Contractor shall immediately report to the County any allegations/arrests identified in the background checks. If it becomes known to the Contractor, or the Contractor has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, the Contractor shall immediately report that finding to the County and immediately remove and thereafter restrict the employee or volunteer from providing services to children, developmentally disabled persons, or vulnerable adults unless otherwise granted written permission by the County's Authorized Representative.

9. CLIENT ELIGIBILITY REQUIREMENTS

a. **Client Eligibility**: Only Benton County residents who meet the income eligibility criteria and definitions of homelessness criteria shall be eligible for client services under this Agreement, unless otherwise approved in writing by the County.

b. **Eligibility Verification and Documentation**: County residency, homelessness status verification, and income eligibility status must be verified by the Contractor for program participants prior to billing for services. Income and homelessness status verification should be verified by a third party or self-declared. Self-declarations must be completed, signed and dated by agency staff. Self-declarations should be used only when written third-party verification cannot be obtained. A copy of each participant's verification documentation shall be kept in the participant's file.

10. CLIENT FILES: All client files shall include:

- Client intake/evaluation, including the initial housing stability plan. The plan shall include goals and objectives as to how the goals will be met. All plans shall contain a timeline in which the goals are expected to be met and indicate whether they have been achieved;
- Written progress notes that describe services provided and the staff's involvement in assisting the client in meeting the goals of their plan. Notes shall be entered for each client and include the purpose of the service, dates, duration of service, and the staff's name. Notes shall be legible;
- Correspondence related to each client;
- Verification and documentation of each client's eligibility for residency, homelessness status, and income;
- Proof of payments made on client's behalf;
- HMIS consent form;
- Verification and documentation that each client's rights, including what services and benefits may be expected from the program and the client, have been explained to the client;
- Verification and documentation that the agency's grievance policy/procedure has been explained to the client; and
- For rental assistance, verification and documentation of a lease agreement.

11. CLIENT RIGHTS

11.1. Grievance Policy: The Contractor shall implement and follow a grievance policy for clients that:

- is approved by the County;
- is explained to participants and, if necessary, to a family member, legal representative, or advocate;
- provides a mediation process using someone who is unaffected by the outcome if conflicts remain unresolved; and
- produces an outcome that shall be documented in the client file.

11.2. Client Rights: The Contractor shall inform clients of their rights, what services and benefits may be expected from the program, and the program's expectations of them. If necessary, the participant's family, legal representative or advocate is also informed.

11.3. Individual Rights: The Contractor shall implement and follow policies and procedures that protect individual rights regarding participant abuse, rights to privacy, and respectful staff-to-participant interactions.

12. INTERAGENCY COOPERATION: Contractor agrees to participate with other agencies, as requested by the County, in the provision of services under this Agreement.

13. ORGANIZATIONAL DESIGN: The Contractor shall document:

- a written Performance Plan that describes the plan's mission, program objectives, expected outcomes, and how and when objectives will be accomplished, and that the plan is evaluated at least biennially and revised based on actual performance;
- how staff training, experience, and expertise relate to the needs of participants and the program's mission;
- that it is able to account for and manage public funds;
- an administrative/organizational structure that clearly defines responsibilities; and
- that it involves participants in policy development and the impact this has had on the program.

14. OTHER REQUIREMENTS:

14.1. Services and Activities to Minorities and Diverse Populations: All services and activities provided by the Contractor under this Agreement shall be designed and delivered in a manner sensitive to the needs of all minorities. The Contractor shall work toward improving access, retention, and cultural relevance of treatment, prevention or other appropriate services for minorities and other diverse populations in need of treatment, and work toward strengthening working relationships with other agencies serving these populations.

14.2. Participation in the Housing Resource Center: The Contractor shall participate with Benton County Department of Human Services in the Housing Resource Center. Accordingly, Contractor shall enter into a Partner Participation Agreement with the Department of Human Services as set forth by the Partner Participation Agreement (Exhibit B, attached hereto and incorporated herein by reference) and shall designate an individual in its organization to be part of the Benton County Department Human Services Partner Agency Committee (PAC). Contractor shall follow the Housing Resource Center Guidelines set forth by Exhibit C, which is attached hereto and incorporated herein by reference.

14.3. Subcontractor Monitoring and Risk assessment: The Contractor will comply with the annual on-site monitoring and risk assessment. The County reserves the right to monitor and review files at any time besides the annual review when deemed necessary.

GENERAL TERMS AND CONDITIONS

15. **AMENDMENT:** This Agreement, or any term or condition, may be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.

16. **ASSIGNMENT/DELEGATION/SUBCONTRACTING:** The Contractor shall not assign, delegate, or subcontract any portion of the contracted services, except as specifically provided by this Agreement, without obtaining prior written approval from the County's Authorized Representative. Assignment, delegation, or subcontracting without prior written approval by the County shall constitute a substantial breach of this Agreement.

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

17. **AUDIT REQUIREMENT**: The Contractor shall have an independent review or independent audit performed at least once every biennium based upon the fiscal year of the Contractor. Each audit shall cover the entire operation of the Contractor. The independent review or audit shall reasonably assure the County that the Contractor is financially stable, and that the Contractor has established and maintains an adequate system of internal control to ensure the efficient, proper processing of, and use of, contract funds. The Contractor shall provide a copy of the independent review report or independent audit to the County within 180 days following the end of the independent review/audit period. For purposes of this section, if so agreed by the parties, an annual on-site monitoring visit by the County may constitute an independent review.

    a. **Correction Actions:** The Contractor shall take whatever corrective action is required by the County to mitigate risk or resolve outstanding audit findings within time periods established by the County.

    b. **Single Audit:** If the Contractor is subject to OMB Circular A-133, the Contractor shall comply with applicable OMB circular A-133 audit requirements and perform any corrective actions identified in the audit findings per A-133 requirements.

18. **COMPLIANCE WITH APPLICABLE LAW:** At all times during the term of this Agreement, the Contractor shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, non-discrimination laws and regulations.

    - **Non-Discrimination:** The Contractor and its assignees, delegates, and subcontractors shall not unlawfully discriminate against any person in the performance of any of their obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

19. **COMPLIANCE WITH HIPAA:** If the Contractor requests or requires Protected Health Care Information for consideration of eligibility, or any other reason, it will at all times during the term of this Agreement, implement policies and procedures to safeguard and maintain any forms of protected health information in accordance with the requirements of state and federal law, and particularly the provisions of the Health Insurance Portability and Accountability Act. The Contractor shall not request or require program applicants to sign uncompleted forms requesting healthcare information (blank releases of information).

20. **COMPLIANCE WITH DEPT. OF COMMERCE HMIS STANDARDS:** At all times during the term of this Agreement, the Contractor shall implement policies and procedures to safeguard and maintain protected personal information in accordance with the requirements of state and federal law, and particularly the provisions of the Dept. of Commerce requirements for the HMIS utilized by the County.

Confidentiality for Victims of Domestic Violence or Other Revealing Information Regarding HIV/AIDS status: In fulfilling HMIS duties for this Agreement, the Contractor shall uphold the disclosure and storage parameters of personal information as found in RCW 70.24.105 and RCW 70.123.076.

21. **CONFIDENTIALITY:** The parties to this Agreement shall use Personal Information and other information gained only for the purposes of this Agreement. The Contractor shall not disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information, without prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other information gained by reason of the Agreement and shall return or certify the destruction of such information if requested in writing by the party to the Agreement that provided the information.

    The Contractor understands that as a public entity, the County is subject to the Public Records Act (RCW 42.56.020) which mandates the release of most public records held for any purpose. The Contractor understands that any written record (including electronically stored records) which it submits to the County including, but not limited to, descriptions of work, client files, billings and correspondence, may be subject to the Public Records Act and if requested by a member of the public, will be disclosed by the County if mandated by the Public Records Act. Provided, however, that the County will not disclose any records that are protected by a statutory scheme (e.g., the Health Information Portability and Accountability Act) or case law. Accordingly, Contractor agrees that to the extent it feels that any of the written records it submits to the County are confidential, proprietary, or otherwise protected from disclosure under the Public Records Act, it will prominently designate the record(s) as such on their face. To the extent that the County receives a Public Records Act request for any written records which have been designated as confidential or proprietary, it will take all reasonable steps to contact Contractor as soon as possible and advise of the request so that Contractor can request a court order protecting the record(s). Contractor also hereby waives any and all rights to recover damages against the County for any records released pursuant to the Public Records Act.

22. **DEBARMENT CERTIFICATION:** The Contractor, by signature to this Agreement, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The Contractor shall not employ any person or contract with any person or agency excluded from participation in federal health care programs or debarred or suspended per this Agreement.

23. **ENTIRE AGREEMENT:** This Agreement, including all documents attached to or incorporated by reference, contains all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties.

24. **GOVERNING LAW AND VENUE:** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and this Agreement shall be governed by the laws of the state of Washington both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in the courts of competent jurisdictions in Benton County, Washington.

25. **HEADINGS AND CAPTIONS:** The headings and captions used in this Agreement are for reference and convenience only, and in no way define, limit, or decide the scope or intent of any provisions or sections of this Agreement.

26. **INDEMNIFICATION:** The Contractor shall hold harmless, indemnify, and defend the County and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the Contractor or its subcontractors or their property upon or in the proximity of the property of the County. Provided, that the Contractor's

obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the County or its officers, officials, employees, or agents.

In any and all claims against the County and its officers, officials, employees, and agents by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefits acts, it being clearly agreed and understood by the parties hereto that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing this Agreement, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated as relevant, into any Agreement the Contractor makes with any subcontractor or agent performing work hereunder. Contractor's obligations under this Section 13 shall survive termination and expiration of this Agreement.

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

27. **INDEPENDENT STATUS:** For purposes of this Agreement, the Contractor acknowledges that the Contractor is not an officer, employee, or agent of the County or the State of Washington. Neither the Contractor, nor any of the Contractor's employees may hold themselves out as or claim status as an officer, employee, or agent of the Benton County Department of Human Services, the State of Washington, or the County. Neither the Contractor, nor any of the Contractor's employees may claim for themselves any rights, privileges, or benefits that would accrue to an employee of the State of Washington or the County. The Contractor shall indemnify and hold harmless Benton County and the Benton and County Department of Human Services for all obligations to pay or withhold federal or state taxes or contributions or any other payroll deductions on behalf of the Contractor or the Contractor's employees.

28. **INSURANCE.** Prior to commencement of services under this Agreement, Contractor shall submit to the County certificates of insurance or certified copies of insurance policies and endorsements, if requested by the County, for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for the life of this Agreement. Each insurance certificate shall provide that coverage will not be canceled or reduced below the contractual amounts stated herein without forty-five (45) days prior to notice to the County. Contractor shall maintain at Contractor's sole expense unless otherwise stipulated, the following insurance coverages, insuring the County and its elected and appointed officials, employees, and agents as required herein.

The Contractor shall not commence work under this Agreement until the Contractor has obtained all insurance required under this paragraph and such insurance has been approved by the County.

All insurance policies shall be issued by companies authorized to do business under the laws of the state of Washington unless an exception is given in writing by the County's Authorized Representative. All insurance to be maintained by the Contractor, other than Professional Liability and Workers' Compensation, shall specifically include the County as an "Additional Insured" and shall not be reduced or canceled without forty-five (45) days prior written notice to the County. The Contractor's insurance coverage shall be primary insurance with respect to the County and its elected and appointed officials, employees, and agents. Any insurance or self -insurance maintained by the County or its elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute to it.

Liability coverage, except Professional Liability, shall be written on an Occurrence policy form. If coverage is Claims Made form, the Retroactive Date shall be prior to or coincident with the date of this Agreement, and the policy shall state that coverage is Claims Made, and state the Retroactive

Date. Should Claims Made be the only option, a minimum of three (3) year tail coverage shall be maintained after the expiration of the Agreement.

29. **Commercial General Liability Insurance:** The Contractor shall maintain, during the life of this Agreement, Commercial General Liability Insurance (Policy Form CG0001, or equivalent) to protect the County from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this Agreement, whether such operations are by the Contractor or by anyone directly employed by or contracting with the Contractor.

    Specific limits required:

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

30. **Commercial General Liability Insurance Policy:** The Contractor shall maintain an endorsement naming the County as Additional Insured (Policy Form CG2010) and an endorsement that specifically states the Commercial General Liability Insurance shall be primary, and not contributory, with any other insurance maintained by the County.

    The policy shall be endorsed to include stop gap employer's liability 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

31. **Automobile Liability Insurance:** The Contractor shall maintain, during the life of this Agreement, Commercial Auto Liability Insurance (Policy Form CA0001, or equivalent) in the amount of $1,000,000 Bodily Injury and Property Damage per combined single limit to protect the Contractor from claims which may arise from the performance of this Agreement, whether such operations are by the Contractor or by anyone directly or indirectly employed by the Contractor. Covered autos shall be designated as "Symbol 1" any auto, if commercial auto liability is applicable.

32. **Workers' Compensation Insurance:** The Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. The Contractor shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to the commencement of work.

33. **Industrial Insurance Waiver:** With respect to the performance of this Agreement and as to claims against the County and its officers, agents, and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend, and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor against the County. However, Contractor's waiver of immunity by the provisions of this section extend only to claims against Contractor by the County and does not include or extend to claims by Contractor's employees directly against Contractor. This waiver is mutually negotiated by the parties to this Agreement.

34. **Professional Liability Insurance:** Prior to the start of work, the Contractor will secure and maintain at its own expense Professional Liability Insurance in an amount of not less than $1,000,000 per claim and in the aggregate. If coverage is Claims Made, the retroactive date shall be prior to or coincident with the date of this Agreement. The policy shall state that coverage is claims made and state the retroactive date. Claims Made form coverage shall be maintained by the Contractor for a minimum of three (3) years following the termination of this Contract, and the Contractor shall annually provide the County with proof of renewal.

35. NOTICES: Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the address and Authorized Representative set out on the face page of this Agreement. Notice may also be given by facsimile or e-mail to the Authorized Representative with the original to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by facsimile or e-mail, service shall be effective at the beginning of the next working day.

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

a. Applicable federal, state, and local law, regulations, rules, and ordinances.
b. This Agreement, including all documents attached to or incorporated by reference.

37. OWNERSHIP OF MATERIAL: Material created by the Contractor and paid for by the County as part of this Agreement, including all copyright and other intellectual property rights associated with such material, shall be owned by the County and shall be "works for hire" as defined by Title 17 USCA, Section 101. This material includes but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Any materials produced as a result of the County's funding shall display the County's name appropriately. Material which the Contractor uses to perform this Agreement, but which is not created for or paid for by the County, is owned by the Contractor, however, the County shall have a perpetual license to use this material for the County's internal purposes at no charge to the County.

38. PROHIBITION OF POLITICAL ACTIVITIES: No funds, material, property, or contracted services provided under the terms of this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

39. RECORDS MAINTENANCE AND INSPECTION: For six (6) years, unless otherwise stated herein, following the termination of this Agreement, the Contractor shall maintain records in their original form that are sufficient to:

- Document the performance of all acts required by law, regulation, or this Agreement;
- Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, and performance;
- Demonstrate accounting procedures and practices which sufficiently and properly document the Contractor's billings to the County and all expenditures made by the Contractor to perform as required by this Agreement;
- Ascertain that personnel policies, procedures, and practices are in compliance with this Agreement; and
- Ascertain that all taxes and insurance required by state and federal law and this Agreement were paid by the Contractor.

39.1. Right of Inspection: The Contractor shall give access to its facilities and records to the County and its officers, employees, and agents, and to any other authorized officer, employee, or agent of the State of Washington or the United States at all reasonable times. Authorized persons shall have the right to examine the Contractor's performance and financial records and to perform other activities to determine the Contractor's compliance with the terms of this Agreement. The County may give the Contractor reasonable notice of monitoring, auditing, observation, and other visits by its officers and employees to the Contractor's place(s) of business; however, the Contractor may also be subject to unannounced site inspections, as necessary. The Contractor's failure to provide access to offices or records upon reasonable notice, as required by this section, shall constitute a substantial breach of this Agreement.

39.2. Notice of Inspections: The Contractor shall verbally notify the County immediately of any inspections, audits, accreditation, or program reviews of services by any individual, agency, or governmental unit. The Contractor shall promptly provide the County with copies of any written reports of such inspections, audits, accreditation, or program reviews upon request.

39.3. Litigation Hold Notice: In the event the County learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by Contractor pursuant to Article 20 of this Agreement may be of evidentiary value; the County will issue written notice to Contractor of such circumstances and direct the Contractor to "hold" such records. In the event that Contractor receives such written notice, Contractor shall abide by all directions therein whether or not such written notice is received at a time when a contract between Contractor and the County are in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Article 20.

39.4. Audit Clarification: In the event that the County desires clarification in any way related to an audit or inspection of Contractor's books, records, or office, to determine whether Contractor is acting in compliance with this Agreement or federal, state, or local law, the County may request, in writing, that Contractor provide further clarification on any issue, or that Contractor provide certain books or records meeting certain criteria. If Contractor receives such a notice, Contractor shall cooperate in providing the requested information, books, or records, by the date and time noted in the request. Failure to respond, evasive responses, or incomplete responses shall constitute a substantial breach of this Agreement. The Contractor shall respond within (5) business days, excluding weekends and holidays.

40. **REDUCTION/SUSPENSION OF SERVICES:** The Contractor shall provide the County with prompt notification of any discontinuance or suspension of or significant reduction in any category of services provided by this Agreement or any change in location of the provision of such services. Said changes shall only be made in accordance with the provisions of this Agreement.

41. **RELATIONSHIP OF THE PARTIES:** The Benton County Department of Human Services shall be the representative of the County with full authority for administering and overseeing the performance of this Agreement. Whenever, in this Agreement, provision is made for the Contractor to contact or give notice to the County or provide it with documents, reports, voucher claims, or any other information, or for the County to give notice to the Contractor to review, inspect, observe, or audit this Contractor's contracted services, facilities, programs, or records, the term "County" shall mean the Department of Human Services.

    The Contractor agrees to immediately remove any of its employees or agents from their assignment to perform services under this Agreement upon receipt of a written request to do so from the County's Authorized Representative, or his designee.

42. **SEVERABILITY:** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions of this Agreement.

43. **SURVIVABILITY:** The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of this Agreement shall so survive. Surviving terms include but are not limited to: Confidentiality; Indemnification and Hold Harmless; Inspection; Maintenance of Records; Ownership of Material; Termination for Default; Termination Procedure; and Treatment of Property.

44. **TERMINATION DUE TO CHANGE IN FUNDING:** If the funds upon which the County relied to establish this Agreement are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding, the County may immediately terminate this Agreement by providing written notice to the Contractor. The termination shall be effective on the date specified in the notice of termination.

45. **TERMINATION FOR CONVENIENCE:** Either party may terminate this Agreement in whole or in part, for any reason, by giving at least thirty (30) calendar day's written notice. In the event of termination, each party shall be responsible only for performance rendered in accordance with the terms of this Agreement prior to the effective date of termination. The Contractor shall assist in the orderly transfer/transition of the clients served under this Agreement.

46. **TERMINATION FOR DEFAULT:** The County may terminate this Agreement for default, in whole or in part, by written notice to the Contractor, if the County has a reasonable basis to believe that the Contractor has:

    a. Failed to meet or maintain any requirement for contracting with the County;
    b. Failed to perform under any provision of this Agreement;
    c. Failed to ensure the health or safety of any client for whom services are being provided under this Agreement;
    d. Violated any law, regulation, rule, or ordinance applicable to the services provided under this Agreement; and/or
    e. Otherwise breached any provision or condition of this Agreement.

    Before the County may terminate this Agreement for default, the County shall provide the Contractor with a ten (10) day written notice of the Contractor's noncompliance and provide the Contractor a reasonable opportunity to correct the Contractor's noncompliance. If the Contractor does not correct the Contractor's noncompliance within the ten (10) day period of time specified in the written notice of noncompliance, the County may then immediately terminate the Agreement. However, the County may terminate the Agreement for default without such written notice and without opportunity for correction if the County reasonably believes that a client's health or safety may be jeopardy, or if the Contractor has violated, or is alleged to have violated, as determined by the County, any law, regulation, rule, or ordinance applicable to the services provided under this Agreement.

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

48. **PROCEDURE UPON TERMINATION OR EXPIRATION OF AGREEMENT:** The following provisions apply in the event this Agreement is terminated or expires:

    41.1. Cease Performance: The Contractor shall cease to perform any services required by the Agreement as of the effective date of termination or expiration and shall comply with all reasonable instructions contained in the notice of termination or expiration which are related to the transfer of clients, distribution of property, and termination or expiration of services.

    41.2. Delivery of Assets: The Contractor shall immediately deliver to the County's Authorized Representative (or to his or her successor) listed on the first page of this Agreement, all of the County's property in the Contractor's possession, including any materials created under the Agreement. If the Contractor fails to return the County's property within ten (10) working days of the effective date of termination or expiration of this Agreement, the Contractor shall be charged with all reasonable costs of recovery, including transportation. The Contractor shall protect and preserve any property of the County that is in the Contractor's possession pending its return to the County. Nothing in this paragraph shall limit the County's rights or remedies pursuant to this Agreement or law.

    41.3. Payment of Services: The County shall be liable for and shall pay for only those services authorized and provided through the date of termination or expiration. The County may pay an amount mutually agreed upon by the parties for partially completed work and services, if usable by the County.

    41.4. Final Payment: If the County terminates this Agreement for default on the part of the Contractor, the County may withhold some or all of the final payment to the Contractor that the County determines necessary to protect the County from loss or additional liability. In addition to these remedies, the County shall be entitled to remedies available at law, in equity, or under this

Agreement. If it is later determined that the Contractor was not in default, the Contractor shall be entitled to all remedies available at law, in equity, or under this Agreement.

41.5. Transition: In the event that this Agreement is terminated or expires, Contractor shall assist in the orderly transition of clients and records to a new provider or to the County, at the County's direction. This includes, at a minimum, transferring client files to new providers at the request of the provider, the client, or County, advising clients of how to contact new provider(s), and not taking any action that would interfere with a client's choice of new provider or relationship with access to a new provider.

49. **TREATMENT OF CLIENT PROPERTY:** Unless otherwise provided in this Agreement, the Contractor shall ensure that any adult client receiving services from the Contractor under this Agreement has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. The Contractor shall provide clients under the age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or, expiration of completion of this Agreement, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.

50. **TREATMENT OF PROPERTY:** Title to all property purchased or furnished by the County for use by the Contractor during the term of this Agreement shall remain titled to the County. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by the County under the Agreement shall pass to and vest in the County. The Contractor shall protect, maintain, and insure all County's property in its possession against loss or damage and shall return the County's property to the County within ten (10) working days of Agreement termination or expiration.

51. **WAIVER:** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed as a modification of the terms and conditions of this Agreement unless amended as set forth in the Amendment provisions of this Agreement. Only the County, or its designee, have the authority to waive any term or condition of this Agreement on behalf of the County and such waivers shall only be effective if they are in writing and signed by the County's Authorized Representative, or designee. The failure of the County to insist upon the strict performance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

CONSIDERATION AND PAYMENT PROVISIONS

52. **CONSIDERATION:** The County shall reimburse the Contractor for reasonable costs associated with the performance of the activities described in the Statement of Work provisions of this Agreement and in accordance with Exhibit A, which is attached hereto and incorporated herein by reference. The maximum consideration for services provided shall be as follows:

52.1. Supporting documentation is required to be submitted with County invoice for all reimbursement requests. (Ledgers, receipts, HMIS reports, etc.)

52.2. RAPID REHOUSING/EVICTION PREVENTION

a. **Direct Service Vouchers – Rapid Rehousing** are eligible for reimbursement for direct expenses provided during each month between January 1, 2021 and December 31, 2022 and shall not exceed a total of $50,000.00 during the term of this Agreement.

52.2 EMERGENCY SHELTER & OPERATIONS

a. **Shelter Operations** eligible for reimbursement and may be billed at no more than $4,166.66 per month between January 1, 2021 and December 31, 2022 and shall not exceed $100,000.00 during the term of this Agreement.

53. **BILLING PROCEDURES:** The Contractor shall submit written claims for payments earned on the appropriate forms provided by the County. All claims must be accompanied by the appropriate HMIS report and supporting documentation. All claims must be submitted by the 10th day of each month for services provided the prior month. The County will pay the Contractor with County warrants or request further verification documentation within thirty (30) days following receipt of timely claims for payment. Claims submitted after the 10th of the month may not be eligible for reimbursement. The final billing for services against this Agreement shall occur no more than sixty (10) days after the end date of this Agreement.

54. **PAYMENT PROVISIONS**

54.1. Right to Withhold Payment: The County expressly reserves the right to withhold payment in whole or in part when:

- the Contractor fails to submit documentation required by this Agreement sufficient to substantiate claims for payments;
- the Contractor fails to maintain its reporting obligations under this Agreement;
- claims for payments are inconsistent with the terms and conditions of this Agreement; or
- the Contractor breaches this Agreement or violates any city, county, state, or federal rule, regulation, or law.

54.2. Overpayments/Duplicate Payments: The Contractor ensures that services billed against this Agreement have not been paid by any other source. In the event the Contractor receives payment from another source, subsequent to receiving payment from the County, the Contractor shall promptly reimburse the County in the amount of the duplicate payment.

54.3. Reductions in Funding: The County expressly reserves the right to modify or terminate this Agreement if the funding it receives for contracted services is withdrawn, reduced, or limited. The County may reduce the level of services authorized or eliminate specific categories of services insofar as necessary to reflect any funding reductions or limitations. The County shall notify the Contractor promptly of any reduction or proposed reduction in funding. The Contractor agrees that, upon receipt of such notice, it shall take immediate, appropriate, and reasonable action to reduce its spending in the affected funding area so that the payments earned do not exceed the reduced funding level.

54.4. Recovery of Costs Claimed in Error: If the Contractor claims and the County reimburses for expenditures under this Agreement which the County later finds were (1) claimed in error or (2) not allowable costs under the terms of the Agreement, the County shall recover those costs and the Contractor shall fully cooperate with the recovery.

54.5. Reimbursement for Services: If the County requests in writing services that exceed those services outlined in this Agreement, then reimbursements of costs for such services shall be limited to an hourly rate of $24.00 per hour and shall not exceed the net total costs for the Supportive Services.

55. **CERTIFICATION FILES INFORMATION**: The Contractor shall provide current certification documentation when requested by the County. Documentation may include, but is not limited to, the Contractor's Board of Directors' roster, bylaws, organizational charts, job descriptions, policies and procedures, and licenses.

Benton Franklin Counties Domestic Violence Services **Exhibit A**
2021-HHAA-CAC
Benton County
January 1, 2021 to December 31, 2022

Expenses	Computation	Cost
Direct Services	**Direct Services** Rental Deposits, Rental Assistance up to 6 months of FMR, App Fees	$50,000.00
Operations	Case management support services $4,166.66 per month X 24 months	$100,000.00
Total		**$150,000.00**

Total Contract Amount: **$150,000.00**

Exhibit B

BENTON COUNTY WA

Partner Participation Agreement

The overall goal of the Housing Resource Center (HRC) provided by Benton County Department of Human Services (BCDHS) is to partner with community agencies in their efforts to decrease homelessness and reduce the time households spend in homelessness. In order for HRC to be successful and improve the experience of households in crisis seeking assistance, both HRC and participating agencies will commit to common performance expectations, to be carried out to the best of their availability.

As a HRC partner, you can expect the following service commitments from BCDHS HRC:

- Households referred by your agency to HRC will be treated with unconditional regard for their situation and scheduled for a screening within 3 business days of your referral.
- Households will be referred by HRC to the necessary housing and support services in a fair and equitable manner, without regard to the individual's race, national origin, ethnicity or gender.
- All households will be pre-screened based on your agency's specific criteria prior to receiving a referral to your agency. Criminal background checks will not be performed by HRC. HRC will contact your agency directly prior to referral, to ensure that there are no unforeseen reasons to expect the referral will be declined.
- HRC will provide households seeking assistance direct services including; navigator preliminary assessment of program qualifications and barriers, data entry into HMIS, emergency shelter/motel vouchers, homeless prevention and rapid re-housing to qualified households.
- Provide an ongoing committee forum to enable your agency to provide feedback regarding HRC performance, conflicts, as well as continually shape the HRC vision and scope of services provided.

As a HRC partner, your agency makes the following service commitments to the HRC:

- Provide HRC the list of qualification criteria for each of its programs (updated as needed).
- Update HRC weekly with program openings.
- Refer all households requesting homeless housing assistance to HRC.
- Identify a point of contact(s) for HRC to direct any referrals.
- Accept and confirm qualified referrals from HRC and provide explanation for referral refusals within 7 days of the households appointment.
- Update HMIS on a daily basis to show program availability.
- Work with BCDHS HMIS coordinator to resolve and improve data quality.
- Report on community needs, trends and resources that may impact HRC.
- Attend HRC housing provider/PAC meetings on a regular basis.

On behalf of Benton Franklin CAC I, Judith A. Gidley, am committed to supporting the success of HRC and its mission and will be an active agency partner with Benton County Department of Human Services Housing Resource Center.

Judith A Gidley 12/28/20
Agency Representative and Date

Benton County Department of
Human Services Representative

Benton County
Dept. of Human Services
7102 W. Okanogan Pl., Ste. 201
Kennewick, WA 99336
Phone: (509) 783-5284
Fax: (509) 783-5981

Housing Resource Center Guidelines

Foundational Principles

- Belief in housing first concept
- Belief of Progressive Engagement and the idea of doing the least for each household rather than the most
- Belief that people are resourceful and can make it without us
- Belief in the consumer as the lead in the process (strength-based approach)
- A willingness to use a system-perspective
- Functions primarily as a centralized intake/triage approach for housing assessment and referral
- Identify and utilize information and strengths of each agency
- Establish role and utilization of HMIS
- Provide community education
- Be data driven
- Know best practice models and consider the best local adaptation

What HRC Does

- Assess clients for immediacy of need and place into appropriate program and/or service
- Assess clients risks of homelessness
- All clients screened for diversion
- Assess for level of need
- All programs that have unique eligibility requirements will be used to verify eligibility and appropriateness
- Provides services to the clients that meet the minimum points on the vulnerability/prioritization tool.
- Provides additional assessment/case management based on needs with an Intake Specialist.

HRC goals

- Reduce the time homeless
- Quick access to comprehensive information
- Household receives a successful referral

- Household has a clear understanding on the next step
- Decrease duplication of agency work to qualify household
- Decrease duplication of services to the same household
- Provide improved access to services

Pre-screen/Prioritization

The Housing Navigator responds to the household to determine:

- Presenting issues
- Special Populations: DV and Youth
- Housing Status: at risk, homeless or shelter assistance
- Income eligibility
- Provide diversion
- Provide Information
- Prioritization tool will be used. For clients 0-4 score there will be no intervention, and clients will be given other community resources and diversion techniques will be offered. For clients scoring of 5 points or more on the tool they will be screened further for appropriate intervention.
- Clients scoring a 4 with extenuating circumstances can be staffed for potential over-ride. The reason for the over-ride will be documented on the tool by the supervisor.

Homeless & At Risk Definitions

Households are homeless if they are unsheltered or residing in a temporary housing program, as defined below.

Unsheltered Homeless:

Living outside or in a place that is not designed for, or ordinarily used as a regular sleeping accommodation for human beings, including a vehicle, park, abandoned building, bus or train station, airport, or campground.

Fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, human trafficking, or other dangerous or life-threatening conditions that relate to violence against the household member(s), including children, that have either taken place within the household's primary nighttime residence or has made the household member(s) afraid to return to their primary nighttime residence.

Sheltered Homeless:

Residing in a temporary housing program including shelters, transitional or interim housing, and hotels and motels paid for by charitable organizations or government programs.

Exiting a system of care or institution where they resided for 90 days or less AND who resided in an emergency shelter or place not meant for human habitation immediately before entering that system of care or institution.

Residing in a trailer or recreational vehicle that is parked illegally or in a location that is not intended for long-term stays (i.e. parking lots).

At Imminent Risk of Homelessness

Households are at imminent risk of homelessness if they will lose their primary nighttime residence (including systems of care or institutions) within 14 days of the date of application for assistance, AND no subsequent residence has been identified, AND the household lacks the resources or support networks needed to obtain other permanent housing.

Screening Process

For households who are determined to be homeless or at risk of homelessness, the intake specialist continues with a full assessment.

Step One Determines:

- Household Information
- Income/Housing Information
- Household Characteristics
- Housing Status
- Use the prioritization tool to see if client/household meets minimum criteria

Step Two Determines:

1. If the client does not meet minimum criteria:
    - Diversion techniques will be utilized
    - A community resource guide will be available to guide the client
2. If the client is at imminent risk:
    - Additional paperwork will be obtained
    - A referral will be made to an eviction prevention program (subject to available funds)
    - Partner agencies will notify the HRC worker within 7 days of the clients appointment to let the HRC staff know the outcome of the referral
    - Data will be entered into HMIS
3. If the client is homeless:
    - Barriers will be determined
    - Level of engagement will be determined
    - Additional paperwork will be obtained

- A referral will be made to a rapid rehousing program (subject to available funds)
- Partner agencies will notify the HRC worker within 7 days of the clients appointment to let the HRC staff know the outcome of the referral
- Data will be entered into HMIS

Applicants are seen on a first come / first served basis. Should there be multiple applicants for a single program opening, clients will then be prioritized for service. For example: (1) Chronically homeless (2) unsheltered literally homeless and then (3) sheltered literally homeless.

