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 the 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, May 25, 2021

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- **May 18, 2021**

Review Agenda

Consent Agenda

Human Resources
a. Memorandum of Understanding w/Teamsters 760 Representing, Corrections Corporals & Sergeants

Information Technology
b. Purchase of Two Laptops, Two Docking Stations & Four Monitors for Superior Court from Dell, Inc.
c. Purchase of One Apple IPad From Costco Wholesale Corp.
d. Approving a Crestron Standard Marketing Materials Release Form

Juvenile
e. Contract w/Robert Stuyvesant for Sex Offender Services & Treatment

Office of Public Defense

f. Amended District Court Public Defense Contract w/Joseph White
g. Amended District Court Public Defense Contract w/Summer Rife
h. District Court Public Defense Contract w/Trinity Orosco for Prosser Docket

Planning

i. Short Plat Vacation of Irrigation Easement – SPV 2021-002
j. Approval of the Altered Plat of Seitz River Tracts – SA 2020-001

Public Works

k. Granting Franchise to Columbia Irrigation District for Irrigation Pipeline System & Facilities
l. Granting Franchise to Kiona Irrigation District for Irrigation Water Transmission System & Facilities

Purchasing

m. Contract w/Gram Northwest for Cultural Resource Survey @ Rattlesnake Mountain Shooting Facility
n. Auditor – Janitorial Contract w/Intermountain Cleaning Service @ the Voting Center
o. Commissioners – Contract w/Benjamin's Carpet One for New Countertop
p. Public Works – Rental of Vactor Truck From One.7 for Road Culvert Maintenance

Workforce Development Council

q. Reappointing Bob Legard for Labor Representation
r. Reappointing Jim Smith for Labor Representation
s. Reappointing Michael Bosse for Labor Representation
t. Reappointing Carol Moser for Business Representation
u. Reappointing Michael Lee for Higher Education Representation

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

Public Hearing

Col Solare Franchise Renewal for An Irrigation System & Facilities ~ C Woods

Cascade Natural Gas Franchise Renewal for a Natural Gas Distribution System ~ C Woods

Community Development Block Grant w/Department of Commerce ~ K Sullivan

Scheduled Business

Line Item Transfer in Corrections for Position Change – Corrections Corporal to Corrections Officer ~ S Souza & L Wingfield

Letter to EFSEC Regarding Horse Heaven Wind Farm Project ~ G Wendt

Agreement w/Tyler Technologies for EnerGov Permitting Software ~ J MacPherson, G Wendt & R Blain

Other Business

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Tuesday, May 18, 2021, 9:00 a.m.
Meeting provided by Video Live-Broadcast and Telephonically

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

Absent: Commissioner Shon Small (Excused)

Benton County Employees Present During All or a Portion of the Meeting: Deputy County Administrator Matt Rasmussen; Robert Heard, IT Manager; Eric Hsu, OPD Manager; Adam Morasch, Risk Manager; Cristina Woods, Public Works (via/WebEx).

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of May 11, 2021 were approved.

Review Agenda

Mr. MacPherson requested the following items be added to the agenda under "Other Business":

- OPD – Request for Approval of Internship
- Benton County Face Covering Policy

Consent Agenda

MOTION: Commissioner McKay moved to approve the consent agenda items "a" through "q", Chairman Delvin seconded and upon vote, the Board approved the following:

District Court

a. Reimbursement Agreement w/WA Administrative Office of the Courts for Printers & Laptops

Human Services

b. Ratifying Agreement, #PSC-2021-GW-TRAP w/Goodwill Industries for Rent Assistance

c. Ratifying Agreement, #PSC-2021-GW-CTRAP w/Goodwill Industries for Rent Assistance
d. First Amended Contract w/Benton-Franklin Community Action Committee for Scope of Work Changes

Information Technology

e. Approving Website Redesign From Municipal One

Juvenile

f. Line Item Transfer, Fund No. 0115-101, Dept. 171
g. Contract w/Michael Henry for Sex Offender Treatment Services

Public Safety Tax

h. Line Item Transfer, Fund No. 0148-101, Dept. 115 to 121
i. Termination of Contract with Tri-Cities Chaplaincy dba Chaplaincy Health Care (Step-Up Program)