Direct Services Provided within HRC

Emergency Motel/Shelter Vouchers

Motel/Shelter vouchers can be issued only as a "last resort" for households that cannot stay at the Union Gospel Mission (UGM) and have no other resources available to them (subject to available funds).

- Motel/Shelter vouchers are limited to one week except under special circumstances
- Motel/Shelter vouchers will be issued to motels that have agreed to do business with Benton and Franklin County.
- Motel/Shelter vouchers will only be issued if the mission is full and/or the client cannot stay there due to mental/physical/medical problems and noted by the case manager. (subject to available funds)
- Priority for motel/shelter vouchers will be given to single fathers with children and families that have a boy over the age of 12 that cannot stay at the mission.

Homeless Prevention

Homeless prevention assistance applies to households facing eviction from their current residence and will be provided based on the Eligibility Criteria and a completed Rating Tool:

- Only households below 30% AMI
- Household must show an eviction notice that will result in their being homeless within 14 days of screening.
- Assistance is limited to the amount to prevent the eviction but cannot exceed 30 days of FMR for the unit size, unless otherwise approved by supervisor.
- Households living with family or friends are not eligible for prevention unless the host family is pending evicted (an eviction notice must be presented) due to overcrowding or the host family is on Section 8 housing and is able to show documentation of enrollment.

Rapid Re-Housing

Rapid re-housing assistance applies to households that are currently unsheltered homeless, fleeing violence, or living in a shelter or motel paid by a charitable or non-profit organization; and in need of first month rent and/or deposit.

- Household will need to show proof of homelessness by submitting a letter from a shelter, receipt from motel (paid for by a charitable or non-profit organization), 3rd party declaration or a self-declaration.
- Households will complete a full intake assessment to determine barriers and service needed.
- Households needing more than one month rent or deposit assistance will be screened and referred to additional programs if found eligible.
- Households will need to obtain housing which is suitable for the household size (based on occupancy guidelines) and budget.
- Households receiving assistance by HRC must have a reasonable sustainable plan to maintain housing on an ongoing basis and show proof of such without further assistance.

Occupancy Standards for Benton and Franklin Counties

Occupancy Standards for Benton and Franklin Counties are listed below. The standard can be evaluated on a case by case situation by the Housing Program Specialist.

Household Size	Unit Size Allowable
1 -2 persons	Studio
1-3 persons	One bedroom
4- 5 persons	Two bedroom
6-7 persons	Three bedroom
8+ persons	Four bedroom/Plus

Community Resources

HRC will provide community resources and referrals including the "Community Resource Guide" which is a comprehensive guide to services in Benton and Franklin Counties.

Referral Process

Clients whom are determined eligible will receive an assessment based on individual need. Referrals to agency partners will be made based on program eligibility. HRC staff monitor openings each day based on direct communication with partner agencies that routinely notify HRC staff of new openings as they become available. The process will include the following:

- Determine which program is most suitable and has a current opening
- Contact the agency to schedule an appointment for the referred household
- Within seven (7) business days after the scheduled appointment, the agency will notify HRC with the HRC Referral Letter outcome whether the client was accepted into the program or why the household was turned away. Programs must provide a qualifying reason to deny a referral.
- Client data and HMIS number will be shared with the referral agency

If an agency sends a client to HRC for prescreening and assessment and would like the client referred back to their program, the agency must submit this request in writing. If their program is the most suitable for the client, HRC will make every effort to honor the request.

Partner Agreements

Agency partner agreements will be required for all agencies receiving funds through Benton County Department of Human Services and any other community agency wanting to participate in the coordinated entry system. Agreements will include the following:

- Partnership agencies must make a good faith effort to serve clients who are referred by HRC
- Partnership agencies will notify HRC within seven (7) business days after the scheduled appointment if the client has been accepted into the program, or if a referral is turned away and provide an explanation
- Partnership agencies will be represented in CEC (CES Evaluation Committee)
- Partnership agencies will send walk-in or phone inquiries to HRC for a prescreening

HMIS Data Collection and Entry

Accurate and timely HMIS data is essential to the success of the HRC. Each household receiving an assessment will be entered into HMIS using the universal data collection requirements by HRC. If a household is already part of the HMIS then their information will be updated by HRC.

- All information will be scanned into each household's HMIS profile.
- When a referral is made to a partner agency the HMIS household identifier will be provided so that the partner agency can have access to household data.
- When the partner agency accepts the household into their program then they need to update the HMIS showing program enrollment and services received.
- Audits of HMIS data entered by partner agencies are performed regularly.

System Evaluation

System evaluations will be performed annually, and the methods will include HMIS data, Department of Commerce Dashboard reports, and CEC feedback.

CES Evaluation Committee (CEC)

Benton County Department of Human Services will hold CEC quarterly to discuss and evaluate HRC. This gives an opportunity to provide feedback, what is working, resolve issues and conflicts and suggest improvement for the program. Partnerships will be developed with housing providers, service providers, mental health agencies and shelters.

Changes to Guidelines

Benton County Department of Human Services may issue revised or new Guidelines at any time. Revised copies will be sent as they are published.

Contact Information

Mari Clark
Contracts Manager
Email: Mari.Clark@co.benton.wa.us
Phone: (509) 737-3902

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Sign the Benton County CJTA Panel Plan Resolution
Presenter:	
Prepared By:	Mari Clark, DHS Contract Manager
Reviewed By:	Kyle Sullivan, DHS Manager

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

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

Summary / Background Information

On September 29, 2020 per Benton County Resolution 2020 668, the Board of Commissioners signed the resolution creating the Benton County Criminal Justice Treatment Account (CJTA) Panel. The CJTA Panel is authorized by RCW 71.24.580(6) for the purpose of establishing and submitting plans for the use of CJTA funds within Benton County to be distributed by the Health Care Authority.

The panel has developed the attached plan for CJTA funds to be approved by the Board.

Fiscal Impact

Amount: $0.00

Fund: There is no impact on the current expense budget.

Recommendation

- Sign the Resolution to accept the Benton County CJTA Plan developed by the Benton County CJTA Panel

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE BENTON COUNTY CRIMINAL JUSTICE TREATMENT ACCOUNT (CJTA) PANEL COUNTY PLAN

WHEREAS RCW 71.24.580 provides for the establishment of a Criminal Justice Treatment Account that may be expended solely for substance use disorder treatment and treatment support services for offenders with a substance abuse disorder that if not treated, would result in addiction, against whom charges are filed by a Prosecuting Attorney in Washington State, or the provision of substance use disorder treatment services and treatment support services for nonviolent offenders within a drug court program; and

WHEREAS, the Benton County Board of Commissioners appointed members to the Benton County CJTA Panel on September 29, 2020 per Benton County Resolution 2020 668 in accordance with RCW 71.24.580(6); and

WHEREAS, the appointed members of the Benton County CJTA Panel has determined that there is a need for a treatment option for criminally charged offenders with substance abuse disorders beyond the existing Drug Court; and

WHEREAS, the Benton County Prosecutor's Office and Merit Resource Services have entered into a Memorandum of Understanding for the diversion, evaluation, and treatment for offenders that meet the criteria of RCW 71.24.580; and

WHEREAS, this additional Drug Diversion will support the ongoing efforts of the existing Drug Court; and

WHEREAS, the Benton County CJTA panel has provided a plan for the expenditure of the CJTA funds for treatment services and treatment support services which includes the ongoing funding of Drug Court participants and the expansion of funding to other individuals qualified under RCW 71.24.580, and the CJTA Panel plan will be submitted to GCBH and/or the HCA, following approval by the county legislative authority; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of County Commissioners hereby approve the Benton County CJTA Panel plan for distribution of CJTA funds.

Dated this _____ day of _____, 2021.

_____
Chair

Attest: _____
Clerk of the Board

_____
Member

_____
Member

Constituting the Board of County
Commissioners
of Benton County, Washington

Benton County CJTA Annual Plan

Greater Columbia CJTA Annual Plan

Greater Columbia consists of the following nine counties: Kittitas, Yakima, Benton, Franklin, Walla Walla, Columbia, Whitman, Garfield and Asotin. Of these nine counties, four (Kittitas, Yakima, Benton and Franklin) have Drug courts and or Therapeutic Courts. The five smallest counties (Walla Walla, Columbia, Whitman, Garfield and Asotin) do not.

The four larger Counties – Kittitas, Yakima, Benton and Franklin have Drug Court Teams that meet with local service providers that provide evidence based practices in their communities. Each of these Drug Courts offer multiple Evidence Base Practices, including MRT, Matrix and 12 Step Models. Each of the Drug Court Teams has representation from the local court, local prosecutor, the local treatment provider(s), the county, and from other interested and collaborative partners. The Benton and Franklin Drug Court operates as one Drug Court in collaboration of both counties and with local service providers. Each of these Drug Courts meet local participation match requirements by providing funds for urine drug screens and or judicial and other drug court team staff, training and support. In addition, each of these counties have representation from their Board of County Commissioners at the Administrative Service Organization and previously at the Behavioral Health Organization.

Requirements for allocation of funds

Pursuant to RCW 71.24.580, funds in the Criminal Justice Treatment Account (CJTA) are limited to certain expenditures. Specifically, funds may be expended for (a) substance use disorder treatment and treatment support services for offenders with a substance use disorder that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of substance use disorder treatment services and treatment support services for nonviolent offenders within a drug court program; and (c) the administrative and overhead costs associated with the operation of a drug court. RCW 71.24.580(1).

In Benton County, CJTA funds will be used to support treatment efforts and will include funding of the following: assessments, Outpatient Treatment, Intensive Outpatient Treatment, Intensive Inpatient Treatment, Urine Drug Screens, Case Management, Housing and transportation. Funds will only be used for CJTA eligible individuals and will reported on to the ASO each quarter by the providers.

The role of the county's judicial system in the delivery of CJTA services is to order that offenders with a drug or alcohol offense get an evaluation and follow the treatment recommendation. The Courts as well as other Drug Court Team Members work cohesively and in cooperation to provide the best available treatment and Case Management services for each of the individuals served.

The objective of a Felony Drug Court programs is to help people recover from their substance addiction and to reduce the number of offenders in the criminal justice system because of a drug addiction. The goals are measured by reduced participant relapse and decreased recidivism. Research on drug court programs shows that they are most effective at serving offenders who are substance dependent and at risk of failing in a less intensive rehabilitation program, or high risk/high need individuals (See Marlowe, Targeting the Right Participants for Adult Drug Courts, NDCI Fact Sheet).

Benton County Programs

The Adult Drug Court in Benton County is combined with Franklin County, and is a joint effort of the Benton and Franklin Superior Court, Benton County Jail, Benton and Franklin County Prosecutor's Offices, Benton and Franklin County Public Defender's Offices, Benton County Human Services and multiple treatment providers. Benton Franklin Counties drug Court is the only Drug court in this region that has multiple Substance Use Disorder Treatment providers that provider services to the offenders as well as participate on the Drug Court Team. This Drug Court currently serves about 60 individuals at a time, though this number is increasing to 70, and has served about 90 to 100 individuals annually.

In addition, Benton Franklin Drug Court, Benton Franklin Human Services, Greater Columbia BHO/ASO and MERIT Resource Services are having discussions with Benton County Therapeutic Courts about the possibility of providing some funds to eligible individuals involved in the Mental Health Court and the Veteran's Court.

All CJTA funds granted to Benton County will be provided pursuant to the contract signed previously by Merit Resource Services, which will continue to provide the treatment services and treatment support services listed above. Expansion funds will be utilized primarily to provide Case Management for Drug Court and for expansion diversion programs.

Expansion diversion programs will utilize multiple Substance Use Disorder service providers Case Managed by a single Case Manager for easier access by law enforcement and legal departments. This will also benefit Drug Court as lower risk/lower need individuals within the pending criminal charges will receive treatment services and treatment support services without the need for supervision by Drug Court, allowing Drug Court to focus on higher risk/higher need individuals. Services in Benton Franklin Counties will continue to have some limited funding for clean and sober housing and for transportation on a case to case basis.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Approving the purchase of One Dell Mobile Precision 3551 or comparable model laptop, One Thunderbolt docking station, and Two 24-Inch Monitors for the Prosecuting Attorney's Department from Dell, Inc. utilizing the Washington State Contract #05815
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	Purchasing Department

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 Prosecuting Attorney's Department has requested to purchase a new laptop, dock, and monitors for a new budgeted position. Resolution 2019-753 requires that all non-budgeted devices purchased over $500 be coded to the department's 3508 expenditure code and be approved by the Board of Benton County Commissioners.

Laptops and docking station will be purchased from Dell, an authorized Washington State vendor under NASPO ValuePoint's Computer Equipment Contract, Dell Marketing, L.P. Contract #05815-003.

Fiscal Impact

Amount: **$3,000 excluding WSST.**

Fund: **Approved Prosecuting Attorney's Department 2021-2022 budgeted funds.**

Recommendation

Information Technology recommends that the Board approves the purchase of one Dell Mobile Precision 3551 or comparable model laptops, one Thunderbolt docking station, and two 24-inch monitors in an amount not to exceed $3,000 excluding WSST from Dell Inc. All equipment purchased will be added to Central Services Replacement Fund (0132101).

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF ONE DELL MOBILE PRECISION OR COMPARABLE MODEL LAPTOP, ONE THUNDERBOLT DOCKING STATION, AND TWO DELL 24-INCH MONITORS FOR THE PROSECUTING ATTORNEY'S DEPARTMENT FROM DELL INC. UTILIZING WASHINGTON STATE CONTRACT #05815

WHEREAS, the Prosecuting Attorney's Department has made a request to purchase a new laptop, docking station and two monitors for a new budgeted position; and

WHEREAS, by Resolution 2012-431 dated June 11, 2013, the Board of County Commissioners approved the Master Contract Usage Agreement for the purpose of purchasing or acquiring goods and services under contracts entered into by the Department of Enterprise Services; and

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

WHEREAS, Information Technology recommends purchasing one Dell Mobile Precision or comparable model laptop, one Thunderbolt docking station, and two Dell 24-inch monitors from Dell Inc.; and

WHEREAS, the Purchasing Department has reviewed this purchase and found it complies with the Procurements, Leasing, and Contracting Policy; and

WHEREAS, per Resolution 2019-753 of the Computer Replacement Policy requires all new computer equipment over $500 receive approval by the Board of Benton County Commissioners before purchasing; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves the purchase of one Dell Mobile Precision 3551 or comparable model laptop, one Thunderbolt docking station, and two Dell 24-inch monitors for the Prosecuting Attorney's Department in an amount not to exceed $3,000 excluding Washington State Sales Tax to be paid for using approved 2021-2022 Prosecuting Attorney Department funds; and

BE IT FURTHER RESOLVED, newly purchased laptop and docking station will be enrolled into Central Services Replacement Fund (0132101).

Dated this 23 day of February , 2021

_____
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, PA

Prepared by: R. Heard

A quote for your consideration.

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

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

Quote No.	**3000078166386.1**	Sales Rep	Charles Anglin
Total	**$2,838.46**	Phone	(800) 456-3355, 6180469
Customer #	1710002	Email	Charles_Anglin@Dell.com
Quoted On	Feb. 03, 2021	**Billing To**	ACCOUNTS PAYABLE BENTON COUNTY CENTRAL SERVICES 620 MARKET ST PROSSER, WA 99350-1300
Expires by	Mar. 05, 2021		
Deal ID	19472910		

Message from your Sales Rep

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

Regards,
Charles Anglin

Shipping Group

Shipping To

ROBERT HEARD
BENTON COUNTY CENTRAL SERVICES
620 MARKET ST
PROSSER, WA 99350-1300
(509) 786-5603

Shipping Method

Standard Delivery

Product	Unit Price	Qty	Subtotal
Mobile Precision 3551	**$1,969.60**	**1**	**$1,969.60**
Dell 24 Monitor - P2419H	**$189.02**	**2**	**$378.04**
Dell Thunderbolt Dock- WD19TB	**$266.03**	**1**	**$266.03**

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

Subtotal:	**$2,613.67**
Shipping:	**$0.00**
Estimated Tax:	**$224.79**
Total:	**$2,838.46**

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

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

Shipping Group Details

Shipping To

ROBERT HEARD
BENTON COUNTY CENTRAL SERVICES
620 MARKET ST
PROSSER, WA 99350-1300
(509) 786-5603

Shipping Method

Standard Delivery

		Qty	Subtotal
Mobile Precision 3551	**$1,969.60**	**1**	**$1,969.60**

Estimated delivery if purchased today:
Mar. 24, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Qty	Subtotal
Intel Core Processor i7-10850H (6 Core, 12MB Cache, 2.70 GHz to 5.10 GHz, 35W, vPro)	379-BDXB	-	1	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	1	-
No Microsoft Office License Included – 30 day Trial Offer Only	658-BCSB	-	1	-
16GB, 1X16GB, DDR4 2933Mhz Non-ECC Memory	370-AFFB	-	1	-
Nvidia Quadro P620 w/ 4GB GDDR5	490-BFBH	-	1	-
M.2 256GB PCIe NVMe Class 40 Solid State Drive	400-BDWT	-	1	-
Bracket for M.2 PCIe NVMe 2280 SSD	575-BBYI	-	1	-
No Additional Hard Drive	401-AAGM	-	1	-
Intel WiFi6 AX201 Wireless Card for WW	555-BFNV	-	1	-
Intel vPro Technology Enabled	631-ACLE	-	1	-
Dual Pointing Backlit US English Keyboard with 10 Key Numeric Keypad	583-BGWN	-	1	-
No ENERGY STAR Qualified	387-BBCE	-	1	-
Not EPEAT Registered	389-DVNR	-	1	-
Intel AX201 2x2 + Bluetooth 5.1 Driver	555-BFNX	-	1	-
E5 US Power Cord	450-AAEJ	-	1	-
SERI Guide (ENG/FR/Multi)	340-AGIK	-	1	-
Quick Setup Guide for Mobile Precision 3551	340-COUO	-	1	-
No UPC Label	389-BCGW	-	1	-
Mix Model Packaging	340-CRFV	-	1	-
Regulatory Label included	389-BEYY	-	1	-
FCC Label	389-DPPX	-	1	-
Intel Core i7 vPro Processor Label	340-CPOZ	-	1	-
SupportAssist	525-BBCL	-	1	-
System Driver for Mobile Precision 3551	631-ACLD	-	1	-
Dell(TM) Digital Delivery Cirrus Client	640-BBLW	-	1	-
Dell Optimizer for Precision	640-BBSC	-	1	-
Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps)	658-BBMR	-	1	-

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

Waves Maxx Audio	658-BBRB	-	1	-
Dell Power Manager	658-BDVK	-	1	-
Dell SupportAssist OS Recovery Tool	658-BEOK	-	1	-
Custom Configuration	817-BBBB	-	1	-
Dell Mobile Precision Workstation 3551 CTO	210-AVJY	-	1	-
Intel Core Processor i7-10850H with Nvidia Quadro P620 Graphics, Thunderbolt	329-BETI	-	1	-
Bottom door	354-BBCD	-	1	-
No Mobile Broadband Card	556-BBCD	-	1	-
DP Palmrest, FIPS Touch Fingerprint Reader, FIPS Contacted SC Reader, Thunderbolt 3	346-BFZI	-	1	-
OS-Windows Media Not Included	620-AALW	-	1	-
6 Cell 97Whr ExpressCharge Capable Battery	451-BCJI	-	1	-
Cable for 6 cell battery	470-ADOZ	-	1	-
WWAN Support	320-BDRS	-	1	-
Bezel, IR Camera & Mic	325-BDRQ	-	1	-
15.6" FHD 1920x1080, Anti-Glare Non-Touch, 45% color gamut	391-BEYZ	-	1	-
Resource Media not Included	430-XYGV	-	1	-
130W E5 Type C Power Adapter (EPEAT)	492-BCWZ	-	1	-
No HD/SSD Filler	750-ABLD	-	1	-
No Anti-Virus Software	650-AAAM	-	1	-
Onsite/In-Home Service After Remote Diagnosis 4 Years	997-1079	-	1	-
Dell Limited Hardware Warranty Plus Service	997-1129	-	1	-
Extended Battery Service for Years 2 and 3 of System Life	988-5552	-	1	-
BTO Standard Shipment (S)	800-BBGT	-	1	-

		Qty	Subtotal
Dell 24 Monitor - P2419H	**$189.02**	**2**	**$378.04**

Estimated delivery if purchased today:
Feb. 11, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Qty	Subtotal
Dell 24 Monitor - P2419H	210-AQDX	-	2	-
Dell Limited Hardware Warranty	814-5380	-	2	-
Advanced Exchange Service, 3 Years	814-5381	-	2	-

		Qty	Subtotal
Dell Thunderbolt Dock- WD19TB	**$266.03**	**1**	**$266.03**

Estimated delivery if purchased today:
Mar. 26, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Qty	Subtotal
Dell Thunderbolt Dock- WD19TB	210-ARIK	-	1	-
Advanced Exchange Service, 3 Years	824-3984	-	1	-
Dell Limited Hardware Warranty	824-3993	-	1	-

Subtotal: $2,613.67

Shipping:	**$0.00**
Estimated Tax:	**$224.79**
Total:	**$2,838.46**

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

Important Notes

Terms of Sale

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

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

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

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

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

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

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

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

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

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Approving the purchase of One Dell Mobile Precision 3551 or comparable model laptop, One Thunderbolt docking station, and Two Monitors for Human Resources Department from Dell, Inc. utilizing the Washington State Contract #05815
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	Purchasing Department

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

Human Resources has requested to purchase a new laptop, dock, and monitors for a new budgeted position. Resolution 2019-753 requires that all non-budgeted devices purchased over $500 be coded to the department's 3508 expenditure code and be approved by the Board of Benton County Commissioners.

Laptops and docking station will be purchased from Dell, an authorized Washington State vendor under NASPO ValuePoint's Computer Equipment Contract, Dell Marketing, L.P. Contract #05815-003.

Fiscal Impact

Amount: **$3,000 excluding WSST.**

Fund: **Approved Human Resources 2021-2022 budgeted funds.**

Recommendation

Information Technology recommends that the Board approves the purchase of one Dell Mobile Precision 3551 or comparable model laptops, one Thunderbolt docking station, and two 24-inch monitors in an amount not to exceed $3,000 excluding WSST from Dell Inc. All equipment purchased will be added to Central Services Replacement Fund (0132101).

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF ONE DELL MOBILE PRECISION OR COMPARABLE MODEL LAPTOP, ONE THUNDERBOLT DOCKING STATION, AND TWO DELL 24-INCH MONITORS FOR THE HUMAN RESOURCES DEPARTMENT FROM DELL INC. UTILIZING STATE CONTRACT #05815

WHEREAS, the Human Resources Department has made a request to purchase a new laptop, docking station and two monitors for a new budgeted position; and

WHEREAS, by Resolution 2012-431 dated June 11, 2013, the Board of County Commissioners approved the Master Contract Usage Agreement for the purpose of purchasing or acquiring goods and services under contracts entered into by the Department of Enterprise Services; and

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

WHEREAS, Information Technology recommends purchasing one Dell Mobile Precision or comparable model laptop, one Thunderbolt docking station, and two Dell 24-inch monitors from Dell Inc.; and

WHEREAS, the Purchasing Department has reviewed this purchase and found it complies with the Procurements, Leasing, and Contracting Policy; and

WHEREAS, per Resolution 2019-753 of the Computer Replacement Policy requires all new computer equipment over $500 receive approval by the Board of Benton County Commissioners before purchasing; **NOW THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves the purchase of one Dell Mobile Precision 3551 or comparable model laptop, one Thunderbolt docking station, and two Dell 24-inch monitors for the Human Resources Department in an amount not to exceed $3,000 excluding Washington State Sales Tax to be paid for using approved 2021-2022 Human Resources Department funds; and

BE IT FURTHER RESOLVED, newly purchased laptop and docking station will be enrolled into Central Services Replacement Fund (0132101).

Dated this 23 day of February , 2021

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, HR

Prepared by: R. Heard

A quote for your consideration.

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

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

Quote No.	**3000078166386.1**	Sales Rep	Charles Anglin
Total	**$2,838.46**	Phone	(800) 456-3355, 6180469
Customer #	1710002	Email	Charles_Anglin@Dell.com
Quoted On	Feb. 03, 2021	**Billing To**	ACCOUNTS PAYABLE BENTON COUNTY CENTRAL SERVICES 620 MARKET ST PROSSER, WA 99350-1300
Expires by	Mar. 05, 2021		
Deal ID	19472910		

Message from your Sales Rep

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

Regards,
Charles Anglin

Shipping Group

Shipping To

ROBERT HEARD
BENTON COUNTY CENTRAL SERVICES
620 MARKET ST
PROSSER, WA 99350-1300
(509) 786-5603

Shipping Method

Standard Delivery

Product	Unit Price	Qty	Subtotal
Mobile Precision 3551	**$1,969.60**	**1**	**$1,969.60**
Dell 24 Monitor - P2419H	**$189.02**	**2**	**$378.04**
Dell Thunderbolt Dock- WD19TB	**$266.03**	**1**	**$266.03**

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

Subtotal:	**$2,613.67**
Shipping:	**$0.00**
Estimated Tax:	**$224.79**
Total:	**$2,838.46**

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

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

Shipping Group Details

Shipping To

ROBERT HEARD
BENTON COUNTY CENTRAL SERVICES
620 MARKET ST
PROSSER, WA 99350-1300
(509) 786-5603

Shipping Method

Standard Delivery

		Qty	Subtotal
Mobile Precision 3551	**$1,969.60**	**1**	**$1,969.60**

Estimated delivery if purchased today:
Mar. 24, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Qty	Subtotal
Intel Core Processor i7-10850H (6 Core, 12MB Cache, 2.70 GHz to 5.10 GHz, 35W, vPro)	379-BDXB	-	1	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	1	-
No Microsoft Office License Included – 30 day Trial Offer Only	658-BCSB	-	1	-
16GB, 1X16GB, DDR4 2933Mhz Non-ECC Memory	370-AFFB	-	1	-
Nvidia Quadro P620 w/ 4GB GDDR5	490-BFBH	-	1	-
M.2 256GB PCIe NVMe Class 40 Solid State Drive	400-BDWT	-	1	-
Bracket for M.2 PCIe NVMe 2280 SSD	575-BBYI	-	1	-
No Additional Hard Drive	401-AAGM	-	1	-
Intel WiFi6 AX201 Wireless Card for WW	555-BFNV	-	1	-
Intel vPro Technology Enabled	631-ACLE	-	1	-
Dual Pointing Backlit US English Keyboard with 10 Key Numeric Keypad	583-BGWN	-	1	-
No ENERGY STAR Qualified	387-BBCE	-	1	-
Not EPEAT Registered	389-DVNR	-	1	-
Intel AX201 2x2 + Bluetooth 5.1 Driver	555-BFNX	-	1	-
E5 US Power Cord	450-AAEJ	-	1	-
SERI Guide (ENG/FR/Multi)	340-AGIK	-	1	-
Quick Setup Guide for Mobile Precision 3551	340-COUO	-	1	-
No UPC Label	389-BCGW	-	1	-
Mix Model Packaging	340-CRFV	-	1	-
Regulatory Label included	389-BEYY	-	1	-
FCC Label	389-DPPX	-	1	-
Intel Core i7 vPro Processor Label	340-CPOZ	-	1	-
SupportAssist	525-BBCL	-	1	-
System Driver for Mobile Precision 3551	631-ACLD	-	1	-
Dell(TM) Digital Delivery Cirrus Client	640-BBLW	-	1	-
Dell Optimizer for Precision	640-BBSC	-	1	-
Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps)	658-BBMR	-	1	-

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Waves Maxx Audio	658-BBRB	-	1	-
Dell Power Manager	658-BDVK	-	1	-
Dell SupportAssist OS Recovery Tool	658-BEOK	-	1	-
Custom Configuration	817-BBBB	-	1	-
Dell Mobile Precision Workstation 3551 CTO	210-AVJY	-	1	-
Intel Core Processor i7-10850H with Nvidia Quadro P620 Graphics, Thunderbolt	329-BETI	-	1	-
Bottom door	354-BBCD	-	1	-
No Mobile Broadband Card	556-BBCD	-	1	-
DP Palmrest, FIPS Touch Fingerprint Reader, FIPS Contacted SC Reader, Thunderbolt 3	346-BFZI	-	1	-
OS-Windows Media Not Included	620-AALW	-	1	-
6 Cell 97Whr ExpressCharge Capable Battery	451-BCJI	-	1	-
Cable for 6 cell battery	470-ADOZ	-	1	-
WWAN Support	320-BDRS	-	1	-
Bezel, IR Camera & Mic	325-BDRQ	-	1	-
15.6" FHD 1920x1080, Anti-Glare Non-Touch, 45% color gamut	391-BEYZ	-	1	-
Resource Media not Included	430-XYGV	-	1	-
130W E5 Type C Power Adapter (EPEAT)	492-BCWZ	-	1	-
No HD/SSD Filler	750-ABLD	-	1	-
No Anti-Virus Software	650-AAAM	-	1	-
Onsite/In-Home Service After Remote Diagnosis 4 Years	997-1079	-	1	-
Dell Limited Hardware Warranty Plus Service	997-1129	-	1	-
Extended Battery Service for Years 2 and 3 of System Life	988-5552	-	1	-
BTO Standard Shipment (S)	800-BBGT	-	1	-

		Qty	Subtotal
Dell 24 Monitor - P2419H	**$189.02**	**2**	**$378.04**

Estimated delivery if purchased today:
Feb. 11, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Qty	Subtotal
Dell 24 Monitor - P2419H	210-AQDX	-	2	-
Dell Limited Hardware Warranty	814-5380	-	2	-
Advanced Exchange Service, 3 Years	814-5381	-	2	-

		Qty	Subtotal
Dell Thunderbolt Dock- WD19TB	**$266.03**	**1**	**$266.03**

Estimated delivery if purchased today:
Mar. 26, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Qty	Subtotal
Dell Thunderbolt Dock- WD19TB	210-ARIK	-	1	-
Advanced Exchange Service, 3 Years	824-3984	-	1	-
Dell Limited Hardware Warranty	824-3993	-	1	-

Subtotal: $2,613.67

Shipping:	**$0.00**
Estimated Tax:	**$224.79**
Total:	**$2,838.46**

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COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	02/23/21
Subject:	Award of public defense contract for child support contempt defense (replacement)
Presenter:	N/A
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu

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 is obligated legally to provide public defense services in Benton County Superior Court for child support contempt proceedings where a respondent is at risk of being incarcerated. The contract for this service expired December 31, 2020.

After a Request for Qualifications process, it was deemed appropriate to award a public defense contract to Judy Chang for child support contempt proceedings in Benton County Superior Court where there is a risk of incarceration for the respondent.

Fiscal Impact

None beyond budgeted.

Recommendation

Approved resolutions as proposed, execute public defense contracts with named attorney.

Suggested Motion

N/A – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING AN AGREEMENT WITH JUDY CHANG TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO RESPONDENTS IN CHILD SUPPORT CONTEMPT PROCEEDINGS

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for respondents at risk of incarceration through child support contempt proceedings ("Child Support Cases"); and

WHEREAS, the existing contract for public defense services on Child Support 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 Judy Chang for public defense services on Child Support Cases in Benton County Superior Court;

WHEREAS, additionally, from time to time Benton County's Office of Public Defense is ordered by Superior Court to provide public defense representation on miscellaneous civil matters, often relating to termination of parental rights cases filed by private attorneys, and Attorney is willing to be appointed to such cases on a per-hour basis; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Judy Chang, designated BCSC2122HLC001C, for services to be provided in Benton County Superior Court to respondents in Child Support cases, commencing January 1, 2021 and expiring December 31, 2022, with a per month compensation in the amount of $2,174 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement), as well as for miscellaneous civil cases during the same time period with a per-hour rate of $65, 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, Judy Chang
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH CIVIL CONTEMPT IN BENTON COUNTY SUPERIOR COURT

BCSC2122HLC001C

CONTRACT SUMMARY			
Contract Type	**Civil Contempt - Monthly**		
Contract Number	**BCSC2122HLC001C**	**Contract Holder**	**Hsiu-Lin "Judy" Chang**
WSBA #	**39367**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**60**	**Compensation**	**Contempt Docket: $2,174/month** **Other Miscellaneous Civil Matters: $65/hr**
Assigned Court	**Superior Court Child Support Contempt**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly** ☐ **By the case but paid monthly**
Compensation Payable To:	**H. Chang Law Office, PLLC**		
Contract Slot Identifier: CSC			

THIS AGREEMENT is entered into by and between **Hsiu-Lin "Judy" Chang** attorney at law, Washington State Bar Association **#39367** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with civil contempt arising from child support enforcement cases initiated by the State who are in jeopardy of incarceration when their cases are pending in Benton County Superior Court ("Contempt Cases").

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

C. Additionally, from time to time, the Office of Public Defense is directed by District or Superior Court to provide counsel to individuals on Miscellaneous Civil Matters (including privately filed contempt of court proceedings, privately filed termination of parental rights/adoption proceedings, or creditor/debtor matters where a debtor is in contempt of court and incarcerated). Attorney is capable of handling such matters and may, on a case-by-case basis, be able to take such cases on.

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.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **6855 W Clearwater Ave., Ste A103, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **(509) 542-7610** and *no fax no*, respectively; and Attorney's current office/work e-mail address is **hchang.law@gmail.com.**

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

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

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

a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters as well as experience in representing individuals facing contempt of court proceedings and subject to penalties that include incarceration; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

d. During each calendar year of the term of this Agreement, Attorney shall obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE")

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

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

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

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

express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

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

- Any matter in which an individual has been charged with civil contempt in Benton County Superior Court arising out of a child support enforcement case filed by the State, is in jeopardy of punishment or sanction by loss of liberty and is otherwise financially unable to obtain legal counsel.

Additionally, on a strictly case-by-case basis, subject to Attorney's consent, in his sole discretion, Attorney may be assigned other civil matters wherein the court has ordered the County's Office of Public Defense to provide public defense counsel to a litigant, including without limitation privately filed contempt matters, termination of parental rights/adoption matters, or debtor/creditor matters (collectively "Miscellaneous Civil Matters").

6. **CONTINUED REPRESENTATION.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this Agreement for up to ninety (90) days following the effective date of termination. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a civil contempt violation after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a civil contempt violation after the termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued, post-termination representation is court-authorized cost reimbursements specified in paragraph 13.b below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Benton County District and/or Superior Court for up to ninety (90) days shall be limited to a sixty (60) day period following the termination date for the following types of matters:

(i) Any civil-based matter other than civil contempt;

(ii) Any matter involving a represented person for whom a warrant has been issued; and

(iii) Any case where personal service is not effected within thirty (30) days of the date of the notice of termination.

c. Attorney will be appointed to no new cases under this Agreement during the thirty (30) day period prior to its termination date specified in paragraph 1 above if Attorney provides written notice to the County at least sixty (60) days prior to such termination date of Attorney's desire and intent to not pursue contracting with the County again to provide indigent defense services in Benton County District and/or Superior Court after such termination date. Attorney may belatedly provide such written notice at any time within said sixty (60) day time period, but the appointment of new cases to Attorney will not stop until thirty (30) days after the date such notice is received by the County.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in

the Benton County District and/or Superior Court up to a maximum of **sixty (60) total case equivalents per calendar year** (proratable for any partial calendar year). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only, and specifically not as any sort of a "weighting system" as provided by the Washington Standards for Indigent Defense, the following provisions shall apply:

- Each and any appointment to a civil contempt matter in Benton County Superior Court shall be counted as one-half (1/2) case equivalent and shall receive an additional one-half (1/2) case equivalent for each additional 12-month period during which representation continues.

- 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.

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 and/or Superior 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 civil contempt violation 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 appearance 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, found to be in contempt, 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. Throughout the term of this Agreement, the PDM shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The PDM shall provide copies of such records to the County and Attorney on

a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the PDM in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County Superior Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

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

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

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

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

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

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

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

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile

Rehabilitation Administration, Washington Department of Social and Health Services; and/or

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder, Attorney's monthly compensation hereunder shall be **$2,174.**

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $300.00 per day for each full day of trial and $150.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $300.00 if the matter was scheduled for a jury trial or $150.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney shall be compensated in the amount of $65 per hour, up to a maximum of $2,000 per case, for Miscellaneous Civil Matters to which he is appointed. The per case maximum may be increased at the discretion of the Benton County Public Defense Manager or designee, up to a grand total of $4,000 per case.

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

e. As a precondition to Attorney receiving payment of the compensation specified under paragraphs 12.a. and/or 12.b. above, Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said

paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

f. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

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

h. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under

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

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** Homicide and persistent offender cases are appointed to attorneys pursuant to a separate contract and Attorney should not expect to receive any such appointments under this Agreement.

14. **COSTS AND EXPENSES.**

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

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

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

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be

reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** This section is not applicable to this contract.

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

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per

claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

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

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

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

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

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

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

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

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

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

19. **TERMINATION.**

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

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

d. In any event, consistent with the provisions of paragraph 12.f. 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. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for

continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

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

a. In the event that Attorney needs the services of a substitute attorney for reasons of conflict or unavailability, Attorney may substitute the services of another attorney provided that Attorney has obtained the advance written consent of the Public Defense Manager ("PDM"), the substitute attorneys meets all qualifications required by this Agreement and agrees to abide by all provisions therein, and the substitute attorney agrees at all times to act under the direction of Attorney. Notwithstanding any other provision, however, it is mutually agreed between the parties that attorney Patrick McBurney, WSBA #22497. shall be permitted to substitute for Attorney for any hearings or other services required of Attorney by virtue of this Agreement on a regular, as-needed basis. This agreement regarding attorney McBurney shall be conditioned on attorney McBurney agreeing to be bound by all of the terms (other than compensation) contained within this Agreement, including insurance compliance. Furthermore, any compensation for attorney McBurney's services shall be a matter of direct negotiation between Attorney and attorney McBurney, and in no way shall County be deemed to have the obligation to compensate attorney McBurney in any manner even if Attorney shall fail to compensate attorney McBurney for services rendered and compensation is deemed appropriate under an unjust enrichment or other theory. Any such claims by attorney McBurney, shall be regarded as a claim for which Attorney has indemnification obligations pursuant to Section 11 herein.

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

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

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

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

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

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

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

32. **NOTICES.**

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

Eric Hsu, Public Defense Manager
Benton 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.

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

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

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

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

For Benton County	**For Contractor**
Date: _____	Date: Jan 12, 2021
_____ Chairman	Hsiu-Lin Chang Hsiu-Lin Chang (Jan 12, 2021 16:33 PST) Hsiu-Lin Chang, Attorney at Law WSBA #39367
_____ Commissioner	Patrick D. McBurney, Jr. Patrick D. McBurney, Jr. (Jan 12, 2021 17:02 PST) Patrick McBurney, Attorney at Law WSBA #39367 Agreeing to the terms herein in his role as authorized substitute attorney
_____ Commissioner	
Approved as to form and content Eric Hsu (Jan 7, 2021 11:22 PST) Eric Hsu, Attorney at Law Public Defense Manager	

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2/23/2021
Subject:	Temporary public defense contract with attorney Brittney Myles
Presenter:	N/A
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu

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

Brittney Myles has been employed by Benton County as a public defense attorney with OPD, assigned to our District Court defense team. She tendered her resignation to join the law firm Gravis Law, PLLC with a last day of work of January 29, 2021. Not long after, the other attorney assigned to OPD's District Court defense team, Luis Cisneros, also tendered his resignation (with a last day of February 19, 2021).

Attorney Myles' outstanding caseload is significantly higher than usual because of the fact that trials have been suspended in District Court for the duration of the COVID-19 pandemic (and therefore cases have not been resolving). This is the same case for most of the other District Court attorneys (contractors). As such, when also considering the fact that attorney Cisneros will also be leaving our office, it has been virtually impossible to reassign attorney Myles' cases to other attorneys upon her departure (as we otherwise would do).

Fortunately, both attorney Myles and her new employer have been receptive to having her continue to work almost all of her cases for an additional month, under contract (as proposed) so that OPD will have a bit more time to recruit the necessary resources needed to facilitate the transfer of attorney Myles' cases.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute proposed temporary public defense contract as proposed.

Suggested Motion

N/A – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING A TEMPORARY CONTRACT WITH ATTORNEY BRITTNEY MYLES FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT

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

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

WHEREAS, attorney Brittney Myles ("Attorney") has been employed, until January 29, 2021, by Benton County as a Public Defense Attorney with the Office of Public Defense; and

WHEREAS, Attorney resigned from employment with Benton County effective January 28, 2021, and did so on good terms (with appropriate notice) to take employment with a local law firm; and

WHEREAS, as a result of the COVID-19 pandemic in 2020 (and the fact that trials were not being held, resulting in a large backlog of unresolved cases) Attorney has a much larger-than-usual caseload that needs to be reassigned; and

WHEREAS, another staff public defender assigned to District Court, Luis Cisneros, has also tendered his resignation which has made reassigning cases on short notice extremely difficult; and

WHEREAS, Attorney has agreed, as has her new employer, to continue handling the majority of her caseload for a month, under contract, to allow OPD additional time to gather the necessary resources to facilitate the reassignment of Attorney's caseload; **NOW, THEREFORE**

BE IT RESOLVED that the temporary public defense contract with attorney Brittney Myles, providing for her to continue to work on almost all of her assigned caseload for the month of February, 2021 (even though she has left employment with Benton County and now works with law firm Gravis Law, PLLC) for a flat fee of $6,000 as a one time payment, payable on the last day of February, 2021, be executed 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, Brittney Myles
Copy – Auditor, S Godinez

E. Hsu

TEMPORARY
PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC2121BNM001

CONTRACT SUMMARY			
Contract Type	**Temporary**		
Contract Number	**BCDC2121BNM001**	**Contract Holder**	**Brittney N. Myles**
WSBA #	**54926**	**Effective Dates**	**February 1, 2021 – February 28, 2021**
Caseload Cap	**75% of current caseload**	**Compensation**	**$6,000 per month**
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: n/a			

THIS AGREEMENT is entered into by and between **Brittney Myles,** attorney at law, Washington State Bar Association **# 54926** ("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.

D. Attorney is transitioning from employment with County as a staff public defender, to employment with Gravis Law, PLLC. County has a need for assistance, for a limited time, with managing Attorney's existing caseload so as to provide County with time to hire a replacement staff public defender.

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 **February 1, 2021** and shall continue thereafter through and including **February 28, 2021**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. By mutual agreement, the parties may extend this Agreement with mutually acceptable adjustments to the caseload and monthly compensation.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **503 Knight St, Suite A, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 240-8688** and **no fax no** respectively; and Attorney's current office/work e-mail address is **bmyles@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.

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney agrees to and shall continue to provide full representation services for approximately 75% of the caseload assigned to her as of the District Court criminal docket day on January 27, 2021. It is understood that Attorney and Benton County's Office of Public Defense will work together to reassign approximately 25% of her caseload during the final days of January, 2021 and to fairly designate which portion of Attorney's caseload constitutes the 75% for which she will be rendering services pursuant to this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney shall only have a responsibility for continued representation on her cases until the expiration of this Agreement at which time she shall no longer have any continuing responsibility on any of the cases.

7. **NUMBER OF APPOINTMENTS.**

Reserved

8. **CASE EQUIVALENTS.**

Reserved

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 at the rate of $6,000 per month.

All compensation shall be payable to: Gravis Law, PLLC *since Attorney is an associate with that firm.*

b. 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 shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation 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.

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. The parties expressly agree that other attorneys employed by Gravis Law may substitute for Attorney and make court appearances or client contact in her stead pursuant to this Agreement, on an infrequent basis.

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

21. **OTHER APPOINTMENTS.**

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

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

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

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

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

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

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

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

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

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

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

BENTON COUNTY	**ATTORNEY**
Date_____	Date 2/2/2021
_____	Brittney Myles
Chairman	Brittney Myles, WSBA 54926
_____	*Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.*

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu
Public Defense Manager

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

WSBA No. 46253

, WSBA

I am a principal with signing authority for . 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:

Brittney Myles

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:	02/23/21
Subject:	Rescind and re-acknowledge public defense contract termination by Megan Whitmire
Presenter:	N/A
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu

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 Superior Court public defense contract with attorney Megan Whitmire was terminated by attorney Whitmire pursuant to notice of early termination with 60 days notice, with a final effective date of January 24, 2021. This contract termination was acknowledged by and through Resolution 2021-094.

Subsequent to her initial notice of termination, attorney Whitmire stated willingness to continue accepting case appointments until January 31, 2021 (something which, given high volumes of cases in the office, was very beneficial to OPD). Following this stated acceptance, attorney Whitmire did, in fact, receive case appointments all the way until January 31, 2021.

Since attorney Whitmire accepted case appointments up to January 31, 2021, it is necessary to rescind the original Resolution acknowledging her contract as terminated effective January 24, 2021, and replace it with an acknowledgement of January 31, 2021 as the correct termination date in order for her compensation to be accurate.

Fiscal Impact

None beyond budgeted.

Recommendation

Approved proposed resolution rescinding original contract termination acknowledgement resolution in order that the correct date of contract termination be accepted and acknowledged.

Suggested Motion

N/A – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF RESCINDING RESOLUTION 2021-094 AND ACKNOWLEDGING ATTORNEY MEGAN WHITMIRE'S CONTRACT TERMINATION WITH A REVISED FINAL EFFECTIVE DATE OF JANUARY 31, 2021

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

WHEREAS, Benton County had been contracting with attorney Megan Whitmire for Services but attorney elected for early termination of her contract by way of written notice, with a final effective date of January 24, 2021 (which was previously acknowledged by and through Resolution 2021-094); and

WHEREAS, subsequent to her initial notice of contract termination, attorney Whitmire expressed willingness to continue to accept new case appointments until January 31, 2021 which provided substantial benefit and value to Benton County OPD (see her email attached as Exhibit "A"); and

WHEREAS, attorney Whitmire was in fact appointed cases all the way up and until January 31, 2021 pursuant to her willingness to do so; and

WHEREAS, it is therefore appropriate to rescind Resolution 2021-094 and, instead, regard attorney Whitmire's public defense contract as terminated effective January 31, 2021, so as to appropriately compensate her for case appointments made and received during the last week of January, 2021; **NOW, THEREFORE**

BE IT RESOLVED that Resolution 2021-094 is hereby rescinded; and

BE IT FURTHER RESOLVED that attorney Whitmire's public defense contract, previously executed by and through Resolution 2018-944, be terminated as requested, with a final effective date of January 31, 2021.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Megan Whitmire
Copy – Auditor, S Godinez

E. Hsu

EXHIBIT A

Eric Hsu

From: Megan Whitmire <whitmirelaw@gmail.com>
Sent: Thursday, December 3, 2020 1:03 PM
To: Eric Hsu
Subject: [EXTERNAL] Re: contracts

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

Hi Eric,

I just wanted to confirm your receipt of my previous email formally giving notice, with the attached pending case report. My new contract does not commence until January 2021, and I could continue to accept appointments until the end of January (rather than around Jan 24 which would be the 60th day) if it makes things easier. Just let me know.

On Wed, Nov 25, 2020 at 3:09 PM MEGAN WHITMIRE <whitmirelaw@gmail.com> wrote:

> Eric,
>
> Please consider this formal notice of my intent to terminate my contract with Benton County effective 60 days from today. In accordance with the contractual requirements, I have attached a list of my currently pending cases. As previously mentioned in my email below, I have accepted a contract with Franklin County to represent juvenile respondents. My contractual obligations in Franklin County are not expected to impede my ability to remain as counsel on currently pending cases until their resolution, with the possible exception of cases on prolonged warrant status.
>
> Please do not hesitate to contact me with any questions, and let me know if you require additional information. It has been a pleasure to work with you and I deeply appreciate your hard work and advocacy on behalf of our defense panel.
>
> Sincerely,
>
> Megan Whitmire
>
> Sent from Mail for Windows 10

From: MEGAN WHITMIRE
Sent: Wednesday, November 25, 2020 9:03 AM
To: Eric Hsu
Subject: contracts

Eric,

I will be sending you formal notice once the docket is over today, but wanted to give you an immediate heads up that I have accept (as of just now) a juvenile contract with Franklin Co. and will be sending you formal notice regarding the termination of my current Benton Co superior court contract.

Megan Whitmire

Attorney at Law

1030 N. Center Parkway, Suite 111

Kennewick, WA 99336

Office: (509) 735-5059

Fax: (509) 222-2223

ATTORNEY WORK PRODUCT--DO NOT DISSEMINATE. CONFIDENTIALITY NOTICE:

This electronic mail transmission may contain legally privileged,

confidential information. The information is intended only for the use

of the individual or entity named above. If you are not the intended

recipient, you are hereby notified that any disclosure, copying,

distribution or taking any action based on the contents of this

electronic mail or its attachment(s) is strictly prohibited. If you

received this in error, please contact the sender and delete or destroy

all copies.

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 117

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by:
Ginny Baddley

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Prosecuting Attorney Dept Nbr: 117

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: Dept 117 TRANSFER TO: Dept 117

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
515.300	1349	Legal Secretary III	2,000	515.300	1925	Overtime	2,000
TOTAL			2,000	TOTAL			2,000

Explanation:

Line item transfer is needed to cover extensive overtime worked in order to process public records requests.

Prepared by: Ginny Baddley Date: 08-Feb-2021

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 SALES TAX FUND NUMBER 0148101, DEPARTMENT NUMBER 115.

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental Dept Nbr: 115

Fund Name: Public Safety Sales Tax Fund Nbr: 0148101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.303	4102	Contract Services	$80,000
TOTAL			$80,000

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.210	6401	Capital Outlay	$80,000
TOTAL			$80,000

Explanation:

To appropriate funding for Capital Outlay. Vehicles were purchased in 2020 and the associated upfit expenditure rolled into the 2021 budget cycle.

Prepared by: Linda Ivey Date: 09-Feb-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PUBLIC SAFETY TAX FUND NUMBER 0148101, DEPARTMENT NUMBER 117

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by:
Ginny Baddley

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Prosecuting Attorney

Dept Nbr: 117

Fund Name: Public Safety Tax

Fund Nbr: 0148101

TRANSFER FROM: Dept 117

TRANSFER TO: Dept 117

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
515.300	3501	Minor Equipment and Small Tool	4,500	515.300	3508	Computer Replacement	4,500
TOTAL			4,500	TOTAL			4,500

Explanation:

Line item transfer is needed to cover the cost of a new computer setup for the Legal Secretary V position, line 1414.

Prepared by: Ginny Baddley

Date: 11-Feb-2021

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 136.

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 _____, 2021

_____
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: L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Office of Public Defense Dept Nbr: 136

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
515.910	1656	Executive Assistant	$82,320	515.910	1656	Office Support	$82,320
515.910	1716	Executive Assistant	$77,647	515.910	1716	Office Support	$77,647
TOTAL			$159,967	TOTAL			$159,967

Explanation:

2021-2022 Budget. As part of the title and job description clean up project, it was discovered that these positions were mistitled. The positions will remain non-bargaining grade 6 and only the title will change to reflect the correct title as Office Support, established via Resolution 2013-494.

Prepared by: L. Wingfield Date 15-Feb-2021

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 COUNTY ROAD FUND NUMBER 0101101, DEPARTMENT NUMBER 500.

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

J. Bowe

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Road Dept Nbr: 500

Fund Name: County Road Fund Nbr: 0101101

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
544.200	3100	Office & Operating Supplies	$4,000	544.200	3508	Computer Replacement	$4,000
TOTAL			$4,000	TOTAL			$4,000

Explanation:

2021-2022 Budget: Reallocation of funding to line items where funds are expected to be utilized.

Prepared by: Jennifer Bowe Date: 04-Feb-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS, RE: TRANSFER OF FUNDS WITHIN EQUIPMENT RENTAL AND REVOLVING FUND 0501-101, DEPARTMENT NUMBER 650

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

Dated this 23rd day of February, 2021.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

D Calhoun

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Equipment Rental and Revolving Dept Nbr: 650

Fund Name: Equipment Rental and Revolving Fund Nbr: 0501101

TRANSFER FROM: TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
548.610	9100	Interfund Professional Svcs	24,000	548.690	1028	Contract Coordinator	16,842
				548.690	2102	Social Security (FICA)	1,258
				548.690	2103	Medical Insurance	3,760
				548.690	2104	Retirement	2,115
				548.690	2119	Paid Family Leave Act	25
TOTAL			$24,000	TOTAL			$24,000

Explanation:

Create line for Contract Coordinator in Road department to code time. This does not create a new position.
This will eliminate Road billing ER&R for employee time.

Prepared by: Debbie Calhoun Date: 03-Feb-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Executing an Interlocal Cooperative Agreement with the Benton County Noxious Weed Control Board for General Equipment and/or Services
Presenter:	N/A
Prepared By:	S. Christen
Reviewed By:	D. D'Hondt

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

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

Summary / Background Information

There is a desire to be able to share equipment and services with other public agencies when the need arises. Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment. Such an Interlocal has been prepared with the Benton County Noxious Weed Control Board, has been reviewed and approved as to form by our Departmental Deputy Prosecuting Attorney, and signed by the Benton County Noxious Weed Control Board.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The County Engineer recommends the Board approve the proposed Interlocal Agreement for General Equipment and/or Services with the Benton County Noxious Weed Control Board.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE BENTON COUNTY NOXIOUS WEED CONTROL BOARD AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, the Benton County Noxious Weed Control Board and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by the Noxious Weed Control Board on December 14, 2020; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with the Noxious Weed Control Board, finding such to be beneficial to Benton County; **NOW, THEREFORE,**

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between Noxious Weed Control Board and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with the Noxious Weed Control Board on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2021 and shall continue through December 31, 2025.

Dated this 23rd day of February 2021.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest._____
Clerk of the Board

Original: Public Works

S. Christen

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN NOXIOUS WEED CONTROL BOARD AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES

This agreement is made and entered into by and between the **Benton County Noxious Weed Control Board** (hereinafter "Noxious Weed") and **Benton County** pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

ARTICLE I
PURPOSE

1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton County and Noxious Weed will temporarily provide equipment and/or services to the other party. Neither Benton County nor Noxious Weed are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

ARTICLE II
ADMINISTRATION

2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.02 Noxious Weed's representative shall be the Weed Control Coordinator.

2.03 Benton County's representative shall be the County Engineer.

2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or service in writing. Written requests shall be submitted prior to rental of equipment or performance of services. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or service may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

ARTICLE III
DURATION AND RENEWAL OF AGREEMENT

3.01 **DURATION AND RENEWAL.** This Agreement shall be effective on January 1, 2021 and shall continue through December 31, 2025. The obligation to provide compensation for the use of equipment or service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

ARTICLE IV
COMPENSATION

4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the service performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, plus all costs for fringe benefits to labor, including but not limited to, Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. Also, an additional five percent (5%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

ARTICLE V
PERFORMANCE OF AGREEMENT

5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.

5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.

5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.

5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

5.07 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.

5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton County shall be to the County Engineer, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to Noxious Weed for all purposes under this Agreement shall be to the Weed Control Coordinator, 1908 Butler Loop, Richland, Washington 99354, and the Benton County Noxious Weed Control Board, 1908 Butler Loop, Richland, WA 99354.

ARTICLE VI
INDEMNIFICATION

6.01 **MUTUAL INDEMNITY.** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against Noxious Weed or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton County or its officers, officials, employees, or agents by any employee of Noxious Weed, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or

type of damages, compensation, or benefits payable by or for Noxious Weed or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Noxious Weed expressly waives any immunity Noxious Weed might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

6.02 **SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII
DISPUTES

7.01 **DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

ARTICLE VIII
TERMINATION

8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX
GENERAL PROVISIONS

9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parities hereto.

9.05 **INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by Noxious Weed, shall remain the sole property of Noxious Weed. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton County, shall remain the sole property of Benton County.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on Noxious Weed's or Benton County's website as required by RCW 39.34.040.

9.06 **EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, Noxious Weed shall provide Benton County and Benton County shall provide Noxious Weed with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (Noxious Weed) and Exhibit B (Benton County).

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

BENTON COUNTY NOXIOUS WEED CONTROL BOARD

By: _____
Chair
Noxious Weed Control Board

Attest:

_____
Office Manager

Date: 12-14-2020

Approved as to form:

_____
Attorney

Date: _____

BENTON COUNTY, WASHINGTON

By: _____
Chairman
Board of County Commissioners

Attest:

_____
Clerk of the Board

Date: _____

Approved as to form:

_____
Benton County Deputy Prosecuting Attorney

Date: 12-7-20

Exhibit A

Benton County Noxious Weed Control Board

1841 Terminal Dr. Richland WA 99354 509-943-6005 Email bcnwcb@frontier.com

Regular Monthly Meeting Minutes
Tuesday December 15, 2020
7:00 PM
Location: Weed Board Office 1841 Terminal Dr. Richland, WA

Chairman Danny Downs called the December regular monthly meeting to order at 7:00 pm.
Board members present-Darrell Miles, Tony Smith and Earl Morgan.
Staff present- Konrad Kauer, Holly Kress and Luis Villalobos.
Next Board Meeting to be held Tuesday January 19, 2021

Budget presentation to commissioner's review

Konrad gave a presentation to the master gardeners

Discuss Holly taking over payroll and printing checks

Renew Benton County Public Works Interlocal for Equipment and Services Sharing

Review the November 17, 2020 minutes

Motion: A motion was made by Earl Morgan to approve the November 17, 2020 minutes with a second from Darrell Miles. Motion carries 3-0.

Review checks to be approved and payroll.
Checks for December 2020 --#1677 thru #1684=$4,631.27
Payroll for November 2020-- Direct Deposit=$15,450.64
Total= $20,081.91

Motion: A motion was made by Darrell Miles to approve the December checks and November payroll with a second from Earl Morgan. Motion carries 3-0.

Financial Report-Profit and Loss/Balance Sheet

Motion: A motion was made by Darrell Miles to receive and file the December financial report with a second from Tony Smith. Motion carries 3-0.

Current Projects Report

County Assessment- The list of parcels we receive our assessment from has been accepted by the county.

BLM Grant-Treating Yellow Starthistle and other noxious weeds on lands near Bombing Range Road.

Winter House Keeping- Shop clean-up and winterizing vehicles.

December Projects – Continue Survey and treatments of BLM grant areas for Yellow Starthistle//Fairgrounds contract renewal // BPA contract renewal//Brainstorming educational program ideas

Upcoming Meetings & Events- Roza Irrigation Presentation Jan. 27th

Executive meeting to discuss 2021 cost of living increase
At 7:50 pm Chairman Danny Downs recessed the December regular monthly board meeting to open the executive session to discuss 2021 cost of living increase. At 7:55 pm Chairman Danny Downs reopened the December regular monthly meeting.

Meeting Adjourned at 8:00 pm

Danny L. Downs 1-19-21
Chairman Date

1-19-21
Clerk of the Board Date

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Executing an Interlocal Cooperative Agreement with the City of Benton City for General Equipment and/or Services
Presenter:	N/A
Prepared By:	S. Christen
Reviewed By:	D. D'Hondt

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

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

Summary / Background Information

There is a desire to be able to share equipment and services with other public agencies when the need arises. Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment. Such an Interlocal has been prepared with the City of Benton City, has been reviewed and approved as to form by our Departmental Deputy Prosecuting Attorney, and signed by the Mayor of Benton City.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The County Engineer recommends the Board approve the proposed Interlocal Agreement for General Equipment and/or Services with the City of Benton City.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE CITY OF BENTON CITY AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, the City of Benton City and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by the Mayor of Benton City on January 19, 2021; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with the City of Benton City, finding such to be beneficial to Benton County; **NOW THEREFORE,**

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between City of Benton City and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with the City of Benton City on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2021 and shall continue through December 31, 2025.

Dated this 23rd day of February 2021.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest._____
Clerk of the Board

Original: Public Works

S. Christen

Exhibit B

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE CITY OF BENTON CITY AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

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BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2021 and shall continue through December 31, 2025.

Dated this 23rd day of February 2021.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest._____
Clerk of the Board

Original: Public Works

S. Christen

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN CITY OF BENTON CITY AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES

This agreement is made and entered into by and between the **City of Benton City** (hereinafter "Benton City") and **Benton County** pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

ARTICLE I
PURPOSE

1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton County and Benton City will temporarily provide equipment and/or services to the other party. Neither Benton County nor Benton City are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

ARTICLE II
ADMINISTRATION

2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.02 Benton City's representative shall be the Mayor of Benton City.

2.03 Benton County's representative shall be the County Engineer.

2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or service in writing. Written requests shall be submitted prior to rental of equipment or performance of services. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or service may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

ARTICLE III
DURATION AND RENEWAL OF AGREEMENT

3.01 **DURATION AND RENEWAL.** This Agreement shall be effective on January 1, 2021 and shall continue through December 31, 2025. The obligation to provide compensation for the use of equipment or service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

ARTICLE IV
COMPENSATION

4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the service performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, plus all costs for fringe benefits to labor, including but not limited to, Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. Also, an additional five percent (5%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

ARTICLE V
PERFORMANCE OF AGREEMENT

5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.

5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.

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5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

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5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton County shall be to the County Engineer, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to Benton City for all purposes under this Agreement shall be to the Mayor of the City of Benton City, P. O. Box 70, Benton City, Washington 99320, and the Benton City City Council, P. O. Box 70, Benton City, WA 99320.

ARTICLE VI
INDEMNIFICATION

6.01 **MUTUAL INDEMNITY.** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against Benton City or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton County or its officers, officials, employees, or agents by any employee of Benton City, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of

damages, compensation, or benefits payable by or for Benton City or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton City expressly waives any immunity Benton City might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

6.02 **SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII
DISPUTES

7.01 **DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

ARTICLE VIII
TERMINATION

8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX
GENERAL PROVISIONS

9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parities hereto.

9.05 **INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by Benton City, shall remain the sole property of Benton City. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton County, shall remain the sole property of Benton County.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on Benton City's or Benton County's website as required by RCW 39.34.040.

9.06 **EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, Benton City shall provide Benton County and Benton County shall provide Benton City with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (Benton City) and Exhibit B (Benton County).

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

CITY OF BENTON CITY, WASHINGTON

By: _____
Linda Lehman, Mayor

Attest:

_____
City Clerk

Date: 1/19/21

Approved as to form:

_____ 47859
Attorney

Date: 1/19/21

BENTON COUNTY, WASHINGTON

By: _____
Chairman
Board of County Commissioners

Attest:

_____
Clerk of the Board

Date: _____

Approved as to form:

_____
Benton County Deputy Prosecuting Attorney

Date: 12-9-20

Exhibit A

RESOLUTION NO. 2021-06

A RESOLUTION OF THE CITY OF BENTON CITY, WASHINGTON, AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE INTERLOCAL AGREEMENT BETWEEN BENTON CITY AND BENTON COUNTY FOR SHARING OF EQUIPMENT AND SERVICES

WHEREAS, the Revised Code of Washington (RCW) Chapter 39.34 authorizes two or more public agencies to contract with each other to perform functions that each may individually perform; and

WHEREAS, the City of Benton City ("City") has identified the need for the assistance of Benton County ("County"), and the County has identified the need for the assistance of City regarding sharing of equipment and services; and

WHEREAS, the City and the County agree to provide assistance to one another consistent with the provisions of the Interlocal Agreement for Sharing of Equipment and Services attached as **Exhibit A**; and

WHEREAS, the City and the County have negotiated and agree to enter into an Interlocal Cooperative Agreement for Sharing of Equipment and Services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the Agreement for the Interlocal Cooperation Agreement for General Equipment and/or Services between Benton County and the City of Benton City, a copy of which is attached hereto and incorporated herein by this reference as **Exhibit A**; and to take all necessary steps required for the implementation of this Agreement and Authorization for Representation to enter into this Agreement.

ADOPTED this 19th day of January, 2021, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 19th day of January, 2021.

Resolution 2021-06 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 19th day of January, 2021.

L. Lehman

Linda Lehman, Mayor

Attest:

Jeni S. Zuniga
City Clerk/Treasurer

Approved as to Form:

47859

Kerr Perguson Law, PLLC
City Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Executing an Interlocal Cooperative Agreement with Columbia Irrigation District for General Equipment and/or Services
Presenter:	N/A
Prepared By:	S. Christen
Reviewed By:	D. D'Hondt

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

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

Summary / Background Information

There is a desire to be able to share equipment and services with other public agencies when the need arises. Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment. Such an Interlocal has been prepared with Columbia Irrigation District, has been reviewed and approved as to form by our Departmental Deputy Prosecuting Attorney, and signed by Columbia Irrigation District.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The County Engineer recommends the Board approve the proposed Interlocal Agreement for General Equipment and/or Services with Columbia Irrigation District.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN COLUMBIA IRRIGATION DISTRICT AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, Columbia Irrigation District and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by Columbia Irrigation District on February 3, 2021; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with Columbia Irrigation District, finding such to be beneficial to Benton County; **NOW, THEREFORE,**

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between Columbia Irrigation District and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with Columbia Irrigation District on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2021 and shall continue through December 31, 2025.

Dated this 23rd day of February 2021.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest._____
Clerk of the Board

Original: Public Works

S. Christen

Exhibit B

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN COLUMBIA IRRIGATION DISTRICT AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, Columbia Irrigation District and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by Columbia Irrigation District on February 3, 2021; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with Columbia Irrigation District, finding such to be beneficial to Benton County; **NOW, THEREFORE,**

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between Columbia Irrigation District and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with Columbia Irrigation District on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2021 and shall continue through December 31, 2025.

Dated this 23rd day of February 2021.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest._____
Clerk of the Board

Original: Public Works

S. Christen

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN COLUMBIA IRRIGATION DISTRICT AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES

This agreement is made and entered into by and between the **Columbia Irrigation District** (hereinafter "CID") and **Benton County** pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

ARTICLE I
PURPOSE

1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton County and CID will temporarily provide equipment and/or services to the other party. Neither Benton County nor CID are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

ARTICLE II
ADMINISTRATION

2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.02 CID's representative shall be the District Manager.

2.03 Benton County's representative shall be the County Engineer.

2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or service in writing. Written requests shall be submitted prior to rental of equipment or performance of services. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or service may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

ARTICLE III
DURATION AND RENEWAL OF AGREEMENT

3.01 **DURATION AND RENEWAL.** This Agreement shall be effective on January 1, 2021 and shall continue through December 31, 2025. The obligation to provide compensation for the use of equipment or service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

ARTICLE IV
COMPENSATION

4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the service performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, plus all costs for fringe benefits to labor, including but not limited to, Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. Also, an additional ten percent (10%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

ARTICLE V
PERFORMANCE OF AGREEMENT

5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.

5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.

5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.

5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

5.07 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.

5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton County shall be to the County Engineer, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to CID for all purposes under this Agreement shall be to the District Manager, 10 E. Kennewick Avenue, Kennewick, Washington 99336, and the Columbia Irrigation District Board of Directors, 10 E. Kennewick Avenue, Kennewick, WA 99336.

ARTICLE VI
INDEMNIFICATION

6.01 **MUTUAL INDEMNITY.** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against CID or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton County or its officers, officials, employees, or agents by any employee of CID, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of

damages, compensation, or benefits payable by or for CID or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that CID expressly waives any immunity CID might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

6.02 **SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII
DISPUTES

7.01 **DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

ARTICLE VIII
TERMINATION

8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX
GENERAL PROVISIONS

9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parities hereto.

9.05 **INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by CID, shall remain the sole property of CID. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton County, shall remain the sole property of Benton County.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on CID's or Benton County's website as required by RCW 39.34.040.

9.06 **EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, CID shall provide Benton County and Benton County shall provide CID with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (CID) and Exhibit B (Benton County).

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

COLUMBIA IRRIGATION DISTRICT

By: _____
Secretary Manager

Attest:

_____
Office Manager

Date: 2/2/21

Approved as to form:

_____
Attorney

Date: _____

BENTON COUNTY, WASHINGTON

By: _____
Chairman
Board of County Commissioners

Attest:

_____
Clerk of the Board

Date: _____

Approved as to form:

_____
Benton County Deputy Prosecuting Attorney

Date: 12-9-20

Exhibit A

COLUMBIA IRRIGATION DISTRICT

RESOLUTION NO. 2017-03

IN THE MATTER OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE COLUMBIA IRRIGATION DISTRICT AND BENTON COUNTY

WHEREAS, Columbia Irrigation District (CID) and Benton County desire to enter into an Interlocal Cooperative Agreement, and

WHEREAS, the agreement is set forth the terms and conditions under which Benton County, through its Road Department and CID will temporarily provide equipment and/or services to the other party,

WHEREAS, it is in the best interest of CID to have the Interlocal Agreement to have access to equipment and services and/or provide same to Benton County,

NOW THEREFORE, BE IT RESOLVED that Resolution No. 2017-03 is hereby approved and the Manager is authorized to sign said agreement.

Dated this 1st day of December, 2017.

Vince Shawver, President

Neil Martin, Vice President

Dallas Ayde, Director

Jim Gose, Director

Mathew Morrell, Director

Attest:

Howard Ellison, Secretary/Manager

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Authorization to bid & advertise 2021 Crushing and Stockpiling
Presenter:	
Prepared By:	JAL
Reviewed By:	D. D'Hondt

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

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

Summary / Background Information

The Benton County Public Works Department routinely crushes and stockpiles aggregate rock materials for road maintenance purposes at quarry sites owned or leased by the County.

Crushing and stockpiling is performed by a contractor as a public works project. Due to the scale of the project, Board approval is required before advertisement and bidding can commence.

The Benton County Public Works Department Requests Board authorization to advertise and bid a public works project for the crushing and stockpiling of aggregate rock materials for road maintenance purposes.

Fiscal Impact

None.

Recommendation

The County Engineer recommends that the Board formally grant permission to go to advertisement and proceed with the project.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REQUESTING PERMISSION TO PROCEED WITH THE ADVERTISEMENT AND BID PROCESS FOR C.E. 2119 SMP - 2021 CRUSHING AND STOCKPILING.

WHEREAS; it is the intention of the Board of County Commissioners to crush and stockpile surfacing materials for road construction and maintenance functions; and

WHEREAS, a bid packet (No. CB 21-02) was prepared by Benton County Public Works staff, reviewed and approved as to form by the Benton County Prosecuting Attorney's office, and signed by the County Engineer; **NOW, THEREFORE,**

BE IT RESOLVED that the County Engineer is authorized to proceed with the advertisement and bid process for Bid No. CB 21-02 C.E. 2119 SMP 2021 Crushing and Stockpiling.

Dated this 23rd day of February 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig Public Works

S. Christen

CONTRACT PROVISIONS AND PLANS

For Construction of:

2021 CRUSHING AND STOCKPILING

CE 2119

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-02

OFFICE OF THE COUNTY ENGINEER
BENTON COUNTY
(CB NO. 21-02)

CALL FOR BIDS

Sealed bids for C E. 2119 – 2021 Crushing and Stockpiling, shall be received by the Benton County Engineer, Benton County Public Services Building, 102206 East Wiser Parkway, Kennewick, Washington 99338 until 2:00 p.m , Local Time, Wednesday, March 11, 2021. NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME. Bids are to be opened on Wednesday, March 11, 2021 at 2:00 p.m., Local Time, in the Public Works Conference Room, Benton County Courthouse, Prosser, Washington. Contractor's Bid Proposal shall include the complete Proposal, consisting of nine (9) pages and the proposal bond is to be enclosed in a sealed envelope marked, "BID FOR 2021 CRUSHING AND STOCKPILING – CE 2119".

All bid proposals shall be accompanied by a bid proposal deposit as certified check, cashier check or proposal bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to Benton County. The Board reserves the right to reject any or all bids and to waive informalities in the bidding The award of contract, if made, will be approved by the Board of Benton County Commissioners, Benton County, Washington.

"NOTE: This document and the materials enclosed herewith constitute an invitation to submit bid proposals only and do not represent an offer by Benton County or the Benton County Engineer. Bid proposals submitted in response hereto shall constitute offers to contract with Benton County, and only upon the County's acceptance of such offer by bid award as provided herein, shall any contractual relations be created."

Complete digital project bidding documents are available at www.questcdn.com Interested bidders may view the plans and specifications at no charge by signing up for an account and inputting Quest Project # 7473189 on the website's Projects Search Page. Firms who intend to submit a bid must download the digital plan documents, specifications, contract documents and bid proposal for fifteen dollars ($15.00). Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership, registration, downloading, and working with this digital project information.

The following is applicable to all Benton County projects:

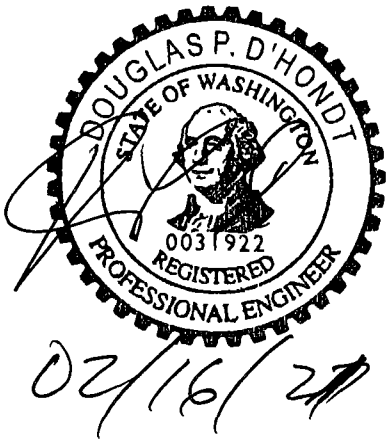
"Benton County, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award."

CERTIFICATIONS

2021 CRUSHING AND STOCKPILING
CE 2119

ENGINEER'S CERTIFICATION:

As the Engineer in direct responsible charge of developing these contract provisions, I certify these provisions have been developed or incorporated into this project under my supervision or as a result of certified specifications provided by other licensed professionals.



02/16/24

APPROVED AS TO FORM:

The Call for Bids and Contract Provisions for the construction of CE 2119 – 2021 CRUSHING AND STOCKPILING has been reviewed and approved as to form:

Deputy Prosecuting Attorney

2/11/24

Date

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SPECIAL PROVISIONS

INTRODUCTION TO THE SPECIAL PROVISIONS

(December 10, 2020 APWA GSP)

The work on this project shall be accomplished in accordance with the *Standard Specifications for Road, Bridge and Municipal Construction, 2021 edition*, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter "Standard Specifications"). The Standard Specifications, as modified or supplemented by these Special Provisions, all of which are made a part of the Contract Documents, shall govern all the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The project-specific Special Provisions are not labeled as such. The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

(March 8, 2013 APWA GSP)
(April 1, 2013 WSDOT GSP)

Also incorporated into the Contract Documents by reference are:

- Manual on Uniform Traffic Control Devices for Streets and Highways, currently adopted edition, with Washington State modifications, if any
- Standard Plans for Road, Bridge and Municipal Construction, WSDOT/APWA, current edition

Contractor shall obtain copies of these publications, at Contractor's own expense.

DIVISION 1
GENERAL REQUIREMENTS

DESCRIPTION OF WORK

(March 13, 1995 WSDOT GSP)
This Contract provides for ***the stripping, drilling, blasting, crushing, and stockpiling of surfacing materials for future County road and maintenance projects,*** and other work, all in accordance with the attached Contract Plans, these Contract Provisions, the Standard Specifications, and the Standard Plans.

SECTION 1-01 DEFINITIONS AND TERMS

1-01.3 Definitions
(January 4, 2016 APWA GSP)

Delete the heading **Completion Dates** and the three paragraphs that follow it, and replace them with the following·

Dates

Bid Opening Date
The date on which the Contracting Agency publicly opens and reads the Bids.

Award Date
The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive Bidder for the Work.

Contract Execution Date
The date the Contracting Agency officially binds the Agency to the Contract.

Notice to Proceed Date
The date stated in the Notice to Proceed on which the Contract time begins.

Substantial Completion Date
The day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, any remaining traffic disruptions will be rare and brief, and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

Physical Completion Date
The day all of the Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date

Completion Date
The day all the Work specified in the Contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor before establishment of this date

Final Acceptance Date
The date on which the Contracting Agency accepts the Work as complete.

Supplement this Section with the following·

All references in the Standard Specifications, Amendments, or WSDOT General Specil Provisions, to the terms "Department of Transportation", "Washington State Transportation Commission", "Commission", "Secretary of Transportation", "Secretary", "Headquarters", and "State Treasurer" shall be revised to read "Contracting Agency".

All references to the terms "State" or "state" shall be revised to read "Contracting Agency" unless the reference is to an administrative agency of the State of Washington, a State statute or regulation, or the context reasonably indicates otherwise.

All references to "State Materials Laboratory" shall be revised to read "Contracting Agency designated location".

All references to "final contract voucher certification" shall be interpreted to mean the Contracting Agency form(s) by which final payment is authorized, and final completion and acceptance granted.

Additive
A supplemental unit of work or group of bid items, identified separately in the Bid Proposal, which may, at the discretion of the Contracting Agency, be awarded in addition to the base bid.

Alternate
One of two or more units of work or groups of bid items, identified separately in the Bid Proposal, from which the Contracting Agency may make a choice between different methods or material of construction for performing the same work.

Business Day
A business day is any day from Monday through Friday except holidays as listed in Section 1-08.5.

Contract Bond
The definition in the Standard Specifications for "Contract Bond" applies to whatever bond form(s) are required by the Contract Documents, which may be a combination of a Payment Bond and a Performance Bond.

Contract Documents
See definition for "Contract".

Contract Time
The period of time established by the terms and conditions of the Contract within which the Work must be physically completed.

Notice of Award
The written notice from the Contracting Agency to the successful Bidder signifying the Contracting Agency's acceptance of the Bid Proposal.

Notice to Proceed
The written notice from the Contracting Agency or Engineer to the Contractor authorizing and directing the Contractor to proceed with the Work and establishing the date on which the Contract time begins.

Traffic
Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and equestrian traffic

SECTION 1-02 BID PROCEDURES AND CONDITIONS

1-02.1 Prequalification of Bidders

Delete this Section and replace it with the following:

1-02.1, Qualifications of Bidder
(January 24, 2011 APWA GSP)

Before award of a public works contract, a bidder must meet at least the minimum qualifications of RCW 39.04.350(1) to be considered a responsible bidder and qualified to be awarded a public works project.

1-02.2 Plans and Specifications
(June 27, 2011 APWA GSP)

Delete this section and replace it with the following:

Information as to where Bid Documents can be obtained or reviewed can be found in the Call for Bids (Advertisement for Bids) for the work.

After award of the contract, plans and specifications will be issued to the Contractor at no cost as detailed below:

To Prime Contractor	No. of Sets	Basis of Distribution
Reduced plans (11" x 17")	*** 2 ***	Furnished automatically upon award.
Contract Provisions	*** 2 ***	Furnished automatically upon award.
Large plans (e.g., 22" x 34")	*** 0 ***	Furnished only upon request.

Additional plans and Contract Provisions may be obtained by the Contractor from the source stated in the Call for Bids, at the Contractor's own expense.

1-02.4(2) Subsurface Information
(March 8, 2013 APWA GSP)

The second sentence in the first paragraph is revised to read:

The Summary of Geotechnical Conditions and the boring logs, <u>if and when included</u> as an appendix to the Special Provisions, shall be considered as part of the Contract.

1-02.5 Proposal Forms
(July 31, 2017 APWA GSP)

Delete this section and replace it with the following:

The Proposal Form will identify the project and its location and describe the work. It will also list estimated quantities, units of measurement, the items of work, and the materials to be furnished at the unit bid prices.

The bidder shall complete spaces on the proposal form that call for, but are not limited to, unit prices; extensions; summations; the total bid amount; signatures; date; and, where applicable, retail sales taxes and acknowledgment of addenda; the bidder's name, address, telephone number, and signature, the bidder's UDBE/DBE/M/WBE commitment, if applicable; a State of Washington Contractor's Registration Number; and a Business License Number, if applicable. Bids shall be completed by typing or shall be printed in ink by hand, preferably in black ink. The required certifications are included as part of the Proposal Form.

The Contracting Agency reserves the right to arrange the proposal forms with alternates and additives, if such be to the advantage of the Contracting Agency. The bidder shall bid on all alternates and additives set forth in the Proposal Form unless otherwise specified.

1-02.6 Preparation of Proposal
(December 10, 2020 APWA GSP, Option B)

Supplement the second paragraph with the following:

4. If a minimum bid amount has been established for any item, the unit or lump sum price must equal or exceed the minimum amount stated.
5. Any correction to a bid made by interlineation, alteration, or erasure, shall be initialed by the signer of the bid.

Delete the last two paragraphs, and replace them with the following:

The Bidder shall submit with their Bid a completed Contractor Certification Wage Law Compliance form, provided by the Contracting Agency. Failure to return this certification as part of the Bid Proposal package will make this Bid Nonresponsive and ineligible for Award. A Contractor Certification of Wage Law Compliance form is included in the Proposal Forms.

The Bidder shall make no stipulation on the Bid Form, nor qualify the bid in any manner.

A bid by a corporation shall be executed in the corporate name, by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign).

A bid by a partnership shall be executed in the partnership name, and signed by a partner. A copy of the partnership agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

A bid by a joint venture shall be executed in the joint venture name and signed by a member of the joint venture. A copy of the joint venture agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

1-02.7 Bid Deposit
(March 8, 2013 APWA GSP)

Supplement this section with the following:

Bid bonds shall contain the following:

1. Contracting Agency-assigned number for the project;
2. Name of the project;
3. The Contracting Agency named as obligee;
4. The amount of the bid bond stated either as a dollar figure or as a percentage which represents five percent of the maximum bid amount that could be awarded;

5. Signature of the bidder's officer empowered to sign official statements. The signature of the person authorized to submit the bid should agree with the signature on the bond, and the title of the person must accompany the said signature;
6. The signature of the surety's officer empowered to sign the bond and the power of attorney.

If so stated in the Contract Provisions, bidder must use the bond form included in the Contract Provisions.

If so stated in the Contract Provisions, cash will not be accepted for a bid deposit.

Revise the second sentence of this to read:

(******)
This deposit may be certified check, cashier's check or a proposal bond (Surety bond).

Supplement this section with the following:

(******)
Bidders wishing to submit a bid deposit in bond form shall use the Proposal Bond form included as part of the Proposal packet for this project.

1-02.9 Delivery of Proposal
(October 1, 2020 APWA GSP Option B)

Delete this section and replace it with the following:

Each Proposal shall be submitted in a sealed envelope, with the Project Name and Project Number as stated in the Call for Bids clearly marked on the outside of the envelope, or as otherwise required in the Bid Documents, to ensure proper handling and delivery.

To be considered responsive on a FHWA-funded project, the Bidder may be required to submit the following items, as required by Section 1-02.6:

- DBE Written Confirmation Document from each DBE firm listed on the Bidder's completed DBE Utilization Certification (WSDOT 272-056);
- Good Faith Effort (GFE) Documentation
- DBE Bid Item Breakdown (WSDOT 272-054)
- DBE Trucking Credit Form (WSDOT 272-058)

These documents, if applicable, shall be received either with the Bid Proposal or as a Supplement to the Bid. The documents shall be received **no later than 48 hours** (not including Saturdays, Sundays and Holidays) after the time for delivery of the Bid Proposal.

If submitted after the Bid Proposal is due, the document(s) shall be submitted as follows:

1. In a sealed envelope labeled the same as for the Proposal, with "Supplemental Information" added, or
2. By facsimile to the following FAX number: (509) 786-5627, or
3. By e-mail to the following e-mail address: publicworks@co.benton.wa.us

All other information required to be submitted with the Bid Proposal must be submitted with the Bid Proposal itself, at the time stated in the Call for Bids.

Proposals that are received as required will be publicly opened and read as specified in Section 1-02.12. The Contracting Agency will not open or consider any Bid Proposal that is received after the time specified in the Call for Bids for receipt of Bid Proposals, or received in a location other than that specified in the Call for Bids. The Contracting Agency will not open or consider any "Supplemental Information" (DBE confirmations or GFE documentation) that is received after the time specified above, or received in a location other than that specified in the Call for Bids.

If an emergency or unanticipated event interrupts normal work processes of the Contracting Agency so that Proposals cannot be received at the office designated for receipt of bids as specified in Section 1-02.12 the time specified for receipt of the Proposal will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the normal work processes of the Contracting Agency resume.

1-02.10 Withdrawing, Revising, or Supplementing Proposal
(July 23, 2015 APWA GSP)

Delete this section, and replace it with the following:

After submitting a physical Bid Proposal to the Contracting Agency, the Bidder may withdraw, revise, or supplement it if:

1. The Bidder submits a written request signed by an authorized person and physically delivers it to the place designated for receipt of Bid Proposals, and
2. The Contracting Agency receives the request before the time set for receipt of Bid Proposals, and
3. The revised or supplemented Bid Proposal (if any) is received by the Contracting Agency before the time set for receipt of Bid Proposals.

If the Bidder's request to withdraw, revise, or supplement its Bid Proposal is received before the time set for receipt of Bid Proposals, the Contracting Agency will return the unopened Proposal package to the Bidder. The Bidder must then submit the revised or supplemented package in its entirety. If the Bidder does not submit a revised or supplemented package, then its bid shall be considered withdrawn.

Late revised or supplemented Bid Proposals or late withdrawal requests will be date recorded by the Contracting Agency and returned unopened. Mailed, emailed, or faxed requests to withdraw, revise, or supplement a Bid Proposal are not acceptable.

1-02.13 Irregular Proposals
(October 1, 2020 APWA GSP)

Delete this section and replace it with the following:

1. A Proposal will be considered irregular and will be rejected if:
   a. The Bidder is not prequalified when so required;
   b. The authorized Proposal form furnished by the Contracting Agency is not used or is altered;
   c. The completed Proposal form contains any unauthorized additions, deletions, alternate Bids, or conditions;
   d. The Bidder adds provisions reserving the right to reject or accept the award, or enter into the Contract;
   e. A price per unit cannot be determined from the Bid Proposal;
   f. The Proposal form is not properly executed;
   g. The Bidder fails to submit or properly complete a Subcontractor list, if applicable, as required in Section 1-02.6;

h The Bidder fails to submit or properly complete a Disadvantaged Business Enterprise Certification, if applicable, as required in Section 1-02.6;

i. The Bidder fails to submit written confirmation from each DBE firm listed on the Bidder's completed DBE Utilization Certification that they are in agreement with the bidder's DBE participation commitment, if applicable, as required in Section 1-02.6, or if the written confirmation that is submitted fails to meet the requirements of the Special Provisions;

j The Bidder fails to submit DBE Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award was made;

k. The Bidder fails to submit a DBE Bid Item Breakdown form, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;

l. The Bidder fails to submit DBE Trucking Credit Forms, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;

m. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation; or

n. More than one Proposal is submitted for the same project from a Bidder under the same or different names.

2. A Proposal may be considered irregular and may be rejected if:
   a. The Proposal does not include a unit price for every Bid item;
   b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the Contracting Agency,
   c. Receipt of Addenda is not acknowledged;
   d. A member of a joint venture or partnership and the joint venture or partnership submit Proposals for the same project (in such an instance, both Bids may be rejected); or
   e. If Proposal form entries are not made in ink.

1-02.14 Disqualification of Bidders
(May 17, 2018 APWA GSP, Option A)

Delete this section and replace it with the following:

A Bidder will be deemed not responsible if the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended.

The Contracting Agency will verify that the Bidder meets the mandatory bidder responsibility criteria in RCW 39.04.350(1). To assess bidder responsibility, the Contracting Agency reserves the right to request documentation as needed from the Bidder and third parties concerning the Bidder's compliance with the mandatory bidder responsibility criteria.

If the Contracting Agency determines the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1) and is therefore not a responsible Bidder, the Contracting Agency shall notify the Bidder in writing, with the reasons for its determination. If the Bidder disagrees with this determination, it may appeal the determination within two (2) business days of the Contracting Agency's determination by presenting its appeal and any additional information to the Contracting Agency. The Contracting Agency will consider the appeal and any additional information before issuing its final determination. If the final determination affirms that the Bidder is not responsible, the Contracting Agency will not execute a contract with any other Bidder until at least two business days after the Bidder determined to be not responsible has received the Contracting Agency's final determination.

1-02.15 Pre Award Information
(August 14, 2013 APWA GSP)

Revise this section to read·

Before awarding any contract, the Contracting Agency may require one or more of these items or actions of the apparent lowest responsible bidder:

1 A complete statement of the origin, composition, and manufacture of any or all materials to be used,
2. Samples of these materials for quality and fitness tests,
3. A progress schedule (in a form the Contracting Agency requires) showing the order of and time required for the various phases of the work,
4. A breakdown of costs assigned to any bid item,
5. Attendance at a conference with the Engineer or representatives of the Engineer,
6. Obtain, and furnish a copy of, a business license to do business in the city or county where the work is located
7. Any other information or action taken that is deemed necessary to ensure that the bidder is the lowest responsible bidder.

SECTION 1-03 AWARD AND EXECUTION OF CONTRACT

1-03.1 Consideration of Bids
(January 23, 2006 APWA GSP)

Revise the first paragraph to read:

After opening and reading proposals, the Contracting Agency will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit will control. If a minimum bid amount has been established for any item and the bidder's unit or lump sum price is less than the minimum specified amount, the Contracting Agency will unilaterally revise the unit or lump sum price, to the minimum specified amount and recalculate the extension. The total of extensions, corrected where necessary, including sales taxes where applicable and such additives and/or alternates as selected by the Contracting Agency, will be used by the Contracting Agency for award purposes and to fix the Awarded Contract Price amount and the amount of the contract bond.

1-03.1(1) Identical Bid Totals
(January 4, 2016 APWA GSP)

Revise this section to read:

After opening Bids, if two or more lowest responsive Bid totals are exactly equal, then the tie-breaker will be the Bidder with an equal lowest bid, that proposed to use the highest percentage of recycled materials in the Project, per the form submitted with the Bid Proposal. If those percentages are also exactly equal, then the tie-breaker will be determined by drawing as follows: Two or more slips of paper will be marked as follows: one marked "Winner" and the other(s) marked "unsuccessful". The slips will be folded to make the marking unseen. The slips will be placed inside a box. One authorized representative of each Bidder shall draw a slip from the box. Bidders shall draw in alphabetic order by the name of the firm as registered with the Washington State Department of Licensing. The slips shall be unfolded and the firm with the slip marked "Winner" will be determined to be the successful Bidder and eligible for Award of the Contract. Only those Bidders who submitted a Bid total that is exactly equal to the lowest responsive Bid, and with a proposed recycled materials percentage that is exactly equal to the highest proposed recycled materials amount, are eligible to draw.

1-03.3 Execution of Contract
(October 1, 2005 APWA GSP)

Revise this section to read:

Copies of the Contract Provisions, including the unsigned Form of Contract, will be available for signature by the successful bidder on the first business day following award. The number of copies to be executed by the Contractor will be determined by the Contracting Agency.

Within 10 calendar days after the award date, the successful bidder shall return the signed Contracting Agency-prepared contract, an insurance certification as required by Section 1-07 18, and a satisfactory bond as required by law and Section 1-03.4. Before execution of the contract by the Contracting Agency, the successful bidder shall provide any pre-award information the Contracting Agency may require under Section 1-02.15.

Until the Contracting Agency executes a contract, no proposal shall bind the Contracting Agency nor shall any work begin within the project limits or within Contracting Agency-furnished sites. The Contractor shall bear all risks for any work begun outside such areas and for any materials ordered before the contract is executed by the Contracting Agency.

If the bidder experiences circumstances beyond their control that prevents return of the contract documents within the calendar days after the award date stated above, the Contracting Agency may grant up to a maximum of 10 additional calendar days for return of the documents, provided the Contracting Agency deems the circumstances warrant it.

1-03.4 Contract Bond
(July 23, 2015 APWA GSP)

Delete the first paragraph and replace it with the following:

The successful bidder shall provide executed payment and performance bond(s) for the full contract amount. The bond may be a combined payment and performance bond, or be separate payment and performance bonds. In the case of separate payment and performance bonds, each shall be for the full contract amount. The bond(s) shall:

1. Be on Contracting Agency-furnished form(s);
2. Be signed by an approved surety (or sureties) that:
    a. Is registered with the Washington State Insurance Commissioner, and
    b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
3. Guarantee that the Contractor will perform and comply with all obligations, duties, and conditions under the Contract, including but not limited to the duty and obligation to indemnify, defend, and protect the Contracting Agency against all losses and claims related directly or indirectly from any failure:
    a. Of the Contractor (or any of the employees, subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform and comply with all contract obligations, conditions, and duties, or
    b. Of the Contractor (or the subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work;
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the project under titles 50, 51, and 82 RCW; and

5. Be accompanied by a power of attorney for the Surety's officer empowered to sign the bond; and
6. Be signed by an officer of the Contractor empowered to sign official statements (sole proprietor or partner). If the Contractor is a corporation, the bond(s) must be signed by the president or vice president, unless accompanied by written proof of the authority of the individual signing the bond(s) to bind the corporation (i.e., corporate resolution, power of attorney, or a letter to such effect signed by the president or vice president).

1-03.7 Judicial Review
(November 30, 2018 APWA GSP)

Revise this section to read:

Any decision made by the Contracting Agency regarding the Award and execution of the Contract or Bid rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Such review, if any, shall be timely filed in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction.

SECTION 1-04 SCOPE OF WORK

1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda
(December 10, 2020 APWA GSP)

Revise the second paragraph to read:

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Addenda,
2 Proposal Form,
3. Special Provisions,
4. Contract Plans,
5. Standard Specifications,
6. Contracting Agency's Standard Plans or Details (if any), and
7. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

1-04.6 Variation in Estimated Quantities
(July 23, 2015 APWA GSP, Option B)

Revise the first paragraph to read:

Payment to the Contractor will be made only for the actual quantities of Work performed and accepted in conformance with the Contract. When the accepted quantity of Work performed under a unit item varies from the original Proposal quantity, payment will be at the unit Contract price for all Work unless the total accepted quantity of any Contract item, adjusted to exclude added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25 percent from the original Proposal quantity, and if the total extended bid price for that item at time of award is equal to or greater than 10 percent of the total contract price at time of award. In that case, payment for contract work may be adjusted as described herein.

SECTION 1-05 CONTROL OF WORK

1-05.7 Removal of Defective and Unauthorized Work
(October 1, 2005 APWA GSP)

Supplement this section with the following:

If the Contractor fails to remedy defective or unauthorized work within the time specified in a written notice from the Engineer, or fails to perform any part of the work required by the Contract Documents, the Engineer may correct and remedy such work as may be identified in the written notice, with Contracting Agency forces or by such other means as the Contracting Agency may deem necessary.

If the Contractor fails to comply with a written order to remedy what the Engineer determines to be an emergency situation, the Engineer may have the defective and unauthorized work corrected immediately, have the rejected work removed and replaced, or have work the Contractor refuses to perform completed by using Contracting Agency or other forces. An emergency situation is any situation when, in the opinion of the Engineer, a delay in its remedy could be potentially unsafe, or might cause serious risk of loss or damage to the public.

Direct or indirect costs incurred by the Contracting Agency attributable to correcting and remedying defective or unauthorized work, or work the Contractor failed or refused to perform, shall be paid by the Contractor. Payment will be deducted by the Engineer from monies due, or to become due, the Contractor. Such direct and indirect costs shall include in particular, but without limitation, compensation for additional professional services required, and costs for repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of the Contractor's unauthorized work.

No adjustment in contract time or compensation will be allowed because of the delay in the performance of the work attributable to the exercise of the Contracting Agency's rights provided by this Section.

The rights exercised under the provisions of this section shall not diminish the Contracting Agency's right to pursue any other avenue for additional remedy or damages with respect to the Contractor's failure to perform the work as required.

1-05.11 Final Inspection

Delete this section and replace it with the following:

1-05.11 Final Inspections and Operational Testing
(October 1, 2005 APWA GSP)

1-05.11(1) Substantial Completion Date

When the Contractor considers the work to be substantially complete, the Contractor shall so notify the Engineer and request the Engineer establish the Substantial Completion Date. The Contractor's request shall list the specific items of work that remain to be completed in order to reach physical completion. The Engineer will schedule an inspection of the work with the Contractor to determine the status of completion. The Engineer may also establish the Substantial Completion Date unilaterally.

If, after this inspection, the Engineer concurs with the Contractor that the work is substantially complete and ready for its intended use, the Engineer, by written notice to the Contractor, will set the Substantial Completion Date. If, after this inspection the Engineer does not consider the work substantially complete

and ready for its intended use, the Engineer will, by written notice, so notify the Contractor giving the reasons therefor.

Upon receipt of written notice concurring in or denying substantial completion, whichever is applicable, the Contractor shall pursue vigorously, diligently and without unauthorized interruption, the work necessary to reach Substantial and Physical Completion. The Contractor shall provide the Engineer with a revised schedule indicating when the Contractor expects to reach substantial and physical completion of the work.

The above process shall be repeated until the Engineer establishes the Substantial Completion Date and the Contractor considers the work physically complete and ready for final inspection

1-05.11(2) Final Inspection and Physical Completion Date

When the Contractor considers the work physically complete and ready for final inspection, the Contractor by written notice, shall request the Engineer to schedule a final inspection. The Engineer will set a date for final inspection. The Engineer and the Contractor will then make a final inspection and the Engineer will notify the Contractor in writing of all particulars in which the final inspection reveals the work incomplete or unacceptable. The Contractor shall immediately take such corrective measures as are necessary to remedy the listed deficiencies. Corrective work shall be pursued vigorously, diligently, and without interruption until physical completion of the listed deficiencies. This process will continue until the Engineer is satisfied the listed deficiencies have been corrected.

If action to correct the listed deficiencies is not initiated within 7 days after receipt of the written notice listing the deficiencies, the Engineer may, upon written notice to the Contractor, take whatever steps are necessary to correct those deficiencies pursuant to Section 1-05.7.
The Contractor will not be allowed an extension of contract time because of a delay in the performance of the work attributable to the exercise of the Engineer's right hereunder.

Upon correction of all deficiencies, the Engineer will notify the Contractor and the Contracting Agency, in writing, of the date upon which the work was considered physically complete. That date shall constitute the Physical Completion Date of the contract, but shall not imply acceptance of the work or that all the obligations of the Contractor under the contract have been fulfilled.

1-05.11(3) Operational Testing

It is the intent of the Contracting Agency to have at the Physical Completion Date a complete and operable system. Therefore when the work involves the installation of machinery or other mechanical equipment; street lighting, electrical distribution or signal systems; irrigation systems; buildings; or other similar work it may be desirable for the Engineer to have the Contractor operate and test the work for a period of time after final inspection but prior to the physical completion date. Whenever items of work are listed in the Contract Provisions for operational testing they shall be fully tested under operating conditions for the time period specified to ensure their acceptability prior to the Physical Completion Date. During and following the test period, the Contractor shall correct any items of workmanship, materials, or equipment which prove faulty, or that are not in first class operating condition. Equipment, electrical controls, meters, or other devices and equipment to be tested during this period shall be tested under the observation of the Engineer, so that the Engineer may determine their suitability for the purpose for which they were installed. The Physical Completion Date cannot be established until testing and corrections have been completed to the satisfaction of the Engineer

The costs for power, gas, labor, material, supplies, and everything else needed to successfully complete operational testing, shall be included in the unit contract prices related to the system being tested, unless specifically set forth otherwise in the proposal.

Operational and test periods, when required by the Engineer, shall not affect a manufacturer's guaranties or warranties furnished under the terms of the contract

1-05.13 Superintendents, Labor and Equipment of Contractor
(August 14, 2013 APWA GSP)

Delete the sixth and seventh paragraphs of this section.

1-05.15 Method of Serving Notices
(March 25, 2009 APWA GSP)

Revise the second paragraph to read:

All correspondence from the Contractor shall be directed to the Project Engineer. All correspondence from the Contractor constituting any notification, notice of protest, notice of dispute, or other correspondence constituting notification required to be furnished under the Contract, must be in paper format, hand delivered or sent via mail delivery service to the Project Engineer's office. Electronic copies such as e-mails or electronically delivered copies of correspondence will not constitute such notice and will not comply with the requirements of the Contract

Add the following new section:

1-05.16 Water and Power
(October 1, 2005 APWA GSP)

The Contractor shall make necessary arrangements, and shall bear the costs for power and water necessary for the performance of the work, unless the contract includes power and water as a pay item.

SECTION 1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 Laws to be Observed
(October 1, 2005 APWA GSP)

Supplement this section with the following:

In cases of conflict between different safety regulations, the more stringent regulation shall apply.

The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).

The Contractor shall maintain at the project site office, or other well known place at the project site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish, and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the project site. Employees should not be permitted to work on the project site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.

The Contractor shall have sole responsibility for the safety, efficiency, and adequacy of the Contractor's plant, appliances, and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation The Contractor shall be solely and completely responsible for the conditions of the project site, including safety for all persons and property in the performance of the work. This requirement shall apply continuously, and not be limited to normal working hours. The required or

implied duty of the Engineer to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the project site.

(March 12, 2014 Benton County GSP)
Supplement this section with the following:

(******)
Dust Control
The Contractor shall, at all times during the operation, maintain proper dust control in accordance with the requirements of the Benton County Clean Air Authority. The Contractor is required to have a designated person, responsible for dust control, on the project site at all times during construction hours. In addition, one person shall be available during non-working hours and shall have equipment and manpower available to control dust. Any problems caused by dust from the construction site will be cause for immediate shutdown of all operations except dust control.

1-07.2 State Taxes

Delete this section, including its sub-sections, in its entirety and replace it with the following:

1-07.2 State Sales Tax
(June 27, 2011 APWA GSP)

The Washington State Department of Revenue has issued special rules on the State sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The Contracting Agency will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract amounts. In some cases, however, state retail sales tax will not be included Section 1-07.2(2) describes this exception.

The Contracting Agency will pay the retained percentage (or release the Contract Bond if a FHWA-funded Project) only if the Contractor has obtained from the Washington State Department of Revenue a certificate showing that all contract-related taxes have been paid (RCW 60.28.051). The Contracting Agency may deduct from its payments to the Contractor any amount the Contractor may owe the Washington State Department of Revenue, whether the amount owed relates to this contract or not. Any amount so deducted will be paid into the proper State fund.

1-07.2(1) State Sales Tax — Rule 171

WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used primarily for foot or vehicular traffic. This includes storm or combined sewer systems within and included as a part of the street or road drainage system and power lines when such are part of the roadway lighting system. For work performed in such cases, the Contractor shall include Washington State Retail Sales Taxes in the various unit bid item prices, or other contract amounts, including those that the Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in doing the work.

1-07.2(2) State Sales Tax — Rule 170

WAC 458-20-170, and its related rules, apply to the constructing and repairing of new or existing buildings, or other structures, upon real property. This includes, but is not limited to, the construction of streets, roads, highways, etc., owned by the state of Washington; water mains and their appurtenances;

sanitary sewers and sewage disposal systems unless such sewers and disposal systems are within, and a part of, a street or road drainage system; telephone, telegraph, electrical power distribution lines, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system; and installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation

For work performed in such cases, the Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit bid item prices, or in any other contract amount subject to Rule 170, with the following exception.

Exception: The Contracting Agency will not add in sales tax for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount.

1-07.2(3) Services

The Contractor shall not collect retail sales tax from the Contracting Agency on any contract wholly for professional or other services (as defined in Washington State Department of Revenue Rules 138 and 244).

1-07.7 Load Limits

(March 13, 1995 WSDOT GSP)
Supplement this section with the following:

Except for the load limit restrictions specified in Section 1-07.7(2), the Contractor may operate vehicles which exceed the legal gross weight limitations without special permits or payment of additional fees provided such vehicles are employed in the construction and within the limits of this project.

Subparagraph 1 of the second paragraph of Section 1-07.7(1) is deleted.

(November 13, 2017 BENTON COUNTY GSP)
Supplement this section with the following:

Whenever the Contractor obtains materials from a source other than that provided by the Contracting Agency, or provides a source for materials not designated to come from a source provided by the Contracting Agency and the location of the source necessitates hauling over roads other than Benton County Roads, the Contractor shall, at the Contractor's expense, make all arrangements for the use of the haul routes.

1-07.18 Public Liability and Property Damage Insurance

Delete this section in its entirety, and replace it with the following:

1-07.18 Insurance
(January 4, 2016 APWA GSP)

1-07.18(1) General Requirements
A. The Contractor shall procure and maintain the insurance described in all subsections of section 1-07.18 of these Special Provisions, from insurers with a current A. M. Best rating of not less than A-: VII and

licensed to do business in the State of Washington. The Contracting Agency reserves the right to approve or reject the insurance provided, based on the insurer's financial condition

B. The Contractor shall keep this insurance in force without interruption from the commencement of the Contractor's Work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated below.

C. If any insurance policy is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

D. The Contractor's Automobile Liability, Commercial General Liability and Excess or Umbrella Liability insurance policies shall be primary and non-contributory insurance as respects the Contracting Agency's insurance, self-insurance, or self-insured pool coverage. Any insurance, self-insurance, or self-insured pool coverage maintained by the Contracting Agency shall be excess of the Contractor's insurance and shall not contribute with it.

E. The Contractor shall provide the Contracting Agency and all additional insureds with written notice of any policy cancellation, within two business days of their receipt of such notice.

F. The Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the Contracting Agency

G. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the Contracting Agency may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.

H. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made

1-07.18(2) Additional Insured

All insurance policies, with the exception of Workers Compensation, and of Professional Liability and Builder's Risk (if required by this Contract) shall name the following listed entities as additional insured(s) using the forms or endorsements required herein:

- the Contracting Agency and its officers, elected officials, employees, agents, and volunteers

The above-listed entities shall be additional insured(s) for the full available limits of liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract, and irrespective of whether the Certificate of Insurance provided by the Contractor pursuant to 1-07.18(4) describes limits lower than those maintained by the Contractor

For Commercial General Liability insurance coverage, the required additional insured endorsements shall be at least as broad as ISO forms CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

1-07.18(3) Subcontractors

The Contractor shall cause each Subcontractor of every tier to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors.

The Contractor shall ensure that all Subcontractors of every tier add all entities listed in 1-07.18(2) as additional insureds, and provide proof of such on the policies as required by that section as detailed in 1-07.18(2) using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

Upon request by the Contracting Agency, the Contractor shall forward to the Contracting Agency evidence of insurance and copies of the additional insured endorsements of each Subcontractor of every tier as required in 1-07.18(4) Verification of Coverage.

1-07.18(4) Verification of Coverage

The Contractor shall deliver to the Contracting Agency a Certificate(s) of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work. Failure of Contracting Agency to demand such verification of coverage with these insurance requirements or failure of Contracting Agency to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the Contracting Agency to be equivalent.
2. Copies of all endorsements naming Contracting Agency and all other entities listed in 1-07.18(2) as additional insured(s), showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.

Upon request by the Contracting Agency, the Contractor shall forward to the Contracting Agency a full and certified copy of the insurance policy(s). If Builders Risk insurance is required on this Project, a full and certified copy of that policy is required when the Contractor delivers the signed Contract for the work.

1-07.18(5) Coverages and Limits

The insurance shall provide the minimum coverages and limits set forth below. Contractor's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Contracting Agency's recourse to any remedy available at law or in equity.

All deductibles and self-insured retentions must be disclosed and are subject to approval by the Contracting Agency. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Contractor. In the event an additional insured incurs a liability subject to any policy's deductibles or self-insured retention, said deductibles or self-insured retention shall be the responsibility of the Contractor.

1-07.18(5)A Commercial General Liability

Commercial General Liability insurance shall be written on coverage forms at least as broad as ISO occurrence form CG 00 01, including but not limited to liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal and advertising injury, and liability assumed

under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage.

The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement.

Contractor shall maintain Commercial General Liability Insurance arising out of the Contractor's completed operations for at least three years following Substantial Completion of the Work.

Such policy must provide the following minimum limits:

$1,000,000	Each Occurrence
$2,000,000	General Aggregate
$2,000,000	Products & Completed Operations Aggregate
$1,000,000	Personal & Advertising Injury each offence
$1,000,000	Stop Gap / Employers' Liability each accident

1-07.18(5)B Automobile Liability
Automobile Liability shall cover owned, non-owned, hired, and leased vehicles; and shall be written on a coverage form at least as broad as ISO form CA 00 01. If the work involves the transport of pollutants, the automobile liability policy shall include MCS 90 and CA 99 48 endorsements.

Such policy must provide the following minimum limit:

$1,000,000	Combined single limit each accident

1-07.18(5)C Workers' Compensation
The Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

1-07.24 Rights of Way
(July 23, 2015 APWA GSP)

Delete this section and replace it with the following:

Street Right of Way lines, limits of easements, and limits of construction permits are indicated in the Plans. The Contractor's construction activities shall be confined within these limits, unless arrangements for use of private property are made.

Generally, the Contracting Agency will have obtained, prior to bid opening, all rights of way and easements, both permanent and temporary, necessary for carrying out the work. Exceptions to this are noted in the Bid Documents or will be brought to the Contractor's attention by a duly issued Addendum.

Whenever any of the work is accomplished on or through property other than public Right of Way, the Contractor shall meet and fulfill all covenants and stipulations of any easement agreement obtained by the Contracting Agency from the owner of the private property. Copies of the easement agreements may be included in the Contract Provisions or made available to the Contractor as soon as practical after they have been obtained by the Engineer.

Whenever easements or rights of entry have not been acquired prior to advertising, these areas are so noted in the Plans The Contractor shall not proceed with any portion of the work in areas where right of way, easements or rights of entry have not been acquired until the Engineer certifies to the Contractor that the right of way or easement is available or that the right of entry has been received. If the Contractor is delayed due to acts of omission on the part of the Contracting Agency in obtaining easements, rights of

entry or right of way, the Contractor will be entitled to an extension of time. The Contractor agrees that such delay shall not be a breach of contract.

Each property owner shall be given 48 hours notice prior to entry by the Contractor. This includes entry onto easements and private property where private improvements must be adjusted.

The Contractor shall be responsible for providing, without expense or liability to the Contracting Agency, any additional land and access thereto that the Contractor may desire for temporary construction facilities, storage of materials, or other Contractor needs. However, before using any private property, whether adjoining the work or not, the Contractor shall file with the Engineer a written permission of the private property owner, and, upon vacating the premises, a written release from the property owner of each property disturbed or otherwise interfered with by reasons of construction pursued under this contract. The statement shall be signed by the private property owner, or proper authority acting for the owner of the private property affected, stating that permission has been granted to use the property and all necessary permits have been obtained or, in the case of a release, that the restoration of the property has been satisfactorily accomplished. The statement shall include the parcel number, address, and date of signature. Written releases must be filed with the Engineer before the Completion Date will be established.

The Contractor shall be responsible for providing, without expense or liability to the Contracting Agency, any additional land and access thereto that the Contractor may desire for temporary construction facilities, storage of materials, or other Contractor needs. However, before using any private property, whether adjoining the work or not, the Contractor shall file with the Engineer a written permission of the private property owner, and, upon vacating the premises, a written release from the property owner of each property disturbed or otherwise interfered with by reasons of construction pursued under this contract. The statement shall be signed by the private property owner, or proper authority acting for the owner of the private property affected, stating that permission has been granted to use the property and all necessary permits have been obtained or, in the case of a release, that the restoration of the property has been satisfactorily accomplished. The statement shall include the parcel number, address, and date of signature. Written releases must be filed with the Engineer before the Completion Date will be established.

SECTION 1-08 PROSECUTION AND PROGRESS

Add the following new section:

1-08.0 Preliminary Matters

(May 25, 2006 APWA GSP)

Add the following new section:

1-08.0(1) Preconstruction Conference

(October 10, 2008 APWA GSP)

Prior to the Contractor beginning the work, a preconstruction conference will be held between the Contractor, the Engineer and such other interested parties as may be invited. The purpose of the preconstruction conference will be:

1. To review the initial progress schedule;
2. To establish a working understanding among the various parties associated or affected by the work;
3. To establish and review procedures for progress payment, notifications, approvals, submittals, etc.;
4. To establish normal working hours for the work;
5. To review safety standards and traffic control; and

6. To discuss such other related items as may be pertinent to the work.

The Contractor shall prepare and submit at the preconstruction conference the following:

1. A breakdown of all lump sum items;
2. A preliminary schedule of working drawing submittals; and
3. A list of material sources for approval if applicable.

Add the following new section:

1-08.0(2) Hours of Work
(December 8, 2014 APWA GSP)

Except in the case of emergency or unless otherwise approved by the Engineer, the normal working hours for the Contract shall be any consecutive 8-hour period between 7:00 a.m. and 6:00 p m. Monday through Friday, exclusive of a lunch break. If the Contractor desires different than the normal working hours stated above, the request must be submitted in writing prior to the preconstruction conference, subject to the provisions below. The working hours for the Contract shall be established at or prior to the preconstruction conference.

All working hours and days are also subject to local permit and ordinance conditions (such as noise ordinances).

If the Contractor wishes to deviate from the established working hours, the Contractor shall submit a written request to the Engineer for consideration. This request shall state what hours are being requested, and why. Requests shall be submitted for review no later than ***3 working days*** prior to the day(s) the Contractor is requesting to change the hours.

If the Contracting Agency approves such a deviation, such approval may be subject to certain other conditions, which will be detailed in writing. For example:

1. On non-Federal aid projects, requiring the Contractor to reimburse the Contracting Agency for the costs in excess of straight-time costs for Contracting Agency representatives who worked during such times. (The Engineer may require designated representatives to be present during the work. Representatives who may be deemed necessary by the Engineer include, but are not limited to: survey crews; personnel from the Contracting Agency's material testing lab; inspectors; and other Contracting Agency employees or third party consultants when, in the opinion of the Engineer, such work necessitates their presence.)
2. Considering the work performed on Saturdays, Sundays, and holidays as working days with regard to the contract time.
3. Considering multiple work shifts as multiple working days with respect to contract time even though the multiple shifts occur in a single 24-hour period.
4. If a 4-10 work schedule is requested and approved, the day that is not worked during the week will be charged as a working day.
5. If Davis Bacon wage rates apply to this Contract, all requirements must be met and recorded properly on certified payroll

1-08.3 General Requirements

1-08.3(2)A Type A Progress Schedule
(March 13, 2012 APWA GSP)

Revise this section to read:

The Contractor shall submit *** 2 *** copies of a Type A Progress Schedule no later than at the preconstruction conference, or some other mutually agreed upon submittal time. The schedule may be a critical path method (CPM) schedule, bar chart, or other standard schedule format. Regardless of which format used, the schedule shall identify the critical path. The Engineer will evaluate the Type A Progress Schedule and approve or return the schedule for corrections within 15 calendar days of receiving the submittal.

1-08.4 Prosecution of Work

Delete this section and replace it with the following:

1-08.4 Notice to Proceed and Prosecution of Work
(July 23, 2015 APWA GSP)

Notice to Proceed will be given after the contract has been executed and the contract bond and evidence of insurance have been approved and filed by the Contracting Agency. The Contractor shall not commence with the work until the Notice to Proceed has been given by the Engineer. The Contractor shall commence construction activities on the project site within ten days of the Notice to Proceed Date, unless otherwise approved in writing. The Contractor shall diligently pursue the work to the physical completion date within the time specified in the contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the contract.

When shown in the Plans, the first order of work shall be the installation of high visibility fencing to delineate all areas for protection or restoration, as described in the Contract. Installation of high visibility fencing adjacent to the roadway shall occur after the placement of all necessary signs and traffic control devices in accordance with 1-10.1(2). Upon construction of the fencing, the Contractor shall request the Engineer to inspect the fence. No other work shall be performed on the site until the Contracting Agency has accepted the installation of high visibility fencing, as described in the Contract.

1-08.5 Time for Completion
(November 30, 2018 APWA GSP, Option A)

Revise the third and fourth paragraphs to read:

Contract time shall begin on the first working day following the Notice to Proceed Date.

Each working day shall be charged to the contract as it occurs, until the contract work is physically complete. If substantial completion has been granted and all the authorized working days have been used, charging of working days will cease. Each week the Engineer will provide the Contractor a statement that shows the number of working days: (1) charged to the contract the week before; (2) specified for the physical completion of the contract; and (3) remaining for the physical completion of the contract. The statement will also show the nonworking days and any partial or whole day the Engineer declares as unworkable. Within 10 calendar days after the date of each statement, the Contractor shall file a written protest of any alleged discrepancies in it. To be considered by the Engineer, the protest shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of time disputed. By not filing such detailed protest in that period, the Contractor shall be deemed as having accepted the statement as correct. If the Contractor is approved to work 10 hours a day and 4 days a week (a 4-10 schedule) and the fifth day of the week in which a 4-10 shift is worked would ordinarily be charged as a working day then the fifth day of that week will be charged as a working day whether or not the Contractor works on that day.

Revise the sixth paragraph to read:

The Engineer will give the Contractor written notice of the completion date of the contract after all the Contractor's obligations under the contract have been performed by the Contractor. The following events must occur before the Completion Date can be established:

1. The physical work on the project must be complete; and
2. The Contractor must furnish all documentation required by the contract and required by law, to allow the Contracting Agency to process final acceptance of the contract. The following documents must be received by the Project Engineer prior to establishing a completion date:
    a. Certified Payrolls (per Section 1-07.9(5)).
    b. Material Acceptance Certification Documents
    c. Monthly Reports of Amounts Credited as DBE Participation, as required by the Contract Provisions.
    d. Final Contract Voucher Certification
    e. Copies of the approved "Affidavit of Prevailing Wages Paid" for the Contractor and all Subcontractors
    f. A copy of the Notice of Termination sent to the Washington State Department of Ecology (Ecology); the elapse of 30 calendar days from the date of receipt of the Notice of Termination by Ecology; and no rejection of the Notice of Termination by Ecology. This requirement will not apply if the Construction Stormwater General Permit is transferred back to the Contracting Agency in accordance with Section 8-01.3(16).
    g. Property owner releases per Section 1-07.24

Supplement this section with the following:

(March 13, 1995 WSDOT GSP)
This project shall be physically completed within *** **60** *** working days.

SECTION 1-09 MEASUREMENT AND PAYMENT

1-09.9 Payments

(March 13, 2012 APWA GSP)

Delete the first four paragraphs and replace them with the following:

The basis of payment will be the actual quantities of Work performed according to the Contract and as specified for payment.

The Contractor shall submit a breakdown of the cost of lump sum bid items at the Preconstruction Conference, to enable the Project Engineer to determine the Work performed on a monthly basis. A breakdown is not required for lump sum items that include a basis for incremental payments as part of the respective Specification. Absent a lump sum breakdown, the Project Engineer will make a determination based on information available. The Project Engineer's determination of the cost of work shall be final.

Progress payments for completed work and material on hand will be based upon progress estimates prepared by the Engineer. A progress estimate cutoff date will be established at the preconstruction conference.

The initial progress estimate will be made not later than 30 days after the Contractor commences the work, and successive progress estimates will be made every month thereafter until the Completion Date. Progress estimates made during progress of the work are tentative, and made only for the purpose of

determining progress payments. The progress estimates are subject to change at any time prior to the calculation of the final payment.

The value of the progress estimate will be the sum of the following:

1. Unit Price Items in the Bid Form — the approximate quantity of acceptable units of work completed multiplied by the unit price.
2. Lump Sum Items in the Bid Form — based on the approved Contractor's lump sum breakdown for that item, or absent such a breakdown, based on the Engineer's determination.
3. Materials on Hand — 100 percent of invoiced cost of material delivered to Job site or other storage area approved by the Engineer.
4. Change Orders — entitlement for approved extra cost or completed extra work as determined by the Engineer

Progress payments will be made in accordance with the progress estimate less:

1. Retainage per Section 1-09.9(1), on non FHWA-funded projects;
2. The amount of progress payments previously made; and
3. Funds withheld by the Contracting Agency for disbursement in accordance with the Contract Documents.

Progress payments for work performed shall not be evidence of acceptable performance or an admission by the Contracting Agency that any work has been satisfactorily completed. The determination of payments under the contract will be final in accordance with Section 1-05.1.

1-09.11(3) Time Limitation and Jurisdiction
(November 30, 2018 APWA GSP)

Revise this section to read:

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Contractor has against the Contracting Agency arising from the Contract shall be brought within 180 calendar days from the date of final acceptance (Section 1-05.12) of the Contract by the Contracting Agency; and it is further agreed that any such claims or causes of action shall be brought only in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Contractor asserts against the Contracting Agency arising from the Contract are filed with the Contracting Agency or initiated in court, the Contractor shall permit the Contracting Agency to have timely access to any records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

1-09.13(3)A Administration of Arbitration
(November 30, 2018 APWA GSP)

Revise the third paragraph to read:

The Contracting Agency and the Contractor mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of the county in which the Contracting Agency's headquarters is located, provided that where claims subject to arbitration are asserted against a county, RCW 36.01.050 shall control venue and jurisdiction of the

Superior Court. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

DIVISION 2
EARTHWORK

SECTION 2-02, REMOVAL OF STRUCTURES AND OBSTRUCTIONS

SECTION 2-07, WATERING

2-07.1, Description
(******)

Supplement this section with the following:

The Contractor shall keep haul roads within the quarry and stockpile area wetted down during crushing/stockpiling operations.

2-07.4, Measurement
(******)

Section 2-07.4 is revised to read:

Water will not be measured.

2-07.5, Payment
(******)

Supplement this section with the following.

All equipment, water, and labor necessary to complete the work described shall be considered incidental to the various bid items in the Contract.

DIVISION 3
AGGREGATE PRODUCTION AND ACCEPTANCE

SECTION 3-01, PRODUCTION FROM QUARRY AND PIT SITES

3-01.2, Material Sources, General Requirements

3-01.2(1) Approval of Source
(******)

Supplement this section with the following:

Finley Quarry Site R-133, Olympia Quarry Site R-87, Hoorigan Quarry Site R-126 and Travis Quarry, Site R-128. will be the sources for the production of all crushed surfacing material.

3-01.2(2) Preparation of Site
(******)

Supplement this section with the following:

The Contractor shall confine their operations to the portions of the quarry site as shown on the plans or as directed by the Engineer. The portions of the quarry site to be used shall be cleared, grubbed, and stripped to the rock surface. The material from clearing, grubbing, and stripping shall be stockpiled and used for reclamation.

After the stockpile areas, identified in Section 3-02.2(3), are prepared, the Contractor shall coordinate with the Contracting Agency to have the stockpile areas surveyed by prior to crushing operations. Days agreed upon by the Contractor and Contracting Agency to be used for surveying pursuant to this Section will not be counted as working days unless the Contractor resumes crushing operation on the same day.

3-01.2(4) Production Requirements
(******)

Supplement this section with the following:

The Contractor shall scalp the materials over a one-half inch screen with a minimum surface area of 32 square feet after primary crushing, unless otherwise determined by the Engineer.

The County's inspector will collect independent samples of the material for testing. The Contractor shall work with the inspector to collect the samples, including indicating the location of the produced material.

The Contractor shall provide their own test results to the Engineer, upon request therefrom.

3-01.3(3) Reject Materials
(******)

Supplement this section with the following:

All reject materials at all Pit locations shall be deposited in the area staked by the Engineer prior to crushing operations.

3-01.6, Payment
(******)

Supplement this section with the following:

All equipment, tools, and labor necessary for clearing, grubbing, stripping, and the electrical hookup to provide power to the Contracting Agency's laboratory trailer shall be considered incidental to the various bid items in the Contract.

SECTION 3-02, STOCKPILING OF AGGREGATES

3-02.2, General Requirements

3-02.2(3), Stockpiling Aggregates for Future Use
(******)

Supplement this section with the following:

Locations for the following materials will be shown on the stockpiling plan and will be staked by the Engineer prior to crushing operations:

- Modified Crushed Surfacing and Crushed Surfacing Top Course – Horrigan Pit
- Modified Crushed Surfacing and Crushed Surfacing Top Course – Finley Pit
- Crushed Surfacing Top Course – Travis Pit
- ¼" – Minus Non Spec – Olympia Pit

SECTION 3-03, SITE RECLAMATION

3-03.2, General Requirements

3-03.2(1), Contracting Agency – Provided Sites
(******)

Supplement this section with the following:

Benton County has been granted operating permits by the Department of Natural Resources for surface mining and the Contractor shall conduct his operations in accordance with the conditions and requirements of the permit The Contractor shall perform interim reclamation measures on the mined portions of the quarry. The Contractor shall reclaim slopes in these locations as shown on the respective Operational Plans.

UNITED STATES DEPARTMENT OF THE INTERIOR – MINING ENFORCEMENT AND SAFETY ADMINISTRATION

The Contractor shall file the Metal-Non-Metal Quarterly Employment Reports and Metal-Non-Metal Mine Injury and Illness Reports as operator of the Coats Quarry and Cherry Lane sites. These reports are to be filed with U.S. Bureau of Mines, Safety Analysis Center, Building 20, Denver Federal Center, Denver, Colorado 80225, with one copy of each report to be filed with the Benton County Road Department. Instructions and forms are available by writing to:

Bellevue Sub-District Office
U.S. Department of Interior
Mining and Enforcement and Safety Administration
Room 100
117-107th N.E.
Bellevue, WA 98004

3-03.5, Payment

3-03.5(1), Contracting Agency – Provided Sites
(******)

Supplement this section with the following:

All equipment, labor, and tools necessary to perform the interim reclamation measures shall be considered incidental to the various bid items in the Contract.

DIVISION 8
MISCELLANEOUS CONSTRUCTION

SECTION 8-01 EROSION CONTROL AND WATER POLLUTION CONTROL

8-01.2 Materials
(******)
Supplement this section with the following:

Fertilizer
Section 9-14.3 is revised to read as follows:

Fertilizer must be organic and must be a pelleted or granular form and shall be one of the following products:

Fertilizer

Products	Guaranteed Chemical Analysis (N-P-K) (%)	Company
Biosol Forte ™	7-2-1	Rocky Mountain Bioproducts Edwards, CO
Grow| Nutri Base ™ (formerly Fertil-Fibers)	6-4-1	Quattro Environmental Coronado, CA
Phyta-Grow Leafy Green Special ™	7-1-2	California Organic Fertilizers Inc. Fresno, CA
Approved Equal *	N: 6 to 7 P: 1 to 4 K· 1 to 2	

*Approved equal must be within the ranges shown for N-P-K. The cumulative N release rate must be no more than 70 percent the first 70 days after incubation (86° F) with 100 percent at 350 days or more.

All fertilizers shall be furnished in standard unopened containers with weight, name of plant nutrients, and manufactures' guaranteed statement of analysis clearly marked, all in accordance with State and Federal laws.

Fertilizer shall be applied at the rate of 1800 pounds per acre. The fertilizer formulation shall be approved by the Engineer before use.

8-01.3 Construction Requirements

8-01.3(1)A Submittals
(******)
Supplement this section with the following:

The Contractor shall prepare and submit a project temporary erosion control and sediment control (TESC) plan. The TESC plan shall be prepared by a person having a current Certificate of Training in Construction

Site Erosion and Sediment Control from a course approved by WSDOT's Statewide Erosion Control Coordinator.

8-01.3(2) Seeding, Fertilizing, and Mulching

8-01.3(2)B Seeding and Fertilizing
(August 4, 2014 WSDOT GSP)
Supplement this section with the following:

Seed of the following mix, rate, and analysis shall be applied at the rates shown below on all areas requiring ***roadside seeding*** seeding within the project:

Seed by Common Name, (Botanical Name), and "Source Identification"	Pounds Pure Live Seed (PLS) Per Acre
*** Bluebunch Wheatgrass "Wahluke" or from Rattlesnake Hills or Hanford vicinity (Pseudoroegneria spicata)	11.55
Thickspike Wheatgrass "Schwindemar" (Elymus lanceolatus ssp. Lanceolatus)	10.56
Indian Ricegrass "Nezpar" or from Rattlesnake Hills (Achnatherum hymenoides)	6.71
Idaho Fescue "Winchester," "Duffy Creek" or from Rattlesnake Hills (Festuca idahoensis)	3.44
Sandberg Bluegrass "Hanford," "Duffy Creek" or from Rattlesnake Hills (Poa sandbergii)	1.72
Prairie Junegrass "Hanford", "La Grande" or from Rattlesnake Hills (Koeleria cristata) (Koeleria macrantha)	0.70
Sand Dropseed "Imnaha" or "Snake River" (Sporobolus cryptandrus)	0.32
Total Pounds PLS per Acre	35.00 ***

Source Identified seed shall be generation four or less. Non-Source Identified seed shall meet or exceed Washington State Department of Agriculture Certified Seed Standards and be from within the appropriate genetic zones of the *** Columbia Plateau, North Cascades, or Northern Rockies *** Ecoregion(s) as defined by the US Environmental Protection Agency (EPA).

The seed certification class shall be Certified (blue tag) in accordance with WAC 16-302 and meet the following requirements.

Prohibited Weed	0% max.
Noxious Weed	0% max.
Other Weed	0 20% max.
Other Crop	0.40% max.

The Contractor shall document all Source Identified seed by providing the Association of Official Seed Certifying Agents (AOSCA) yellow seed label for each species in the mix. Site Identification Logs can be supplied for collections where the AOSCA yellow label is not available.

8-01.3(2)D Mulching
(January 5, 2015 WSDOT GSP)
Supplement this section with the following:

*** HECP Type I Long Term Mulch *** shall be applied at a rate of *** 3500 *** pounds per acre with no more than *** 2000 *** pounds per acre applied in a single lift.

8-01.4 Measurement
(******)
Supplement this section with the following:

A separate measurement will not be made for any application of mulch.

8-01.5 Payment
(******)
Supplement this section with the following:

All costs for providing the TESC plan shall be included in the unit contract prices of the various bid items involved.

The unit contract price for "Seeding, Fertilizing, and Mulching", per acre, shall be full payment for all costs, including tracer, tacking agent, water, all applications of mulch and all other costs necessary to complete the work as described.

DIVISION 9
MATERIALS

SECTION 9-03, AGGREGATES

9-03.9, Aggregates for Ballast and Crushed Surfacing
(******)

Modified Crushed Surfacing
The grading requirements for Modified Crushed Surfacing are as follows:

Sieve Size	Percent Passing
1 ¼ " square	100
5/8" square	75-90
U.S. No. 4	40-55
U.S. No. 40	8-24
U.S. No. 200	10.0 max
% Fracture	75 min.
Sand Equivalent	40 min.

¼" – Minus Non Spec

The grading requirements for ¼" – Minus non spec are as follows:

Sieve Size	Percent Passing
¼" square	100

WAGE RATES

APPENDIX A:

STATE WAGE RATES

For Construction of:

2021 CRUSHING AND STOCKPILING

CE 2119

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-02

APPENDIX A

REQUIRED CONTRACT PROVISIONS - STATE DEPARTMENT OF LABOR AND INDUSTRIES

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

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

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

> The Department of Labor & Industries prevailing wage rate website is http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm
>
> The publication date to use is **March 11, 2021.**
>
> The public works project is located in Benton County.

A copy of the prevailing wage rates, the benefit code key and the supplement are available for viewing at the Public Works Department, 620 Market Street, Prosser, WA Monday through Friday, between 8:00 a.m. & noon and between 1:00 p.m. & 5:00 p.m. except holidays.

The Public Works Department will mail a hard copy of the wage rates upon request. We can be reached at (509)786-5611 or (509)736-3084 or by email at publicworks@co.benton.wa.us

PROPOSAL
FOR BIDDING PURPOSES

For Construction of:

2021 CRUSHING AND STOCKPILING

CE 2119 SMP

INCLUDES:
PROPOSAL
- ASSURANCE OF NON-DISCRIMINATION
- NON-COLLUSION DECLARATION

PROPOSAL BOND
PROPOSAL FOR INCORPORATING RECYCLED MATERIALS
CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

PUBLIC WORKS DEPARTMENT

COUNTY OF
BENTON
WASHINGTON

PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned hereby certifies that he/she has examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

2021 CRUSHING AND STOCKPILING

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

ITEM NO.	QTY.	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts.	Dollars	Cts.
1	1	LS	Mobilization				
2	36,770	Ton	Crushed Surfacing Top Course (Hoorigan Quarry)				
3	32,000	Ton	Modified Crushed Surfacing (Hoorigan Quarry)				
4	40,000	Ton	Crushed Surfacing Top Course (Finley Quarry)				
5	40,000	Ton	Modified Crushed Surfacing (Finley Quarry)				
6	40,430	Ton	Crushed Surfacing Top Course (Travis Quarry)				
7	64,000	Ton	1/4" - Minus Non Spec (Olympia Pit)				
8	1,900	L.F.	Remove Wire Fencing				
9	4	Acre	Seeding, Fertilizing, and Mulching				
10	1	L.S.	SPCC Plan				
	TOTAL						

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

Cashier's Check_____ In the Amount of _____

Certified Check _____ ($_____) Payable to the County Treasurer of Benton County, Washington.

Proposal Bond _____ In the amount of 5% of the Bid.

Receipt is hereby acknowledged of Addendum No(s). _____, _____, & _____.

PUBLIC WORKS TRAINING

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act, and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

CONTRACTOR'S REGISTRATION NO. _____

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. _____

FIRM NAME: _____

_____ _____
SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

_____ _____
SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

PROPOSAL MUST BE SIGNED

DATED this _____ day of _____, 20____.

ADDRESS OF BIDDER: _____

PRINCIPAL PLACE OF BUSINESS: _____

TELEPHONE NO.: (____)_____ EMAIL:_____

NOTE: (1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.

(2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we, _____

_____ of _____

as principal, and the _____, a corporation

duly organized under the laws of the State of _____, and authorized

to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

CE 2119 CRP – 2021 CRUSHING AND STOCKPILING

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of **ten (10) days** from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be

signed and sealed this _____ day of _____, _____.

_____
(Principal)

_____
(Surety)

_____
(Attorney-in-fact)

BENTON COUNTY
WASHINGTON

This form must be submitted with the Bid Proposal or as a Supplement to the Bid no later than 24 hours after the time for delivery of the Bid Proposal, as provided for in Section 1-02.9 of the Contract Provisions.

Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date, March 11, 2021, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

_____
Bidder's Business Name

_____
Signature of Authorized Official*

_____
Printed Name

_____
Title

_____ _____ _____
Date City (where signed) State

Check One:
Sole Proprietorship ☐ Partnership ☐ Joint Venture ☐ Corporation ☐

State of Incorporation, or if not a corporation, State where business entity was formed:

_____

If a co-partnership, give firm name under which business is transacted:

_____

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

COUNTY OF
BENTON
WASHINGTON

Proposal for Incorporating Recycled Materials into the Project

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E Table on Maximum Allowable Percent (By weight) of Recycled Material, of the Standard Specifications

Proposed total percentage: _____percent

Note Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tiebreaker, per the APWA GSP in Section 1-03 1 of the Special Provisions. Regardless, the Bidders stated proposed percentages will become a goal the Contractor should do its best to accomplish Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06 6 of the Special Provisions.

Bidder _____

Signature _____

Date _____

CONTRACT

INFORMATION FOR THE CONTRACTOR THAT IS AWARDED THE CONTRACT

For Construction of:

2021 CRUSHING AND STOCKPILING

CE 2119 SMP

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-02

CONTRACT

THIS CONTRACT, made and entered into this _____ day of _____, 2021, between the COUNTY OF BENTON, STATE OF WASHINGTON, (hereinafter "the County") acting through the Board of County Commissioners, under and by virtue of RCW 36, as amended, and _____, (hereinafter "the Contractor").

WITNESSETH:

That in consideration of the terms and conditions contained herein and in the Contract Documents attached hereto and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall furnish all tools, materials, and equipment, and shall do all work described in and in accordance with the attached plans and specifications entitled "Contract Provisions and Plans, CE 2119 – 2021 Crushing and Stockpiling," and as described in and in accordance with the State of Washington 2021 Standard Specifications for Road, Bridge, and Municipal Construction adopted by the County, (hereinafter collectively referred to as "the Contract Documents") which are by this reference incorporated herein and made part hereof, and shall perform any changes to the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by the County.

II The County hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached plans and specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices at the time and in the manner and upon the conditions provided for in this contract. The County further agrees to employ the Contractor to perform any alterations in or additions to the work covered by this contract and every part thereof and any force account work that may be ordered and to pay for the same under the terms of this contract and the attached plans and specifications.

III. The Contractor, for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

IV. The County agrees to pay to the Contractor, as full and complete compensation for materials and work provided in accordance with the Contract Documents, the sum of $_____, payable as provided in the Contract Documents.

V. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

VI. The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorney fees thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractors acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees, or agents.

VII. The Contractor specifically waives the Contractor's immunity under Title 51 RCW (Industrial Insurance statute), and acknowledges that his waiver of immunity was mutually and expressly negotiated by the parties, and expressly agrees that Contractor's promise to indemnify and hold harmless applies to all claims filed by and/or injuries to the Contractor's own employees.

IN WITNESS WHEREOF, the said Contractor has executed this instrument, and the Board of County Commissioners of Benton County, Washington has caused this instrument to be executed by and in the name of the said Board of County Commissioners the day and year first above written.

Executed by the Contractor:

_____
Signature

_____
Title

_____
Date

COUNTY OF BENTON

_____
Chairman, Board of Commissioners

Attest: _____
Clerk of the Board

_____
Date

APPROVED AS TO FORM:

_____
Benton County Deputy Prosecuting Attorney

_____
Date

PUBLIC WORKS PAYMENT BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to _____ (Principal), a contract for the construction of the project designated as **2021 Crushing and Stockpiling , Project No.: CE 2119,** in Benton County, Washington (Contract), and said Principal is required, under the terms of that Contract, to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39 08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL		SURETY	
_____		_____	
Principal Signature	Date	Surety Signature	Date
_____		_____	
Printed Name		Printed Name	
_____		_____	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:

PUBLIC WORKS PERFORMANCE BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to _____ (Principal), a contract for the construction of the project designated as **2021 Crushing and Stockpiling, Project No.: CE 2119**, in Benton County, Washington (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U S Treasury Dept , are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified, and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL		SURETY	
_____		_____	
Principal Signature	Date	Surety Signature	Date
_____		_____	
Printed Name		Printed Name	
_____		_____	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Purchase Agreement between Benton County and Bob Barker Company utilizing County of Sacramento, CA Contract WA00034777
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Cdr. Shelton; Shela Berry; Robert Blain

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

Type of Agenda Item:	**Type of Action Needed:** *(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 per Resolution 2020-749, Benton County entered into an agreement with National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise.

The County of Sacramento is also a member OMNIA Partners and issued RFP #8259 for Inmate and Detention Supplies, Solutions and Services on February 3, 2016, to establish a national cooperative contract for said services as per Contract WA00034777, for a term commencing October 5, 2016 and terminating October 4, 2021.

The Benton County Corrections Department and Juvenile Detention wishes to utilize Contract WA00034777 for as needed inmate and detention supplies, solutions and services, as further outlined in the attached Purchase Agreement between Benton County and Bob Barker Company and the documents attached thereto, for a contract amount not to exceed $90,000 including WSST.

Fiscal Impact

Expenditures shall be paid from the approved 2021-2022 budget of each department that utilizes the attached Purchase Agreement for an overall amount not to exceed $90,000.

Recommendation

Approve the attached Resolution and Purchase Agreement between Benton County and Bob Barker Company and authorize the Chairman of the Board to sign said agreement.

Suggested Motion

Approved as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF INMATE AND DETENTION SUPPLIES, SOLUTIONS AND SERVICES FROM BOB BARKER COMPANY UTILIZING THE OMNIA PARTNERS CONTRACT AND COUNTY OF SACRAMENTO, CA CONTRACT WA00034777 FOR ALL BENTON COUNTY DEPARTMENTS

WHEREAS, per Resolution 2020-749 dated October 20, 2020, the Board of Benton County Commissioners approved the agreement between Benton County and National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise; and

WHEREAS, the County of Sacramento, CA is also a member with OMNIA Partners and issued RFP #8259 for Inmate and Detention Supplies, Solutions and Services on February 3, 2016, to establish a national cooperative contract for said supplies and services; and

WHEREAS, proposals were received and evaluated and the County of Sacramento, CA, OMNIA Partners, and Bob Barker successfully negotiated Contract WA00034777 for a term commencing October 5, 2016 and expiring October 4, 2021; and

WHEREAS, different Benton County departments currently purchase from Bob Barker and wish to utilize Contract WA00034777 for their as needed supplies, as further outlined in the attached Purchase Agreement between Benton County and Bob Barker Company and documents attached thereto, for an overall contract amount not to exceed $90,000 including WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the attached Purchase Agreement between Benton County and Bob Barker Company, utilizing the OMNIA Partners and County of Sacramento, CA Contract WA00034777 for the purchase of as needed inmate and detention supplies, solutions and supplies for Benton County Departments, with a Purchase Agreement amount not to exceed $90,000 including WSST; and

BE IT FURTHER RESOLVED, the attached Purchase Agreement shall commence upon signature of both parties and shall terminate October 4, 2021; and

BE IT FURTHER RESOLVED, expenditures shall be paid from the individual departments budget whom choses to utilize the attached Purchase Agreement; and

BE IT FURTHER RESOLVED, the Chairman of the Board is hereby authorized to sign the attached Purchase Agreement between Benton County and Bob Barker Company.

Dated this _____ day of _____, 2021.

_____
Chairman of the Board

_____
Member

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: Purchasing Dept.
Cc: Auditors, PA, County Depts, Bob Barker Co. L. Small

PURCHASE AGREEMENT
Benton County, Washington

Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350

RESOLUTION No: _____

Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.

Vendor: Bob Barker Company
Vendor Code:
Vendor Contact: Debbie Sargent, Customer Service Representative
Vendor Contact Phone: (800) 334-9880
Vendor Principal Place of Business: 7925 Purfoy Rd. Fuquay-Varina, NC 27526

AGREEMENT:
The Vendor agrees to make available the goods provided in Exhibit A to Benton County under the terms described herein.

Ship To:	Bill To:
Benton County 7122 W. Okanogan Pl. Bldg. B Kennewick, WA 99336	Benton County 7122 W. Okanogan Pl. Bldg. B Kennewick, WA 99336

Line	Description	Qty		
	Vendor agrees to provide all items and name brands associated with Exhibit A available to the County for the purchase at the price discounts provided in Exhibit A, as currently in effect, or hereafter amended pursuant to the County of Sacramento, CA Contract No. WA00034777.			
	Benton County's OMNIA Partners Membership Number:			
	2562889			

The term of this Agreement shall commence upon signature of both parties and shall expire 10/04/2021.

This purchase agreement incorporates by reference all terms and conditions issued off the County of Sacramento, CA Contract WA00034777 (copy attached hereto as Master Contract) as well as the Price Worksheet (attached as Exhibit A); as a registered member of the OMNIA Partners.

Vendor signature on this Purchase Agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms and/or previous contracts.

In case of conflict, the order of precedence is:
1. The County of Sacramemnto Contract No. WA00034777
2. Pricing Worksheet attached hereto as Exhibit A, as currently in effect, or hereafter amended.
3. This Purchase Agreement

Questions and Clarifications should be Addressed to Buyer Contact:

Contact: Lisa Small
Address: 7122 W. Okanogan Pl, Bldg B
Kennewick, WA 99336
Phone: 509-786-1451 ext. 3880
Email: Lisa.Small@co.benton.wa.us

Approved as to Form
(Deputy Prosecutor): _____
Ryan J. Lukson, Civil DPA

By signing in the space provided, the parties hereby acknowledge the following:

1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
2) The person executing this Agreement is authorized to do so by his/her party;
3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreement(s) for all purposes.

Vendor Name (Print): Bob Barker Company, Inc. Contract Administrator 2/2/2021

Vendor Signature: Tawnha K Hartley

Chairman
Benton County
Board of Commissioners: _____ Date: _____
Jerome Delvin, Chairman

Exhibit A

WA00034777 - Bob Barker Co
Price List Effective October 5, 2016

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4&5	Remark
Clothing					
Stenciled Orange Shirt in Sizes					
Medium	Each	NPOS-M	$4.39	$4.57	Catalog Number updated on 8/13/2019
Large	Each	NPOS-L	$4.39	$4.57	
XL	Each	NPOS-XL	$4.39	$4.57	
2XL	Each	NPOS-2XL	$4.39	$4.57	
3XL	Each	NPOS-3XL	$4.39	$4.57	
4XL	Each	NPOS-4XL	$4.39	$4.57	
5XL	Each	NPOS-5XL	$4.69	$4.88	
6XL	Each	NPOS-6XL	$4.69	$4.88	
Stenciled Orange and White Striped Shirt in Sizes					
Medium	Each	JTOWSNP-M	$4.39	$4.57	
Large	Each	JTOWSNP-L	$4.39	$4.57	
XL	Each	JTOWSNP-XL	$4.39	$4.57	
2XL	Each	JTOWSNP-2XL	$4.39	$4.57	
3XL	Each	JTOWSNP-3XL	$4.39	$4.57	
4XL	Each	JTOWSNP-4XL	$4.39	$4.57	
Stenciled Orange Unisex Pants in Sizes					
Small - XL	Pair	TOT-S, TOT-M, TOT-L, TOT-XL	$5.67	$5.90	
2XL	Pair	TOT-2XL	$5.67	$5.90	
162.5	Pair	TOT-3XL	$5.67	$5.90	
4XL	Pair	TOT-4XL	$5.67	$5.90	
5XL	Pair	TOT-5XL	$5.67	$5.90	
Stenciled Navy Blue Unisex Pants in Sizes					

WA00034777 - Bob Barker Co
Price List Effective October 5, 2016

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4&5	Remark
Small - XL	Pair	TNT-S, TNT-M, TNT-L, TNT-XL	$5.67	$5.90	
2XL	Pair	TNT-2XL	$5.67	$5.90	
3XL	Pair	TNT-3XL	$5.67	$5.90	
4XL - 5XL	Pair	TNT-4XL, TNT-5XL	$5.67	$5.90	
Stenciled Unisex White Kitted Short-Sleeve Polo Shirt in Sizes					
Small - XL	Each	Z8800WH-SIZE	$5.40	$5.40	
2XL	Each	Z8800WH-2XL	$6.99	$6.99	
3XL	Each	Z8800WH-3XL	$6.99	$6.99	
4XL	Each	Z8800WH-4XL	$6.99	$6.99	
Stenciled White Thermal Shirt in Sizes					
XL	Dozen	63-XL	$32.40	$32.40	Sold in dozen
2XL	Dozen	63-2XL	$33.84	$33.84	Sold in dozen
3XL	Dozen	63-3XL	$34.56	$34.56	Sold in dozen
4XL	Dozen	63-4XL	$36.84	$36.84	Sold in dozen
White Tube Sock	Dozen	1700-W	$4.16	$4.16	Tube Sock 21”
Non-Stenciled Navy or Dark Colors Paper Jumpsuit in Sizes 3XL (Size Fits All)	Each	3575-3XL	$1.19	$1.19	Sold in case of 25 , sizes S & 5XL
Non-Stenciled Navy Shorts					S & 5XL - Packed in case of 12 pairs
Small	Pair	J618-S	$3.60	$3.74	
Medium	Pair	618-M	$3.60	$3.74	
Large	Pair	618-L	$3.60	$3.74	
XL	Pair	618-XL	$3.66	$3.81	
2XL	Pair	618-2XL	$4.55	$4.73	
3XL	Pair	618-3XL	$4.55	$4.73	

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4&5	Remark
4XL	Pair	618-4XL	$4.60	$4.78	
5XL	Pair	J618-5XL	$4.60	$4.78	
Footwear					
Men's Deck Shoes, Gum-Soled	Pair	155NV-SIZE	$3.21	$3.26	
V-Strap Thongs	Pair	1800-SIZE	$0.49	$0.49	Sold in dozen
For Eva (Ethyl Vinyl Acetate) Slip-On Shoes	Pair	FEVST35-OR-SIZE	$2.18	$2.18	Catalog Number updated on 8/13/2019
Slip-On PVC Sandal, Tan Sizes (6-16)	Pair	BB888-SIZE	$1.39	$1.39	Sizes 6-14
Bedding and Linen					
Mattress Cover	Each	VMC30724	$9.77	$10.75	Mattress 75"x30"x4"
Non-Stenciled Isolation/Suicide Cell Smock	Each	505	$66.00	$66.00	
Non-Stenciled Isolation/Suicide Cell Blanket	Each	SB5480	$60.25	$60.25	
Mattress					Mattress 1. Size 75"x30"x4" 2. Add $11 each for recycle fee.
Mattress (mattress recycle fee not included)	Each	PJM30754	$34.50	$37.95	
Mattress for Probation (mattress recycle fee not included)	Each	SSCM30754P	$57.50	$63.25	
Personal Hygiene Product					
Hair & Scalp Conditioner, Bergamot, 12 Oz Each, 12 per Case	Case	024	$20.64	$20.64	
Body Lotion with Aloe, 14.8 Oz Each, 12 per Case	Case	M1245	$13.98	$13.98	
Tampon, Super Absorbency, Cardboard Applicator, 500 per Case	Case	SBTPX500	$45.08	$45.08	

WA00034777 - Bob Barker Co
Price List Effective October 5, 2016

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4&5	Remark
Toothbrush, Full-Sized, Clear Handle, Nylon Bristle Brush, 30-Tuft, Medium, 144 per Pack, 10 per Case	Case	BB28	$56.60	$56.60	
Toothbrush Cover, Ivory Color, 1,440 per Case	Case	NTBC	$67.50	$67.50	
Deodorant, Roll-On, 1.5 Oz Each, 96 per Case	Case	PPI10150	$26.62	$26.62	
Hand Sanitizer, 4 Oz Each, 60 per Case	Case	AG46	$38.60	$38.60	
A & D Ointment, 4 Oz Each, 72 per Case	Case	JHC1122	$109.80	$109.80	Catalog Number updated on 6/18/2018

Notes:

1. Delivery Time: 3 to 30 days
2. Miscellaneous Inmate and Detention Supplies - 10% discount off the current product catalog price, with the exclusion of furniture and metal product lines.

National IPA Pricing Structure Proposal

Category Description	Proposed Discount
Bedding & Linens	15%
Bedspreads	
Blankets	
Mattress Covers	
Pillows	
Pillowcases	
Sheets	
Towels & Washcloths	
Other Subcategories & Colors	
Vinyl	10%
Mattresses	
Shower Curtains	
Other Subcategories	
Clothing, Underwear & Socks	25%
Uniforms, Jumpsuits & Scrubs	
Work Clothes	
Outerwear	
Activewear	
Transport Clothing	
Men's Inmate Underwear & Socks	
Women's Inmate Underwear & Socks	
Socks & Slipper Socks	
Release Clothing	
Disposables	
Other Subcategories	
Footwear	10%
Sandals, Shower Shoes & Flip Flops	
Shoes, Oxfords & Boots	
Slippers, Step-Ins & Pullovers	
Tennis Shoes	
Shoe Accessories	
Other Subcategories	
Furnishings	0%
Seating Solutions	
Table Solutions	
Visitation Stations	
Mold Seating	
Mirrors	
Bunks	
Exercise Equipment	
Other Subcategories	
Janitorial	15%
Laundry Cart	
Laundry Utility Trucks	
Laundry Hampers	
Laundry Baskets	
Kangaroo Cart	
Property Bags	
Laundry Net or Mesh Bags	
Mesh Storage Bag	
Strong Box	
Hanging Locker	
In-Cell Organize (Clear & Mesh)	
Evidence Storage Bag	
Other Subcategories	

National IPA Pricing Structure Proposal

Category Description	Proposed Discount
Hygiene & Personal Care	
Combs & Hairbrushes	8%
Shampoo & Body Bath	5%
Liquid Soap & Body Lotion	5%
Bar Soap	5%
Feminine Hygiene	8%
Toothpaste & Mouthwash	8%
Disposable Razors & Shaving Cream	8%
Other Subcategories	8%
Healthcare	15%
Masks	
Over-the-Counter Drugs	
Pain Relieving Lotions & Creams	
Equipment Sharp Containers, Spill Kits & Misc.	
Infection Control Supplies	
Drug Testing Kits	
Other Subcategories	
Examination Gloves	10%
Nitrile Gloves	
Latex Gloves	
Powdered Nitrile Gloves	
Powdered Latex Gloves	
Other Subcategories	
Recreation	15%
Recreation & Games: Books, Puzzles, Cards Sports & Games	
Batteries	
Electronics: Radios, DVD Player & Misc.	
Media: Internet, Music & Movies	
Office Supplies: Security Pens, Pencils, Sketch Pads & Paper	
Other Subcategories	
Suicide Prevention	10%
Suicide Safety Bedroll	
Suicide Smocks	
Suicide Blanket	
Padded Helmets	
Other Subcategories	
Officers Only	10%
Restraints	10%

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Columbia Safety, LLC Personal Service Contract
Presenter:	N/A
Prepared By:	Adam Morasch, Risk Manager
Reviewed By:	Mary Christen, Administrative Assistant

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 had a contract with Columbia Safety, LLC to provide first aid, CPR, and AED training to Benton County employees and said contract expired on December 31, 2020. Benton County wishes to continue offering training for life saving skills to employees.

Fiscal Impact

N/A

Recommendation

Approve the attached Resolution and sign the attached Personal Service Contract between Benton County and Columbia Safety, LLC.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE PERSONAL SERVICES CONTRACT BETWEEN BENTON COUNTY AND COLUMBIA SAFETY, LLC TO PROVIDE FIRST AID, CPR, AND AED TRAINING TO BENTON COUNTY EMPLOYEES

WHEREAS, PER Resolution 2012-677, Section 4.0 Services "the County need not advertise or follow a formal competitive bidding procedure for service contracts, but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances to obtain services of the highest quality at the lowest cost"; and

WHEREAS, Benton County wishes to continue offering training for life saving skills to employees; and

WHEREAS, Columbia Safety, LLC can provide training and certification to employees on First Aid, CPR, and AED; and

WHEREAS, the Risk Manager recommends awarding said services to Columbia Safety, LLC;

NOW, THEREFORE, BE IT RESOLVED that the Board of Benton County Commissioners Benton County, Washington hereby concurs with the recommendation and agrees to sign the attached agreement between Benton County and Columbia Safety, LLC, which will expire on December 31, 2022, and not exceed $30,000.00 excluding W.S.S.T.

Dated this _____ day of _____ 2020.

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

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

Org: Risk Management
Cc: Auditor

A. Morasch

BENTON COUNTY
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **COLUMBIA SAFETY, LLC**, a corporation organized under the laws of the State of Washington with its principal offices at 418 N Kellogg St. STE A, Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A - Service Agreement; and
b. Exhibit B - Fees.

2. DURATION OF CONTRACT

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

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide, through its licensed and qualified employees, as-needed on-site Adult First Aid/CPR/AED Training. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Service Agreement", which is attached hereto and incorporated herein by reference.

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

c. The CONTRACTOR shall perform the work specified in this

Contract according to standard industry practice.

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Nathan Kennedy, RN
Address:	418 N Kellogg St. STE A Kennewick, WA, 99336
Phone:	509-820-3883
Email:	nathan@columbiasafety.net

b. For COUNTY:

Name:	Adam Morasch
Address:	7122 W Okanagan Place; Bldg A Kennewick, WA, 99336
Phone:	509-736-3082
Email:	adam.morasch@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates set forth in Exhibit B, “Fees”, which is attached hereto and incorporated herein by reference excluding W.S.S.T.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Thirty Thousand Dollars ($30,000.00), excluding W.S.S.T.

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

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

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

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

7. **HOLD HARMLESS AND INDEMNIFICATION**

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

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

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all

claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

shall be as follows:

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

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

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

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

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

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

d. **Other Insurance Provisions:**

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

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

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

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract.

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

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

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

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

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

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

3. All written notices under this Section 8 and notice of

cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

9. TERMINATION

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

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

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

b. An electronic copy of all word processing documents shall be

submitted to the COUNTY upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

b. Any action at law, suit in equity, or judicial proceeding

arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

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

27. PUBLIC RECORDS ACT

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

CONTRACTOR may seek a judicial order of protection if necessary.

- **This section left blank intentionally** -

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

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 02-04-2021

FOR: COLUMBIA SAFETY, LLC

_____
Signature

Owner
Title:

Nathan Kennedy
Print Name

Exhibit A – Service Agreement

1. CONTRACTOR FACILITY

the CONTRACTOR's training facility in Kennewick, Washington is capable of handling up to 30 students at one time. When circumstances require a larger training environment, the CONTRACTOR will obtain a larger training forum and inform participants of the training location.

2. COUNTY FACILITY

The CONTRACTOR will bring the class to the COUNTY's location as long as the following conditions are guaranteed: a) minimum class size of at least 8 students in the Tri city area (Kennewick, Pasco and Richland), outside of the Tri Cities a minimum of 10 students is required; the CONTRACTOR will bill for a minimum of 8 students/ 10 students (respective locations) regardless, due to the extra efforts required to prepare for an off-site class; and b) a training area large enough to support the size of the group being trained; power outlets for a computer, projector, and room for a screen; as well as enough floor space to accommodate the hands-on sessions.

3. Remedial Training

In rare circumstances, a student may not successfully complete the training. When this occurs, the CONTRACTOR will offer the student the opportunity to participate in the next available class and retake the exam (written and/or practical) again without additional charge. If the student fails to successfully complete the training a second time, the COUNTY must pay for any subsequent training class.

4. Certification

The training for CPR/AED, First Aid, BLS Provider, ACLS, and PALS shall be valid for 2 years from the date of successful completion of the training course and examination (written and practical). With the implementation of eCards through AHA, should a replacement card be needed a $30 fee will be charged.

5. Record Keeping

The CONTRACTOR will maintain training records for a minimum of 7 years. Upon a Benton County employee's completion of a training course, the CONTRACTOR will enter the dates of training into our computer system and make it accessible on-line to that employee and the COUNTY's management staff. We will contact the employee before the end of each certification period to remind them to schedule additional training to recertify their card(s). We will make 2 attempts to contact the employee, after which we will contact the COUNTY to notify them that the employee is not able to be reached. If the employee leaves the COUNTY's employment, we ask that the COUNTY contact the CONTRACTOR in a timely manner so that we can remove that employee from the COUNTY's records and into another archival file.

Exhibit B-Fees

Class Type	Client's Price
AHA - Heartsaver CPR/AED only	$47.50 per person
AHA - Heartsaver First-Aid only	$47.50 per person
AHA – Heartsaver CPR/AED & First-Aid	$76.00 per person
AHA – Hearstaver CPR/AED, First-Aid, or BLS eLearning option includes Skills	$85.50 per person
AHA - Bloodborne Pathogens Training Blended	$32.75 per person
Bloodborne Pathogen w/ CPR or First Aid	$29.25 per person
4-Hour HIV / AIDS	$76.00 per person
7-Hour HIV / AIDS	$95.00 per person
Stop the Bleed	$10 Donation request

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2020
Subject:	2020 Federal Equitable Sharing Agreement Certification
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Ryan Lukson, PA

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

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

Summary / Background Information

The Benton County Sheriff's Office participates in the Equitable Sharing Agreement with the federal government for the use of federally forfeited cash, property proceeds, and any interest earned thereon, which are equitably shared with the participating law enforcement agencies. Pursuant to this agreement the Benton County Sheriff's Office is required to submit yearly the Equitable Sharing Agreement and Certification.

The yearly Equitable Sharing Agreement and Certification must be signed by the Benton County Sheriff and the Chairman of the Board of Benton County Commissioners.

Fiscal Impact

N/A

Recommendation

Approve the attached Resolution and authorize the Chairman of the Board of Benton County Commissioners to sign, on behalf of the Board, the Federal Equitable Sharing Agreement and Certification Report for 2020.

Suggested Motion

Approve as part of Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE 2020 FEDERAL EQUITABLE SHARING AGREEMENT AND CERTIFICATION REPORT.

WHEREAS, the Benton County Sheriff's Office participates in the Federal Equitable Sharing Agreement with the federal government for the use of federally forfeited cash, property proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. Pursuant to this agreement the Benton County Sheriff's Office is required to submit yearly the Federal Annual Certification Report; and

WHEREAS, the annual Equitable Sharing Agreement and Certification Report must be signed by the Benton County Sheriff and the Chairman of the Board of Benton County Commissioners; **NOW THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners that the Chairman of the Board of Benton County Commissioners is authorized to sign, on behalf of the Board, the Federal Equitable Sharing Agreement and Certification Report for 2020.

Dated this _____ day of _____, 2021

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Orig: Sheriff's Office
cc: Auditor

Prepared by: Katie Gillies

OMB Number 1123-0011
Expires: December 31, 2021

Equitable Sharing Agreement and Certification

NCIC/ORI/Tracking Number: WA0030000
Agency Name: Benton County Sheriff's Office **Type:** Sheriff's Office
Mailing Address: 7122 W. Okanogan Place Bldg. B
Kennewick, WA 99336

Agency Finance Contact
Name: Gillies, Katie L
Phone: 509-735-6555 x 3273 **Email:** katie.gillies@co.benton.wa.us

Jurisdiction Finance Contact
Name: Coverdell, Aileen
Phone: 509-786-5620 **Email:** aileen.coverdell@co.benton.wa.us

ESAC Preparer
Name: Gillies, Katie L
Phone: 509-735-6555 x 3273 **Email:** katie.gillies@co.benton.wa.us

FY End Date: 12/31/2020 **Agency FY 2021 Budget:** $15,315,373.00

Annual Certification Report

	Summary of Equitable Sharing Activity	Justice Funds [1]	Treasury Funds [2]
1	Beginning Equitable Sharing Fund Balance	$0.00	$0.00
2	Equitable Sharing Funds Received	$0.00	$0.00
3	Equitable Sharing Funds Received from Other Law Enforcement Agencies and Task Force	$0.00	$0.00
4	Other Income	$0.00	$0.00
5	Interest Income	$0.00	$0.00
6	Total Equitable Sharing Funds Received (total of lines 1-5)	$0.00	$0.00
7	Equitable Sharing Funds Spent (total of lines a - n)	$0.00	$0.00
8	Ending Equitable Sharing Funds Balance (difference between line 7 and line 6)	$0.00	$0.00

[1] Department of Justice Asset Forfeiture Program participants are: FBI, DEA, ATF, USPIS, USDA, DCIS, DSS, and FDA
[2] Department of the Treasury Asset Forfeiture Program participants are: IRS, ICE, CBP and USSS.

	Summary of Shared Funds Spent	Justice Funds	Treasury Funds
a	Law Enforcement Operations and Investigations	$0.00	$0.00
b	Training and Education	$0.00	$0.00
c	Law Enforcement, Public Safety, and Detention Facilities	$0.00	$0.00
d	Law Enforcement Equipment	$0.00	$0.00
e	Joint Law Enforcement/Public Safety Equipment and Operations	$0.00	$0.00
f	Contracts for Services	$0.00	$0.00
g	Law Enforcement Travel and Per Diem	$0.00	$0.00
h	Law Enforcement Awards and Memorials	$0.00	$0.00
i	Drug, Gang, and Other Education or Awareness Programs	$0.00	$0.00
j	Matching Grants	$0.00	$0.00
k	Transfers to Other Participating Law Enforcement Agencies	$0.00	$0.00
l	Support of Community-Based Programs	$0.00	
m	Non-Categorized Expenditures	$0.00	$0.00
n	Salaries	$0.00	$0.00
	Total	$0.00	$0.00

Equitable Sharing Funds Received From Other Agencies

Transferring Agency Name	Justice Funds	Treasury Funds

Other Income

Other Income Type	Justice Funds	Treasury Funds

Matching Grants

Matching Grant Name	Justice Funds	Treasury Funds

Transfers to Other Participating Law Enforcement Agencies

Receiving Agency Name	Justice Funds	Treasury Funds

Support of Community-Based Programs

Recipient	Justice Funds	

Non-Categorized Expenditures

Description	Justice Funds	Treasury Funds

Salaries

Salary Type	Justice Funds	Treasury Funds

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section at 1400 New York Avenue, N.W., Washington, DC 20005.

Privacy Act Notice

The Department of Justice is collecting this information for the purpose of reviewing your equitable sharing expenditures. Providing this information is voluntary; however, the information is necessary for your agency to maintain Program compliance. Information collected is covered by Department of Justice System of Records Notice, 71 Fed. Reg. 29170 (May 19, 2006), JMD-022 Department of Justice Consolidated Asset Tracking System (CATS). This information may be disclosed to contractors when necessary to accomplish an agency function, to law enforcement when there is a violation or potential violation of law, or in accordance with other published routine uses. For a complete list of routine uses, see the System of Records Notice as amended by subsequent publications.

Single Audit Information

Independent Auditor

Name: Ginny Waltman
Company: Office of the Washington State Auditor
Phone: 509-734-7104 **Email:** waltmang@sao.wa.gov

Were equitable sharing expenditures included on your jurisdiction's prior fiscal year's Schedule of Expenditures of Federal Awards (SEFA)?

YES ☐ NO ☒

Prior year Single Audit Number Assigned by Harvester Database: 853927

Affidavit

Under penalty of perjury, the undersigned officials certify that they have read and understand their obligations under the *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (Guide)* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations. The undersigned officials certify that the information submitted on the Equitable Sharing Agreement and Certification form (ESAC) is an accurate accounting of funds received and spent by the Agency.

The undersigned certify that the Agency is in compliance with the applicable nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq*.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. The Agency agrees that it will comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the Agency, and (3) the Agency's governing body, sets forth the requirements for participation in the federal Equitable Sharing Program and the restrictions upon the use of federally forfeited funds, property, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By submitting this form, the Agency agrees that it will be bound by the *Guide* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations. Submission of the ESAC is a prerequisite to receiving any funds or property through the Equitable Sharing Program.

1. Submission. The ESAC must be signed and electronically submitted within 60 days of the end of the Agency's fiscal year. Electronic submission constitutes submission to the Department of Justice and the Department of the Treasury.

2. Signatories. The ESAC must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body head is the head of the agency that appropriates funding to the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, administrator, commissioner, and governor. The governing body head cannot be an official or employee of the Agency and must be from a separate entity.

3. Uses. Shared assets must be used for law enforcement purposes in accordance with the *Guide* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations.

4. Transfers. Before the Agency transfers funds to other state or local law enforcement agencies, it must obtain written approval from the Department of Justice or Department of the Treasury. Transfers of tangible property are not permitted. Agencies that transfer or receive equitable sharing funds must perform sub-recipient monitoring in accordance with the Code of Federal Regulations.

5. Internal Controls. The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury, funds from state and local forfeitures, joint law enforcement operations funds, and any other sources must not be commingled with federal equitable sharing funds.

The Agency certifies that equitable sharing funds are maintained by the entity that maintains the Agency's appropriated or general funds and agrees that the funds will be subject to the standard accounting requirements and practices employed by the Agency's jurisdiction in accordance with the requirements set forth in the *Guide,* any subsequent updates, and the Code of Federal Regulations, including the requirement to maintain relevant documents and records for five years.

The misuse or misapplication of equitably shared funds or assets or supplantation of existing resources with shared funds or assets is prohibited. The Agency must follow its jurisdiction's procurement policies when expending equitably shared funds. Failure to comply with any provision of the *Guide*, any subsequent updates, and the Code of Federal Regulations may subject the Agency to sanctions.

6. Single Audit Report and Other Reviews. Audits shall be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards. The Agency must report its equitable sharing expenditures on the Schedule of Expenditures of Federal Awards (SEFA) under Catalog of Federal Domestic Assistance number 16.922 for Department of Justice and 21.016 for Department of the Treasury. The Department of Justice and the Department of the Treasury reserve the right to conduct audits or reviews.

7. Freedom of Information Act (FOIA). Information provided in this Document is subject to the FOIA requirements of the Department of Justice and the Department of the Treasury. Agencies must follow local release of information policies.

8. Waste, Fraud, or Abuse. An Agency or governing body is required to immediately notify the Money Laundering and Asset Recovery Section of the Department of Justice and the Executive Office for Asset Forfeiture of the Department of the Treasury of any allegations or theft, fraud, waste, or abuse involving federal equitable sharing funds.

Civil Rights Cases

During the past fiscal year: (1) has any court or administrative agency issued any finding, judgment, or determination that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above; or (2) has the Agency entered into any settlement agreement with respect to any complaint filed with a court or administrative agency alleging that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above?

☐ **Yes** ☒ **No**

Agency Head

Name: Hatcher, Jerry
Title: Benton County Sheriff
Email: Jerry.hatcher@co.benton.wa.us

Signature: _____ Date: _____

To the best of my knowledge and belief, the information provided on this ESAC is true and accurate and has been reviewed and authorized by the Law Enforcement Agency Head whose name appears above. Entry of the Agency Head name above indicates his/her agreement to abide by the Guide, any subsequent updates, and the Code of Federal Regulations, including ensuring permissibility of expenditures and following all required procurement policies and procedures.

Governing Body Head

Name: Delvin, Jerome
Title: Chairman of the Board
Email: jerome.delvin@co.benton.wa.us

Signature: _____ Date: _____

To the best of my knowledge and belief, the Agency's current fiscal year budget reported on this ESAC is true and accurate and the Governing Body Head whose name appears above certifies that the agency's budget has not been supplanted as a result of receiving equitable sharing funds. Entry of the Governing Body Head name above indicates his/her agreement to abide by the policies and procedures set forth in the Guide, any subsequent updates, and the Code of Federal Regulations.

☐ I certify that I have obtained approval from and I am authorized to submit this form on behalf of the Agency Head and the Governing Body Head.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2/23/2021
Subject:	Contract with Cascade Engineering, Inc.
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Ryan Lukson, PA

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

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

Summary / Background Information

Per Resolution 2020-991, Section 5.0 Services "the County need not advertise or follow a formal competitive bidding procedure for service contracts, but rather the county may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost.

The Sheriff's Office uses radar/LIDAR speed measuring devices for traffic enforcement throughout Benton County and the devices require periodic diagnostic tests and recalibration in order to ensure proper performance.

The Sheriff's Office has had previous contracts with Cascade Engineering, Inc per resolution 2018-536 and wishes to enter into another contract for 2021 and 2022.

Fiscal Impact

Contract amount not to exceed $10,000.00 plus W.S.S.T. split between:

0000101.121 Current Expense

0148101.121 Public Safety Tax

Recommendation

The Sheriff's Office recommends entering into a personal service contract with Cascade Engineering Services, Inc., Redmond, WA for diagnostics, recalibrations, and N.I.S.T. traceable certification of radar and LIDAR Speed Measuring Devices (SMD's) for calendar years 2021 and 2022 for a total contract amount not to exceed $10,000.00 plus W.S.ST.

Suggested Motion

Approve as part of Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING CASCADE ENGINEERING SERVICES, INC. A PERSONAL SERVICE CONTRACT FOR DIAGNOSTICS, RECALIBRATION, AND N.I.S.T. TRACEABLE CERTIFICATIONS OF RADAR AND LIDAR SPEED MEASURING DEVICES FOR THE SHERIFF'S OFFICE

WHEREAS, per Resolution 2020-991, Section 5.0 Services "the County need not advertise or follow a formal competitive bidding procedure for service contracts, but rather the county may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost; and

WHEREAS, the Sheriff's Office uses radar/LIDAR speed measuring devices for traffic enforcement throughout Benton County; and

WHEREAS, the devices require periodic diagnostic tests and recalibration in order to ensure proper performance; and

WHEREAS, the Sheriff's Office recommends entering into a personal service contract with Cascade Engineering Services, Inc., Redmond, WA for diagnostics, recalibrations, and N.I.S.T. traceable certification of radar and LIDAR Speed Measuring Devices (SMD's) for calendar years 2021 and 2022; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the Sheriff's Office recommendation and hereby awards the personal services contract to Cascade Engineering Services, Inc. for a total contract amount not to exceed $10,000.00 plus W.S.S.T., per each year the contract is in effect; and

BE IT FURTHER RESOLVED, the attached contract shall commence February 1, 2021 and shall expire December 31, 2022.

Dated this _____ day of _____, 2021

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Original: BCSO
cc: Auditor; PA; Cascade Engineering

K. Gillies

BENTON COUNTY
PROFESSIONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **CASCADE ENGINEERING SERVICES, INC.,** a professional service corporation organized under the laws of the State of Washington with its principal offices at 6640 185TH Avenue NE, Redmond, WA 98052 hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Terms and Conditions (this document)
b. Exhibit A - Scope of Work/Compensation

2. DURATION OF CONTRACT

The term of this Contract shall be effective February 1, 2021 and shall expire on December 31, 2022. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

a. The diagnostics, recalibration and N.I.S.T. traceable certification of Radar and LIDAR Speed measuring Devices, (SMD). A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit "A" Scope of Work, which is attached hereto and incorporated herein by reference.

b. The CONTRACTOR agrees to provide its own labor and

materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

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

d. The CONTRACTOR shall complete its work in and in accordance with the schedule parties.

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:
Cliff Nahm
6640 185th Avenue, NE
Redmond, WA 98052
Phone: (425) 895-8617
Fax: (425) 702-9358
cliffn@cascade-eng.com

b. For COUNTY:
Katie Gillies, C.F.O.
7122 W Okanogan Place, Bldg. A
Kennewick, WA 99336
Phone:(509) 735-6555 Ext. 3273
Katie.gillies@co.benton.wa.us

5. COMPENSATION

a. A detailed description of the compensation to be paid by the COUNTY is set forth in Exhibit "A", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed $10,000.

c. No payment shall be made for any work performed by the

CONTRACTOR, except for work identified and set forth in this Contract.

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by

both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of

or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employer's liability.

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

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

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

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

The CONTRACTOR must provide commercial general liability

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

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

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

d. **Automobile Liability:** The CONTRACTOR shall. maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA000l or equivalent) covering any auto (Symbol 1), or if the Contractor has no owned autos, hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR

e. **Other Insurance Provisions**:

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

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

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

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

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

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

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

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

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

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

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

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

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

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following

address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. TERMINATION

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

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

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

e. The CONTRACTOR agrees to immediately remove any of its

employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative, or designee.

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

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

27. PUBLIC RECORDS ACT

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

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

Dated:_____

BENTON COUNTY

Jerome Delvin, Chairman
Benton County Commissioner

Approved as to Form:

Ryan J. Lukson, Civil DPA

Dated: 02/02/2021

CASCADE ENGINEERING SERVICES, INC.

Cliff Nahm

Signature

Metrology Lab Manager

Title:

Cliff Nahm

Print Name

EXHIBIT "A"

Scope of Work/Compensation

Cascade Engineering Services (CES) will calibrate, certify and maintain speed measuring equipment. This equipment consists of Doppler Radar and Lidar. CES will come on site to provide the calibration and certification services. The Sheriff's Office (SO) will send any repairs of the units to the CES and the SO will be responsible for the shipping charges back to the SO. In addition, CES can provide the SO courtroom testimony if request to do so.

Calibration and Certification Services - these services will include: Each unit that is calibrated for accuracy will also be issued a certificate of calibration. Each certificate will include: A title, e.g. "Calibration Report", or "Calibration Certificate"; Name and address of laboratory, and location where the calibration was carried out if different from the address of the laboratory ; Unique identification of tl1e certificate or report (such as serial number) and on each page; Name and address of customer, where appropriate; Description and unambiguous identification of the item calibrated; Date(s) of performance of calibration, where appropriate; Identification of the calibration procedure used, or unambiguous description of any non-standard method used; Any deviations from, additions to or exclusions from the calibration method, and any other information relevant to a specific calibration; Measurements, examinations, and derived results and any failures identified; A signature and title, or an equivalent identification of the person(s) accepting responsibility for the content of the certificate or report (however produced), and date of issue; Notarized signature of the person(s) accepting responsibility for the content of the certificate or report. The rates for calibration are provided in the chart below.

Repair Services- shall include repairing any of the units sent to the CES by SO. CES will provide an estimate for repairs when possible. CES will bill in 15 (fifteen) minute increments. TI1e maximum Overhead and Parts services charge will be JO percent. Hours paid under this contract shall be only for productive hours at the job site. Time spent for transportation of workers, material acquisition, handling and delivery or movement of contractor owned, or rental equipment is not chargeable directly but is overhead and must be included in the hourly rates for labor. The hourly "labor" rate quoted throughout this proposal is $95.00 per hour for diagnostics and or repairs and is invoiced in fifteen (15) minute increments. Consumable materials and supplies, overhead, supervision, set-up and prep time are general and administrative costs are included in the quoted cost to perform the calibration and recertification service required on each speed measuring device. Repair replacement parts are quoted

additionally, depending on the specific parts replaced.

Courtroom Testimony - SO may request the CES to provide expert testimony for various courtroom requirements. The hourly Courtroom Testimony Cost for Cascades expert witness will be substantially reduced if the Benton County Court will allow telephonic or video testimony. Most such testimony is received and accomplished within less than one hour per telephonic appearance. There is a one hour minimum per telephonic testimony appearance. The hourly "labor" rate is $95.00 per hour, portal to portal. Additional hour's testimony is invoiced accordingly, in whole hours. Telephonic testimony is embraced and utilized by other law enforcement agencies within Washington State. If video testimony will be implemented and provided, it is invoiced at the same rate as above.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2/23/2021
Subject:	Contract with Watch Systems, LLC
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Ryan Lukson, PA

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

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

Summary / Background Information

Per Resolution 2020-991, Section 5.0 Services "the County need not advertise or follow a formal competitive bidding procedure for service contracts, but rather the county may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost.

The Sheriff's Office utilizes a software program called Offender Watch, which is a system of Watch Systems, LLC that manages the location of registered sex offenders and the system is provided through the Washington Association of Police Chiefs and Sheriff's at no cost to the County.

The Benton County Sheriff's Office currently has a personal service contract with Watch System, LLC for the mailing of registered sex offender notifications, offender watch mobile, and offender watch booking alert per Resolution 2018-910.

Fiscal Impact

Contract amount not to exceed $10,000.00

0000101.121 Current Expense - WASPC

Recommendation

The Sheriff's Office recommends renewing the contract with Watch System, LLC for said services for calendar years 2021 and 2022 for a contract amount not to exceed $10,000.00.

Suggested Motion

Approve as part of Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A PERSONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND WATCH SYSTEMS, LLC FOR MAILING OF SEX OFFENDER NOTIFICATIONS, OFFENDER WATCH MOBILE, AND OFFENDER WATCH BOOKING ALERT FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, per Resolution 2020-991, Section 5.0 Services "the County need not advertise or follow a formal competitive bidding procedure for service contracts, but rather the county may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost; and

WHEREAS, the Sheriff's Office utilizes a software program called Offender Watch, which is a system of Watch Systems, LLC that manages the location of registered sex offenders; and

WHEREAS, the system is provided through the Washington Association of Police Chiefs and Sheriff's at no cost to the County; and

WHEREAS, the Benton County Sheriff's Office currently has a personal service contract with Watch System, LLC for the mailing of registered sex offender notifications, offender watch mobile, and offender watch booking alert per Resolution 2018-910; and

WHEREAS, the Sheriff's Office recommends renewing the contract with Watch System, LLC for said services for calendar years 2021 and 2022; and

WHEREAS, the cost per each postcard mailed will be the current United States Postal Service first class rate at the time of mailing with a minimum order of $35.00; and

WHEREAS, the cost for Offender Watch Mobile per Exhibit A shall be $565.37 per year for the County with support for unlimited users; and

WHEREAS, the cost for Offender Watch Booking Alert per Exhibit A shall be provided at the rate of $1,278.19 per year; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the recommendation and hereby awards the personal service contract to Watch Systems, LLC for a contract amount not to exceed $10,000; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman to sign the attached personal service agreement between Benton County and Watch Systems, LLC; and

Original: BCSO
cc: Auditor; S. Godinez; Watch Systems, LLC

K. Gillies

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

Dated this _____ day of _____, 2021

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Original: BCSO
cc: Auditor; S. Godinez; Watch Systems, LLC

K. Gillies

BENTON COUNTY
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **WATCH SYSTEMS, LLC,** a Louisiana Limited Liability Corporation, with its principal offices at 516 E. Rutland St., Covington, LA 70433 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Terms and Conditions (this document)
b. Exhibit A – Offender Watch Add-On Products Renewal

2. DURATION OF CONTRACT

The term of this Contract shall begin on January 1, 2021 and shall expire on December 31, 2022. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

a. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

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

c. The CONTRACTOR shall perform the work specified in this

Contract according to standard industry practice.

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Jonathan Roberts
Address:	516 East Rutland Street Covington, LA 70433
Phone:	(985) 871-8110
Email:	jroberts@offenderwatch.com

b. For COUNTY:

Name:	Katie Gillies, CFO
Address:	7122 W. Okanogan Place, Bldg. A Kennewick, WA 99336
Phone:	(509) 735-6555 Ext. 3273
Email:	katie.gillies@co.benton.wa.us

5. COMPENSATION

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

a. The cost per each postcard mailed will be the current United States Postal Service first class rate at the time of mailing.

b. For each mailing there is a minimum order of $35.

c. The cost for Offender Watch Mobile per Exhibit A shall be $565.37 per year for the COUNTY with support for unlimited

users.

d. The cost for Offender Watch Booking Alert per Exhibit A shall be provided at the rate of $1,278.19 per year.

e. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed $10,000.

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

g. The CONTRACTOR may submit invoices to the COUNTY not more than once per month. Invoices shall cover the services CONTRACTOR provided during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of services and will remit payment within thirty (30) days from the date of receipt of the invoice.

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the

CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of

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

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

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

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

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

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

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

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

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

e. **Other Insurance Provisions**:

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

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

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

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

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

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

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

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

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

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

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

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

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

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

Place, Bldg. A, Kennewick, WA 99336.

9. TERMINATION

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

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

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm,

other than a bona fide employee working exclusively for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to:

indemnification provisions (Sections 7 and 17); extended reporting period requirements for professional liability insurance (Section 8(a)); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

26. LITIGATION HOLD NOTICE

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

27. PUBLIC RECORDS ACT

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

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

Dated:_____	Dated:_____
FOR: BENTON COUNTY	**FOR: WATCH SYSTEMS, LLC**
Jerome Delvin, Chairman Benton County Commissioner	Signature Vice President of Operations, Watch Systems LLC
Approved as to Form:	Title:
Ryan J Lukson, Civil DPA	Jonathan Roberts Print Name

RENEWAL FOR

THE OFFENDERWATCH ADD-ON PRODUCTS

- **MOBILE APP**
- **MAILINGS**
- **BOOKING ALERTS**

Presented on 12/01/2020 to
Benton County Sheriff's Office, WA

By

Don Thanars
Territory Manager
dthanars@watchsystems.com
Phone: 985-867-6289

Offender watch®
Prevent the Unthinkable

516 East Rutland Street
Covington, LA 70433

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offenderwatch.com

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SECTION ONE: A PUBLIC SAFETY SOLUTION

WE UNDERSTAND YOUR NEEDS

Our proposed OffenderWatch Suite will help deliver effective sex offender registration, support mobile operations, and provide public notification.

We believe in exceeding the *letter* of the law and the *spirit* of the current sex offender management statutes. We propose to address specific challenges related to your agency's sex offender management and public notification responsibilities.

We have identified these crucial objectives:

- Create a more efficient process when offenders move in or out of the jurisdiction
- Improve communication and record sharing with law enforcement agencies nationwide
- Process registrations and verifications more efficiently
- Improve investigations with advanced search, interagency collaboration, mobile operations
- Expand community awareness of sex offenders in neighborhoods and online

Our needs assessment has identified critical issues which must be addressed to achieve agency objectives:

- Lack of connectivity with other jurisdictions
- No interface with other state's offender databases
- Minimal automation of registration and forms processing
- Limited investigative search capabilities
- Lack of immediate notification of citizen submitted tips

CHOOSE THE NATIONAL LEADER

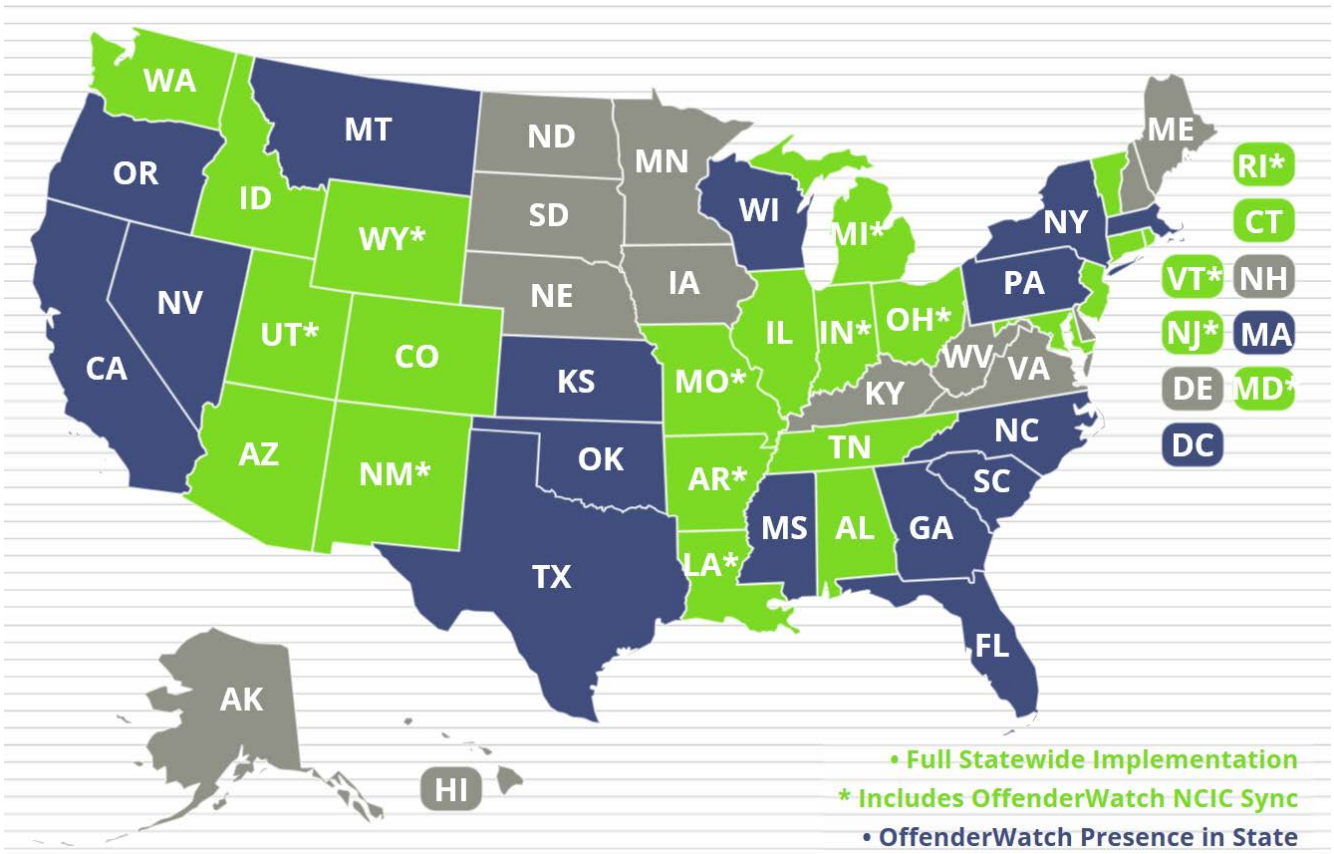
OffenderWatch is used by more states and law enforcement agencies than any other solution.

Watch Systems LLC, doing business as OffenderWatch, is a privately held consultation and process improvement firm based in Covington, LA. Over the past 20 years, OffenderWatch has specialized in

helping law enforcement identify, adopt and deploy best practices in proactive sex offender management and community notification. In addition to our professional consultation services, OffenderWatch has developed a web-based software solution called OffenderWatch to further enhance the workflow and process efficiencies of our law enforcement client partners.

OffenderWatch is highly configurable, so all agency workflows and processes are seamlessly supported with little or no customization required. This allows for shorter, less complex implementations, faster time to deployment and lower overall development and support costs when compared to home grown internally hosted solutions.

Today, over 3,000 law enforcement agencies in 36 states utilize OffenderWatch to efficiently register and proactively manage over 500,000 registered sex offenders. Because these agencies are part of the only nationwide law enforcement network dedicated to sex offender management, they can share records, documents, photos and case information critical to effective management and public notification. A competitive differentiator between OffenderWatch and any other sex offender management solution is the network of law enforcement professionals collaborating and sharing data daily. The power of the OffenderWatch network has led to numerous cross-country arrests of non-compliant and absconded offenders. See Appendix "A" for specific case studies.



OffenderWatch is the sex offender management and community notification solution used by over 14,000 users in over 3,000 agencies in 39 states and all 94 judicial districts of the U.S. Marshals Service.

OUR HOSTED OFF-THE-SHELF SOLUTION HAS ALL YOU REQUIRE

OffenderWatch ensures up-to-date, reliable, and accurate offender information.

OffenderWatch® is a law enforcement database and geographic information system (GIS) that is a hosted Software as a Service (SAAS) application with secure online access. Because OffenderWatch is hosted for

you, there is no specialized hardware required, and the system can grow with your needs. We will configure OffenderWatch to immediately satisfy your state's applicable sex offender statutes. OffenderWatch will also be configured to meet your agency's policies and procedures regarding public notification requirements. The moment your OffenderWatch goes live, your agency will be compliant with the letter of the law and exceeds the spirit of the law within your jurisdiction.

OffenderWatch is hosted at NLETS and requires no IT support from your agency.

OffenderWatch NLETS hosting including all hardware and network services for the OffenderWatch database, GIS system, and notification system. The facility has security, disaster recovery, fire and power protection. With one of the most secure and established hosting systems in the nation, NLETS provides the latest, state-of-the-art technology in an unparalleled secure environment with redundant technical infrastructure and onsite expertise monitoring hardware and connectivity 24/7/365. Nlets has a robust, scalable, private, secure network with connectivity to every state and federal agency with a law enforcement component including the FBI CJIS Division.

SECTION TWO: A PROVEN INVESTMENT

Our proposed solution will satisfy the following objectives to reach the goal of effectively complying with the sex offender registration and notification requirements.

1. Ensure compliance to state sex offender registry and notification statutes, staff training in best practices using the system, and ongoing professional support.
2. Improve efficiency by automating many common tasks and eliminating double entry.
3. Integrate with a powerful GIS system for automatically checking addresses and mapping.
4. Support the information transfer of offenders between local agencies and to the state, as well as to the national registries and alert the US Marshals on absconded offenders.
5. Provide secure Software as a Service (SaaS) solution where all data remains under the control of your agency, with software and hardware upgrades to ensure future compliance and system availability.

Our pricing model has been developed over 20 years so that it is fair and reasonable to our law enforcement customers of any size. Several considerations are weighed in our calculation to deliver and support state-wide, county, Tribe, or Police Department solutions that can be maintained in a long-term partnership. Based on the needs the agency has communicated and the variables factored in the delivery of a solution for the Agency, we have derived at a long-term plan. The variables include, but are not limited to, the Agency's need assessment, population, and a license supporting unlimited agency users. We also considered the number and complexity of any external interfaces to the system.

OFFENDERWATCH SUITE: MOBILE APP, BOOKING ALERTS & MAILINGS

Our OffenderWatch Renewal Suite is a proven and low-cost solution for registering agencies.

ITEM NO.	OFENDERWATCH SUITE	PRICE
1	**WS515 – OffenderWatch Mobile** Used to perform field address verifications, sweeps, field investigations, and locate homeless offenders. Search for offenders, create My Queue to do list, display maps, take photos, pin-point location on map, capture Lat & Long, add notes, and automatically update the record in OffenderWatch database.	$565.37
2	**WS503 – OffenderWatch Booking Alerts** Booking Alerts automatically notifies you when one of your registered offenders is booked or released from a jail in the U.S.	$1,278.19
3	WS101 **– OffenderWatch Mailings** Booking Alerts automatically notifies you when one of your registered offenders is booked or released from a jail in the U.S.	No renewal cost; will be charged based on actual number of mailings.

ITEM NO.	OPTIONAL PRODUCTS AND SERVICES	PRICE
4		$Insert
5		$Insert
6		$Insert
7		$Insert
8		$Insert

PAYMENT AND BILLING TERMS

Annual Subscription / Renewal

OffenderWatch and any add-on products is an annual subscription that renews automatically. If the agency chooses not to renew, then the agency must provide a written notice to OffenderWatch 60 days prior to the renewal date. The renewal date is the date of execution of the contract.

Duration of Contract

This contract is for the period of January 1, 2021 thru December 31, 2021.

Invoicing

Your agency will be invoiced with the execution of this agreement. Payment is due 30 days upon receipt of invoice.

Escalation

The cost of OffenderWatch and optional products increases minimum 2.5% to maximum 5% per year for the duration of the contract.

Ownership of Offender Data

The Sheriffs remains the owner of all offender data stored by OffenderWatch. Per published policy statements and guidelines, you may download initially, periodically, or at agreement termination, a full unrestricted copy of your offender data. Watch Systems holds your data securely and maintains full confidentiality of your offender data.

Other Terms

All OffenderWatch software components and data are maintained within the United States. Watch Systems, LLC complies with Federal regulations pertaining to the development of an Equal Employment Opportunity Plan (EEOP), 28 C.F.R. § 42.301-.308.

SIGNATURES

Agreed to and Accepted by Signatures

For OffenderWatch

Jonathan Roberts
Vice President, Operations
OffenderWatch
516 East Rutland Street
Covington, LA 70433
jroberts@offenderwatch.com
Mobile: 985.871.8110

For the Agency

Signature

Date

Name, Title

Your agency
Street
City, State, Zip
Email:
Phone:

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2/23/2021
Subject:	Facilities Re-Organization
Presenter:	L. Wingfield & J. Jones
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

The Facilities Manager worked with the HR Manager and Administration and found that a re-organization of the Facilities Department would help increase productivity, meet the growing needs of the department, and have an overall cost savings. The re-organization consists of the following:

1. Changing position 1318, currently a Facilities Assistant Manager non-bargaining grade 17, to an Office Assistant IV, Courthouse grade 9. The OAIV will assist the Facilities Manager with administrative support, for example scheduling, payroll, accounts payable, and accounts receivable.
2. Change position 1520 (unfunded and vacant) to a Facilities Lead Maintenance Worker, non-bargaining grade 13. Once this position is funded with the difference between a Facilities Maintenance Worker and a Facilities Lead Maintenance Worker, the Facilities Manager will internally post for the Lead position and transfer the successful candidates' wages into the Lead, leaving a Facilities Maintenance Worker unfunded and vacant to be eliminated.
3. Increase the Clerk of the Board, currently a non-bargaining grade 12 to a non-bargaining grade 14, who regularly completes administrative tasks within the Facilities Department.
4. Increase the Executive Assistant position, currently a non-bargaining grade 12 to a non-bargaining grade 13, who helps and backs up the administrative tasks within the Facilities Department.

This re-organization is being accomplished by the following documents:

1. Internal Facilities (department 110) line item transfer
2. Facilities (department 110) to Commissioners (department 107) line item transfer
3. Resolution establishing the new grade for a Clerk of the Board
4. Resolution establishing the new grade for an Executive Assistant, please note there is only 1 Executive Assistant throughout the County therefore, this will not have any unforeseen effects.

Fiscal Impact

The overall cost savings for the 2021-2022 budget for all of the items proposed is roughly $45,000.

cc: Facilities, HR, Auditor

Prepared by: L. Wingfield

Recommendation

Recommend the Board of Benton County Commissioners adopt all 4 resolutions as presented.

Suggested Motions

I move to approve the resolution and LIT for the Facilities re-organization to change position 1318 to an Office Assistant IV and position 1520 to a Facilities Lead Maintenance Worker.

I move to approve the resolution establishing the Clerk of the Board as a non-bargaining grade 14 effective February 1, 2021.

I move to approve the resolution establishing the Executive Assistant as a non-bargaining grade 13 effective February 1, 2021.

I move to approve the resolution and LIT to transfer funds from Facilities, department 110, to Commissioners, department 107, to fund the increases for the Clerk of the Board and Executive Assistant.

cc: Facilities, HR, Auditor

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 CURRENT EXPENSE FUND NUMBER 0000101, 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.

Dated this _____ day of _____, 2021

_____
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: L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: County Facilities Dept Nbr: 110

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.301	1318	Facilities Assistant Manager	$87,849
523.500	1318	Facilities Assistant Manager	$48,896
TOTAL			$136,745

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.301	1318	Office Assistant IV	$80,500
523.500	1318	Office Assistant IV	$46,245
518.301	1520	Fac. Lead Maintenance Worker	$5,000
523.500	1520	Fac. Lead Maintenance Worker	$5,000
TOTAL			$136,745

Explanation:

2021-2022 Budget. Facilities Re-organization. Changing position 1318 from a Facilities Assistant Manager, non-bargaining grade 17 to an Office Assistant IV, Courthouse grade 9. Changing vacant and unfunded position 1520 to a Facilities Lead Maintenance Worker, nonbarg grade 13.

Prepared by: L. Wingfield Date 15-Feb-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING THE SALARY GRADE FOR THE CLERK OF THE BOARD.

WHEREAS, as part of the Facilities re-organization and information received as part of a salary survey that was conducted based on comparable counties similar positions; and

WHEREAS, it is recommended that the Clerk of the Board be placed as a grade 14 on the Benton County Non-Bargaining salary schedule; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approve the placement of the Clerk of the Board position on the Benton County Non-Bargaining salary schedule at a grade 14 effective February 1, 2021; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retain 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 _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING THE SALARY GRADE FOR THE EXECUTIVE ASSISTANT.

WHEREAS, as part of the Facilities re-organization it was determined that there was a need to increase the Executive Assistant position; and

WHEREAS, it is recommended that the Executive Assistant be placed as a grade 13 on the Benton County Non-Bargaining salary schedule; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approve the placement of the Executive Assistant position on the Benton County Non-Bargaining salary schedule at a grade 13 effective February 1, 2021; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retain 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 _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor

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 CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 110 TO 107.

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 _____, 2021

_____
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: L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: County Facilities to Commissione

Dept Nbr: 110 to 107

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
523.500	1318	Facilities Assistant Manager	$22,000
TOTAL			$22,000

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
511.300	1147	Clerk of the Board	$13,000
513.100	1246	Executive Assistant	$9,000
TOTAL			$22,000

Explanation:

2021-2022 Budget. Facilities Re-organization part 2. Increasing the Clerk of the Board from a non-bargaining grade 12 to a non-bargaining grade 14 and increasing the Executive Assistant from a non-bargaining grade 12 to a non-bargaining grade 13.

Prepared by: L. Wingfield

Date 15-Feb-2021

Approved ❑

Denied ❑

Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2/23/2021
Subject:	LIT to change an Information Systems Analyst
Presenter:	L. Wingfield & R. Heard
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

Due to current department needs and candidate qualifications, IT is requesting to change a vacant Information Systems Analyst III to an Information Systems Analyst II. Upon review of department needs and staff's qualifications, the IT Manager, may request to promote an Information Systems Analyst II to an Information Systems Analyst III with board approval given the line item is budgeted for an Information Systems Analyst III.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution and the LIT to change position 1690 to an Information Systems Analyst II.

Suggested Motion

I move to approve the resolution and attached LIT to change an Information Systems Analyst III to an Information Systems Analyst II.

cc: IT, HR, Auditor

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 CENTRAL SERVICES FUND NUMBER 0502101, DEPARTMENT NUMBER 000.

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

Dated this _____ day of _____, 2021

_____
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: L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Central Services | Fund Nbr: 0502101

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
518.810	1690	Info Systems Analyst III	$136,418	518.810	1690	Info Systems Analyst II	$136,418
TOTAL			$136,418	TOTAL			$136,418

Explanation:

2021-2022 Budget. Changing a vacant Information Systems Analyst III (Courthouse grade 16) to an Information Systems Analyst II (Courthouse grade 14) with the option to change back with board approval when necessary.

Prepared by: L. Wingfield | Date 14-Feb-2021

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2/23/2021
Subject:	LIT to create 2 Temp Housing Program Navigators
Presenter:	L. Wingfield & K. Sullivan
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 approval of the Emergency Rental Assistance Grant, Human Services is requesting two (2) extended temporary Housing Program Navigators to help provide the community with the greatest assistance when administering funding as provided by the Grant. Human Services will work with HR to assure the extended temporary employees follow temporary help guidelines with an anticipated end date in connection with the Grant of December 31, 2021.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution and the LIT to create two (2) Temp Housing Program Navigators.

Suggested Motion

I move to approve the resolution and attached LIT to create two (2) Temp Housing Program Navigators.

cc: Human Services, HR, Auditor

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 HUMAN SERVICES FUND NUMBER 0108101, DEPARTMENT NUMBER 560

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: Lexi Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Contract Management Dept Nbr: 560

Fund Name: Human Services Fund Nbr: 0108101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
566.220	4155	Contract Services	$70,000
TOTAL			$70,000

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
565.110	1267	Temp Housing Program Navigator	$29,000
565.110	1270	Temp Housing Program Navigator	$29,000
565.110	2102	Social Security	$4,440
565.110	2104	Retirement	$7,460
565.110	2119	Paid Family Leave	$100
TOTAL			$70,000

Explanation:

2021-2022 Budget. New Temporary Positions 1267 & 1270 are hourly positions for 2021 only. Are not funded for 2022 or beyond. Positions are grant related for the Emergency Rental Assistance Grant and end with the completion of the Grant December 31, 2021.

Prepared by: Lexi Wingfield Date: 14-Feb-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Training LIT
Presenter:	Josie Delvin
Prepared By:	Josie Delvin
Reviewed By:	

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

Type of Agenda Item:

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

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

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

Summary / Background Information

The Clerk is requesting this LIT so that we can hire people and place them in training with employees that are taking advantage of the early retirement. These items are to be used only for the 2021-2022 cycle.

Fiscal Impact

None, money is currently available in the retiring employees' line item.

Recommendation

The Benton County Clerk recommends passing the resolution for employee training line items.

Suggested Motion

The Benton County Board of County Commissioners moves to approve the resolution as presented by the Clerk to create 2 training line items for the 2021-2022 budget cycle.

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 106

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: J. Delvin

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Clerk

Dept Nbr: 106

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.300	1226	LPA IV	$6,900	512.300	1306	LPA IV - Trainee	$6,900
512.300	1211	LPA III	$4,700	512.300	1237	LPA III - Trainee	$4,700
TOTAL			$11,600	TOTAL			$11,600

Explanation:

We are requesting this LIT so that we can hire people and place them in training with the employees that are taking advantage of the early retirement. These line items are to be used only for the 2021-2022 budget cycle. The trainee will be moved to the permanent line item once the current employee retires on April 1, 2021. For the LPA IV the trainee will be at a grade 7 and the LPA III trainee will be placed at grade 6. These positions are governed by the Courthouse bargaining unit.

Prepared by: Josie Delvin

Date: 10-Feb-2021

Approved ☐

Denied ☐

Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 23, 2021
Subject:	Professional Medical Service Agreement Discussion & Direction
Presenter:	Cdr. Shelton
Prepared By:	Lisa Small
Reviewed By:	Cdr. Shelton

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

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

Summary / Background Information

Per Resolution 2020-841 dated November 10, 2020, the Board of Benton County Commissioners approved the Request for Qualifications for Professional Medical Services for the Benton County Corrections Department (BCCD). A total of sixteen (16) companies requested a copy of the Request for Qualifications packet with the following companies responding:

- NaphCare, Inc., Birmingham, AL
- Diamond Pharmacy Services – Alternative Pharmacy Only Option

Diamond Pharmacy Services provided an alternative pharmacy only option to the RFQ, which was also reviewed and considered.

Fiscal Impact

Based on the proposal for 0 – 500 inmates, there will be an approximate $419,937 shortfall in the current 2021-2022 approved budget. A three (3) year contract would be $7,289,032.05

Based on the proposal for 501 – 650 inmates, there will be an approximate $1,242,263.00 shortfall in the current 2021-2022 budget. A three (3) year contract would be $8,608,963.71

Recommendation

Chief Souza and Commander Shelton recommend moving forward with an Agreement with NaphCare as the only responsive bidder to be placed on the consent agenda at a later date, with the plan to keep the average daily population below 500.

Suggested Motion

Authorize the Benton County Corrections Department and involved parties to negotiate a three (3) year Agreement between Benton County and NaphCare, Inc. for professional medical service for the Benton County Jail to be placed on the consent agenda at a later date.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	23 February 2021
Subject:	Rural County Capital Fund – Disbursement Agreement & Program Update
Presenter:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	AJF

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

Type of Agenda Item:

- ☐ 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

After a general update of the Rural County Capital Fund ("RCCF") program, commissioners will be asked to consider a new RCCF disbursement award to the Port of Benton for the "Richland Innovation Center" improvements project.

Background

Staff will first provide an update of the RCCF program with a brief slide show, including comments on a County policy review and on related activity happening during the current state legislative session.

Staff will then briefly present the Port's project for improvements within the Richland Innovation Center. The Port's initial application which provides great detail, is attached. The staff review committee (Rasmussen, Blain, Fyall) has reviewed the project and recommends it for funding. The Prosecutor has approved the disbursement agreement for form, and the Port will have signed it before the Commissioners' meeting.

The agreement calls for the disbursement of $1,100,000 from the Port's allocation. As of December 31, 2020 there was $1,568,000 available in the Port's RCCF allocation and therefore this request can be accommodated in full.

Fiscal Impact

Total expenditure from the Rural County Capital Fund will be $1,100,000.

Recommendation

Staff recommends funding the project.

Suggested Motion

"I move for the disbursement of Rural County Capital Funds to the Port of Benton for the Richland Innovation Center project in the amount of $1,100,000, and for signing of the disbursement agreement by the Chair that will put this action into force."

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE RURAL COUNTY CAPITAL FUND, DISBURSEMENT TO THE PORT OF BENTON FOR THE "RICHLAND INNOVATION CENTER IMPROVEMENTS" PROJECT

WHEREAS, RCW 82.14.370, adopted by the Washington State Legislature in 1997, authorizes certain qualified counties like Benton County to impose a "sales and use tax for public facilities", the revenue from which is intended to support "economic development activities" through the construction of "public facilities" by the cities, ports, and the County itself for the purposes of job creation and tax revenue generation; and,

WHEREAS, Benton County has established the "Rural County Capital Fund" for said economic development activities, and has reserved a portion of the Fund for discretionary disbursement to cities and ports within the County who request County participation with qualified capital development projects that are compliant with both State law and County policy; and,

WHEREAS, the Port of Benton submitted an application for disbursement of funds to be used toward certain improvements located with the city referenced herein as the "Richland Innovation Center Improvements", which calls for the upgrade of roads and utilities within Port property located in Richland, bringing said roads and utilities to current city standards for the purposes of eventual sales, leases, and further developments; and,

WHEREAS, the County and the Port have mutually agreed to terms on a *Disbursement Agreement for use of Rural County Capital Funds*; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of County Commissioners that the Chairman is hereby authorized to sign the *Disbursement Agreement for use of Rural County Capital Funds* with the Port of Benton for the disbursement of up to $1,100,000.00 toward completion of the "Richland Innovation Center Improvements" project from the Port's allocation of Rural County Capital Funds, as stipulated in the *Disbursement Agreement*.

Dated this 23rd day of February, 2021.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

orig: Sustainable Development
cc: Port of Benton, Auditor

Prepared by: A.J. Fyall

DISBURSEMENT AGREEMENT

FOR USE OF RURAL COUNTY CAPITAL FUNDS

This Agreement, among and between Benton County (hereinafter "County"), and the Port of Benton (hereinafter "Port"), shall be effective upon execution by both parties.

WHEREAS, the County has previously agreed to distribute certain funds received from the State of Washington that it has deposited in its Rural County Capital Fund (hereinafter "Fund") after April 1, 2016 for the financing of certain "public facilities [projects] serving economic development purposes" as contemplated by State statute (RCW 82.14.370) and in conformance with County policy (Resolution 2017-103, adopted January 31, 2017); and

WHEREAS, the County and the Port are authorized, including under Chapters 39.33 and 39.34 of the Revised Code of Washington, to contract with each other and other public agencies in order to effectively and efficiently operate, administer, and carry out their programs and public projects; and

WHEREAS, the 71.5-acre "Richland Innovation Center", now owned by the Port and formerly attached to the United States Department of Energy's Hanford Site, is part of the overall 2,875-acre Tri-Cities Research District, a State of Washington *Innovation Partnership Zone* focused on education and commercialization in the areas of advanced manufacturing, computational industries, and biosciences; and,

WHEREAS, the Port desires to undertake infrastructure improvements within the Richland Innovation Center so that development of the property, which has stagnated because inadequate infrastructure, can continue; and,

WHEREAS, the substantial improvements that the Port seeks funding to accomplish consist of the widening of Einstein Avenue, Fermi Avenue, Salk Avenue, Boyle Street, Curie Street, Dalton Avenue, and University Boulevard within the Richland Innovation Center, new sidewalks, curb-and-gutter, and streetlights along those streets, and the installation of internet infrastructure and other utilities along those streets to bring the overall infrastructure and development potential in that area depicted in Exhibit A to acceptable standards as detailed in the Binding Site Plan for the property (hereafter, "the Project"); and,

WHEREAS, the Project will support the continued growth within the wine, hospitality, engineering, technology, and biosciences industries that are central to the Port's and City of Richland's (the "City") shared vision for this part of the City; and also holds the potential for allowing the Richland Innovation Center to be a focal point, as contemplated in the Tri-Cities Research District master plan, as a location where research partners with private industry; and,

WHEREAS, specific companies have expressed desire to purchase and redevelop some of the underlying land within the Richland Innovation Center if the infrastructure can be brought to City standards; and,

WHEREAS, the Project is estimated to result in retention of existing and recruitment of new light industrial development that will result in over $15 million in private investment and over 300 jobs, which will positively tax revenues within Benton County; and,

WHEREAS, the Port has requested $1,100,000.00 for the Project from that portion of the Fund allocated to it by the County to be reimbursed to the Port by the County; and,

WHEREAS, the requested funding amount is currently available within the Port's Fund allocation;

NOW THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the County and the Port mutually agree to the following:

1. Based on the Port's request for reimbursement from the Fund, the County agrees to reimburse the Port for up to $1,100,000.00 of qualified direct costs incurred by the Port for the Project between the date of the execution of this Agreement and December 31, 2023; contingent upon: (i) such funds being less than the amount of the Fund allocated to the Port, and (ii) that each reimbursement is consistent with the County's Rural County Capital Fund Disbursement Policy.

2. The Port and the County acknowledge and agree that the December 31, 2023 completion date may be amended by mutual consent at a later time if problems arise regarding the Project schedule, and both parties understand that neither party is obligated to agree to any amendment.

3. The Port represents that the use of revenues from the Fund for the Project is consistent with RCW 82.14.370.

4. The Port agrees to use all funds allocated by this Agreement solely for the purpose of financing the Project and warrants that all expenditures by the Port for which it seeks reimbursement will comply with RCW 82.14.370.

5. The parties agree that funds will be disbursed only as reimbursement for actual, direct costs incurred by the Port in connection with the Project.

6. The Port shall invoice the County every ninety (90) days after the effective date of this Agreement, identifying all Project costs incurred by the Port during the prior quarter that are eligible for and for which reimbursement is sought. All invoices shall be mailed to the County at the following address:

   Benton County Commissioners Office
   ATTN: Sustainable Development Manager
   7122 West Okanogan Place
   Kennewick, Washington 99336

7. All approved reimbursement payments will be made via check mailed directly to the Port at 3250 Port of Benton Boulevard, Richland, Washington 99354.

8. The Port shall not hold the County liable for any delay in disbursements, but the County agrees to use its best efforts to make appropriate disbursement payments to the Port in a reasonably timely fashion.

9. The Port shall be responsible for establishing policies for implementing this Agreement, monitoring progress of the Project, and monitoring the fulfillment of the Parties' responsibilities under the Agreement. In addition to other responsibilities set forth in this Agreement, the Port is responsible for following applicable bid and prevailing wage law policies and procedures when awarding bids for the Project contemplated by this Agreement.

10. The Port agrees to provide the County with a quarterly report along with each invoice outlining the status of the Project, including a spreadsheet detailing all costs being reimbursed by the County.

11. If Rural County Capital Funds are applied by the Port toward non-eligible expenditures, the County may cease all disbursements and the Port shall repay to the County all monies inappropriately expended.

12. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by the parties during the term of this Agreement and for three years after its termination. This Agreement shall be filed by the Port with the Benton County Auditor.

13. It is not the intention that a separate legal entity be established with respect to the Project, nor is the joint acquisition, holding, or disposing of real or personal property anticipated.

14. The Port agrees to indemnify the County from and against any claims, actions, losses, costs, penalties, damages, attorneys' fees, and all other liabilities and costs of defense of any nature arising out of the County's agreement to disburse funds under this Agreement.

15. The Port shall not have the right to assign the rights under this Agreement nor to terminate its obligations hereunder without first securing the written consent of the County.

16. The County's obligation to disburse funds under this Agreement only extends to direct Project costs incurred prior to December 31, 2023. After that date, the County's rights under this Agreement shall continue, but the County may use the funds previously allocated under this Agreement for any purpose allowable under state law.

17. This Agreement contains the entire, complete, and integrated statement of each and every term agreed-to by and between the Port and the County, and this Agreement supersedes any and all prior written and unwritten agreements and understandings pertaining to the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed below.

BENTON COUNTY

_____
Jerome Delvin, Commission Chairman

Date: _____

PORT OF BENTON

Diahann Howard
Diahann Howard, Executive Director

Date: 2-3-2021

ATTEST:

_____
Clerk to the Board

ATTEST:

Danielle Conner
Danielle Conner, Director of Finance

APPROVED AS TO FORM:

Ryan K Brown
Chief Deputy Prosecuting Attorney

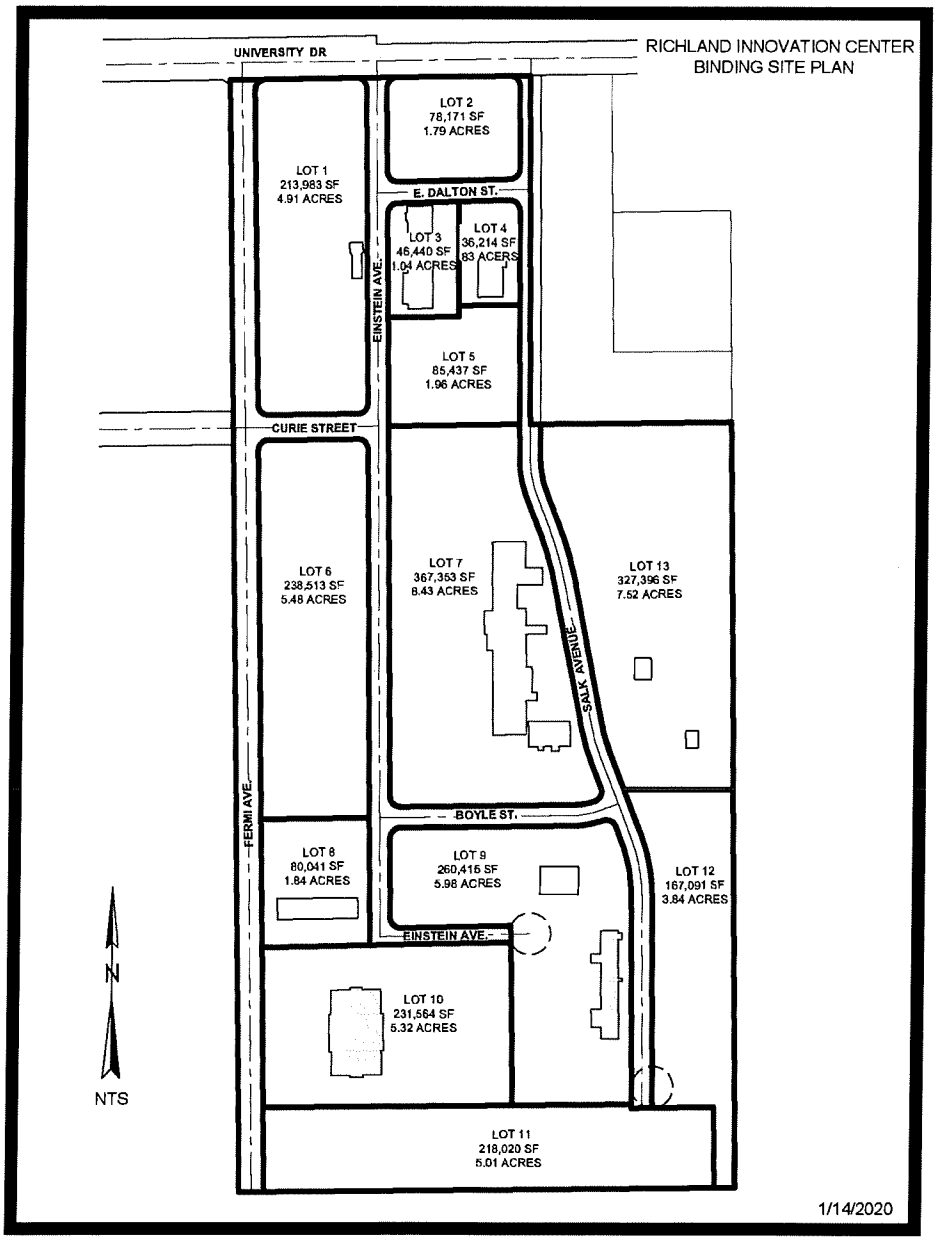
APPROVED AS TO FORM:

David Billetdeaux, Port Counsel

EXHIBIT A

PROJECT AREA – THE RICHLAND INNOVATION CENTER

Project improvements will occur within the Richland Innovation Center Binding Site Plan area depicted here.



BENTON COUNTY

RURAL COUNTY CAPITAL FUND
PROJECT APPLICATION FORM

Organization: Port of Benton

Contact: Diahann Howard, PPM® Executive Director

Telephone: 509-375-3060 **Email:** dhoward@portofbenton.com

Address: 3250 Port of Benton Blvd. Richland, WA 99354

Project Title: **Richland Innovation Center 71.5 Acre- Roads, Streetlights, Sidewalks and Development Building**

Project Category:

__X_ Transportation (Roads & Bridges)	___ Energy Generation
___ Domestic Water Facilities	___ Transmission & Conveyance
___ Industrial Water Facilities	___ Earth Stabilization
___ Sanitation & Sewer	___ Telecommunications
___ Buildings & Structures	___ Port Facilities
_X__ Other: Street Lights and Sidewalks	

Project Description: Please describe the project briefly, but with the essential details. Include location (attach vicinity map), describe how the project will be managed, and list any partnerships or other forms of leveraged monetary, logistical, administrative, or other support.

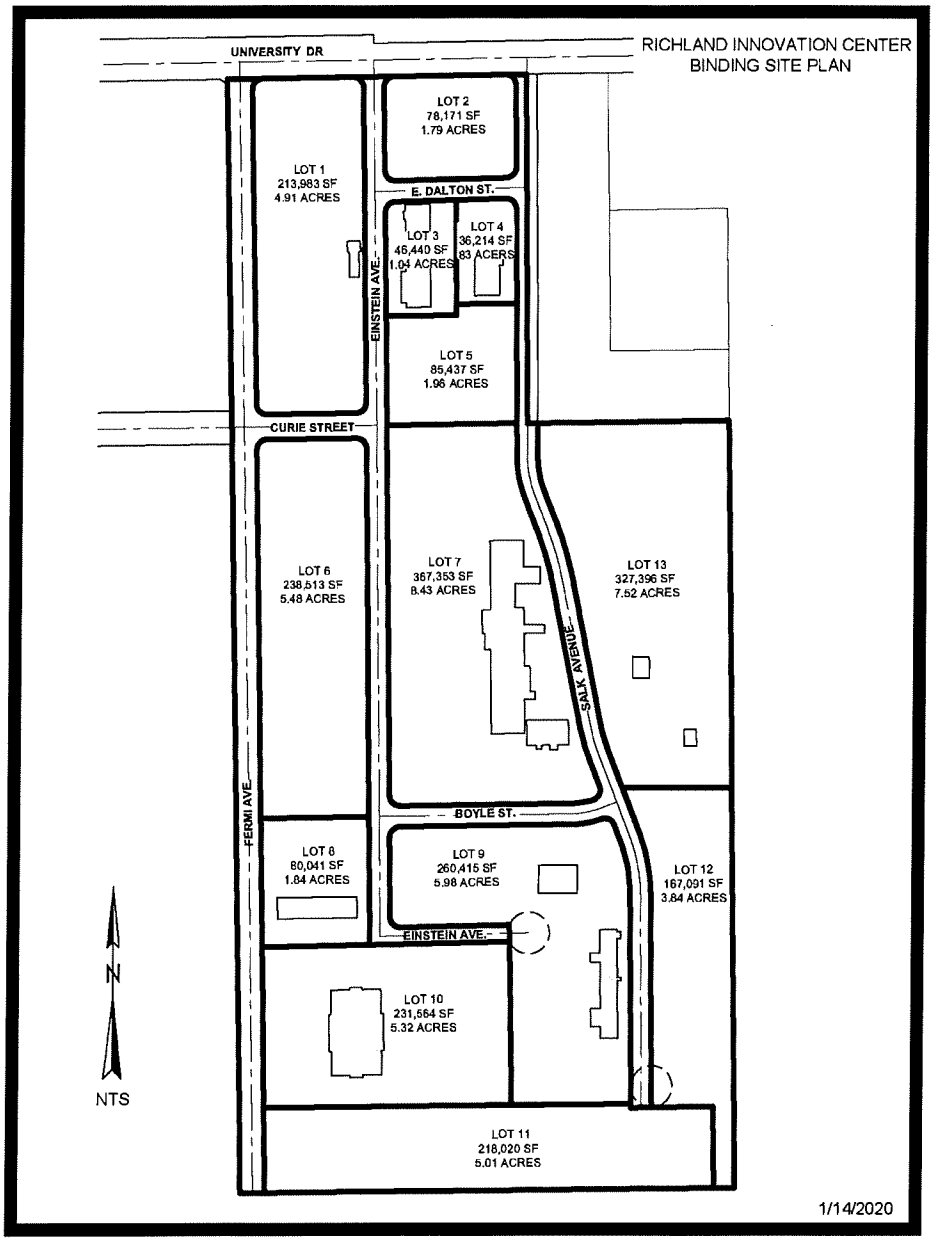
The Port of Benton acquired 71.5 acres of land located in north Richland, south of University Drive, east of Stevens known as the former Hanford 3000 area in 1996 under the U.S Department of Transportation Maritime Administration (MARAD) Port Conveyance Program. The property was conveyed to the Port of Benton with deed restrictions that required the port to get approval on all uses and any lease over five years, along with providing an annual report to MARAD.

Over the last ten years the Port has worked with MARAD, along with Congressional offices to remove the property from the program and the attached deed restrictions. Finally, working with Congressman Newhouse, Section 2829B of the National Defense Authorization Act for Fiscal Year 2017authorized the U.S Department of Transportation Maritime Administration (MARAD) to release all remaining rights, title and interest to the approximately 71.5 acres Richland Innovation Center (RIC). However, the Port had to provide $3 million in payment for the release of the restrictions to allow removal of the property from the program. As the transfer action was taking place, the Port was working with the City of Richland to plat the property to support land sale and lease development upon the 71.5 acres. The Binding Site Plan process was complicated for this sub-division because the land had been partially developed with improvements over the decades. Furthermore, the developed parcels lacked adequate municipal infrastructure to meet current zoning and building codes. The Port had to complete significant surveying

and land subdivision, as well as prepare preliminary plans for additional infrastructure across developed lots for items such as street lights, sidewalks, curb/gutter, and road widening. The Port also had to prepare cost estimates for these deferred improvements as well as preliminary design documents. Over the last 18 months the Port has expended approximately $50,000 in completing the Binding Site Plan process. The final plat was approved by the City of Richland in January 2020 with requirements to improve the property with streets upgrades, curb/gutter, sidewalks and streetlights. The Port of Benton will retain ownership of the roadways, manage and administer the development of the property with a focus on job creation within key industry target sectors (value added agriculture, advanced manufacturing, clean energy and education).

The RIC property is a central feature within the 2,875 acre Tri-Cities Research District (the "TCRD", a State of Washington Innovation Partnership Zone) that the Port of Benton administers. It is one of the few properties within the district boundary that can allow light industrial use within close proximity to Pacific Northwest National Laboratory (PNNL) and WSU Tri-Cities (WSU TC). The TCRD is made up of Battelle, Department of Energy/PNNL, Energy Northwest, WSU Tri-Cities, Columbia Basin College, WorkSource Development, TRIDEC, the City of Richland, City of Pasco, and FUSE SPC, along with private business owners focused on entrepreneurial and technology focused development.

The RCCF dollars are being requested to support the site development improvements that are required under the new plat conditions. The City of Richland is requesting for roadways to be improved, as well as sidewalks, curb/gutter and street lights, across all existing developed lots. The Port would like to complete these improvements along with adding fiber prior to any sell or land lease property for private development and job creation. The Port has a letter of intent for the construction of wine production facilities from Charlie Hoppes, Fidelitas winery. The Hoppes family wants to support ongoing wine education by being near the WSU Wine Science Center and they also want to support the expansion of WSC fermentation programs. The Port is also in discussions with WSU Tri-Cities, Hanford History Project and B Reactor Tours to see if a joint 10-20,000 sq. ft. facilities development building could be constructed. A white paper has been drafted regarding the project. We believe the RIC may be an ideal option and we are also considering a second site by the USS Triton Submarine Park. Having the RIC plat improvements complete allows for more meaningful business discussions to come to fruition.



Is the Project named in City/County/Port Comprehensive Plan? _X__ Yes ___ No

Is the Project named in the Benton County Overall Economic Development Plan? ___Yes_X__No

Note: To ensure compliance with RCW 82.14.370, all projects submitted to the County will be included in the updated Benton County Overall Economic Development Plan, revised at least annually.

Project Schedule & Budget

Estimated proposed project schedule, expenditures, and sources of funds.

Project Begin Date: Summer 2020 **Completion Date:** Winter 2020

Project Budget: $1,000,000 **Contingency?:** 10%

Project Funding Sources: Proponent's Own Funds: Port expended $3m 2019 to purchase, $50,000 to Plat
2020-2021 $100,000 POB funds

Other Leveraging Sources: _____

_____

Benton County RCCF: $1,000,000

Project Budget & Schedule Detail:

PROJECT PHASES	START DATE	FINISH DATE	RCCF FUNDS REQUESTED	OTHER FUNDS IN-HAND	SOURCE(S) OF OTHER FUNDS
Design	March 2020	May 2020	$200,000		
Construction	June/July 2020	December 2020	$900,000		
SUB-TOTALS			[1] $1,100,000	[2] $0	
TOTAL PROJECT COST			[1+2] $1,100,000		

Rural County Capital Fund assistance is on a reimbursable basis. The proponent must be able to cash-flow work on the project either in whole or in phases. The proponent shall invoice the County not more than once per month for those expenses eligible for Rural County Capital Fund assistance to the extent that such costs are directly attributable and properly allocable to the project.

Project Anticipated Benefits

What are the anticipated outcomes of this project with respect to the criteria identified below?

Please answer concisely in narrative form, supported with defendable estimates and projections. This is not a competitive application. The intent is to demonstrate that the project meets with the "economic development purposes" intended by the Legislature in its development of RCW 82.14.370 and our local economic development goals, not to weigh the merits of multiple projects against each other.

Jobs

- Estimated *new* jobs to be created? What mix/types of new jobs?
- Estimated retention of *existing* jobs?

Currently, there are two businesses who would like to purchase property they currently lease in order to support additional private investment and expansion. Columbia Energy currently employees 35 full time employees with an average wage of $35.00 per hour and planning for 25% growth for each of the next three years ($4.9 million in additional investment and 96 jobs). If they are the selected team for Hanford contracting work their planning growth would be 100%. Hitman Transportation employs eight full time employees. Companies currently located within the RIC that may have interest include:

- Moravk Biochemical Inc. With only two local employees they support R&D work for national companies such as Phzer.
- WSU TC. WSU TC currently leases a lab space. They have interest in acquiring the building due to the amount of investment already completed within the facility. WSU TC's acquisition would provide support to the Bioproducts Sciences and Engineering Laboratory researchers specifically within the area of aviation biofuel. It also provides ongoing research and hands on experience for students specifically within the area of biosciences.
- PNNL and Hanford. Both have contractor related office space supporting approximately 130 employees.

The Port also has interest from wineries to use the property for production facilities that can leverage the close proximity of the location to the WSU TC Wine Science Center. Graduate students in both the viticulture and the enology programs, as well as the hospitality programs would be supported by such a property use. We have one wine owner, Fidelitas that currently has 10-15 employees. They have interest in expanding production including into fermentation of other products. This is an effort that would be coordinated for ongoing teaching with WSU TC Wine Science Center programs. The impact of these developments will likely result in follow up interest from other value added agriculture industries.

Overall we estimate the light industrial development to result in over $15 million in private investment and over 300 jobs. The parcels along University Drive may be able to support commercial or neighborhood retail that will strongly support the areas growth.

Diversification

- Would the project help to expand the palette of Tri-Cities business and industry? How would it help to develop new sectors to better balance the local and regional economy, making it less anchored in, reliant upon, and responsive to traditional economic sectors?

This project supports the continued growth within the wine, hospitality, engineering, technology and biosciences industries. It also holds the potential for being a central point as contemplated in the TCRD Masterplan as a location where research meets and partners with private industry. This type of partnership and facility was also identified in the MyTRi2030 strategic plan under agriculture, prosperity, and energy. It is also in alignment with desires of Visit Tri-Cities to promote STEM Tourism due to the companies and technologies being developed within this area.

Tax Revenue Generation

- Estimate and discuss tax revenue generation from expanded business or trade (sales, property, business & occupation taxes, etc.).

The one time building permit for the facilities and expansions will support the City of Richland. Ongoing sales tax and B&O taxes from the business will be additional revenues currently not realized. The two anticipated land sales (approx. 13 acres) are estimated to bring over $5 million in private investment and 100 jobs .. Additionally, the County/State will start seeing property taxes as these lots are put into private ownership. The Port is seeking a mix of land sale and land lease in an effort to provide sustaining revenues to support further economic development and job creation efforts.

Sustainability

- Does the project utilize existing abandoned, derelict, or otherwise underutilized land, buildings, or other infrastructure?
- What are the long-term prospects for success of the project's intended beneficiaries?
- What is the project's impact on resource consumption?
- Discuss other potential environmental impacts.

The Port has worked for years to get the RIC property and deed restrictions released. During this period (from 1996-2020) the Port has invested over $1.5M to improve the property and buildings. The RIC has been a blight due to the state of disrepair of the buildings received by the Port. The Port had two buildings removed from the tax rolls due to their condition. This action will allow private investment to take place by bringing renovated and new facilities onto the property tax rolls. It will allow the property to fulfil the envisioned TCRD masterplan by connecting research of WSU TC and PNNL with private industry that will be key for the long-term success of our regional diversification efforts. The TCRD masterplan encourages but does not require sustainable building and site development.

Incidental & Other Benefits

- Does the project have a likelihood to incubate or spin-off other businesses into the future that may not be intended or foreseen now?
- Will the project support additional prestige, cultural, recreational, tourism, or other experiential opportunities aside from the intended direct economic benefits?

  Yes, Columbia Energy, WSU TC Biofuels facility and the proposed wine production expansions will likely result in spin-offs. The Port has adjacent development buildings that can provide these companies with initial start-up space. Currently the private sector has created this space in close relation to the RIC and the Port has been providing leads to these owners.

  Overall we believe the RIC can bring other agri-business related companies to build upon the momentum of what has been started following the initial phase of development now that the deed restrictions have been removed. We also hope this will spur further private development to occur and provide space to support the growing education, research, tourism events and experiences.

Submitted by:

Agency: Port of Benton

Date: 2-3-2020 By: Diahann Howard, PPM®

Title: Executive Director

Submit to: Benton County Commissioners Office
% Sustainable Development Manager
7122 West Okanogan Place
Kennewick, Washington 99336
commissioners@co.benton.wa.us