Public Works

j. Approval of Construction Plans & Authorization for Bid Process for Obsolete Bridge Removal Project
k. Agreement w/Clean Harbors Environmental Services for Hazardous Waste Disposal Services
l. Speed Limits on Shelby Road & Wamba Road

Purchasing

m. Building – Purchase of Ford Escape From Clary Longview
n. Corrections – First Amended Contract w/Apollo for Jail Boiler Replacement Project
o. Public Works – Accepting Work Performed by Central Paving for Crack Seal Public Works – Agreement w/Christensen Inc for Purchase of Bulk Diesel

Superior Court

p. Purchase Reimbursement Agreement w/WA State Administrative Office of the Courts for Computers, Monitors & Printers

Public Comment

None.

Public Hearing - Vacation of Portion of Right of Way

Cristina Woods, Public Works (via/WebEx) presented the request by Public Works to proceed with vacating an unusable portion of right-of-way abutting E. 45th Avenue.

Commissioner McKay asked if notices were put out to the affected parties.

Ms. Woods said when the County initiated a vacation, they put out notices for three weeks. They did receive inquiries and phone calls, however, were not required to file a petition.

Testimony

Miladin Ostic, via/WebEx, said this vacation affected his property and he spoke in favor of the vacation.

MOTION: Commissioner McKay moved to proceed as recommended with the vacation of a portion of right of way abutting E. 4th Avenue as presented. Chairman Delvin seconded and upon vote, the motion carried.

Justice Center - 2022 Tenant Improvement Project

Robert Blain requested the Board's approval to move forward with advertising for architectural and engineering services to evaluate and design space at the Justice Center for the Clerk's office, upon completion and consolidation of services at the New Administration Building.

He said a study was done in 2015 to evaluate office space needs, and the Board set aside $1.5 million for this work in the capital plan. The Board agreed to move forward.

Mr. Blain stated they would advertise the RFQ and put together a panel to evaluate the submittals, and based on qualifications, would negotiate a price after selection of the A & E Firm.

Other Business

Office of Public Defense – Request for Temporary Help

Eric Hsu, OPD Manager, requested the Board authorize a line item transfer in the amount of $2,000.00 to allow him to hire a temporary Intern for his office. He added that COVID had placed a great burden on his office and this was the beginning of a strategy to help alleviate and address some of the duties in his office. Additionally, he said this was a prime opportunity to see if the Intern (a local resident) would be interested in public defense.

MOTION: Commissioner McKay moved to approve the Line Item Transfer in the amount of $2,000.00 to hire a temporary employee as presented. Chairman Delvin seconded and upon vote, the motion carried.

Resolution Update – Face Covering Guidance

Matt Rasmussen and Adam Morasch presented a Resolution regarding face covering guidance for the Board's consideration.

Mr. Rasmussen said the CDC issued new guidance allowing individuals who were fully vaccinated against COVID-19 to cease wearing face coverings when in public. Additionally, the Washington State Secretary of Health also revised its order exempting people who were fully vaccinated against COVID-19 from its face covering requirements.

In June 2020, the Board adopted a resolution requiring face coverings to be worn at all times when inside a County building. If the local rule in place was more restrictive than that adopted by the State, it would supersede the State's order. He asked if the Board wanted to rescind its resolution and update the policy to mirror the Secretary of Health, and then the County Administrator could make any changes necessary under the Emergency Resolution.

MOTION: Chairman Delvin moved to approve the Resolution and Rescind Resolution 2020-437 and adopt the face covering guidance issued by the Washington State Department of Health under Order of the Secretary of Health 20-03.2 and any subsequent revisions regarding masking in Benton County Facilities as presented. Commissioner McKay seconded and upon vote, the motion carried.

Benton County Fairgrounds – Benton-Franklin Fair

Commissioner McKay said that he and Mr. Rasmussen met with the Fair Board and they asked if Benton County was in support of them putting on a fair. Commissioner McKay said he was in support. Mr. Rasmussen said the Fair Board wanted to move forward and the mass vaccination site would likely be moved on by then, or if they still needed a presence at the Fairgrounds, they would find a way to have them there.

Chairman Delvin said he was in support of moving forward with the Fair. Commissioner McKay said he would reach out to the Fair Board to let them know Benton County was in support.

Broadband Presentation

Chairman Delvin said he wanted to schedule a presentation in June when the Board was back in Prosser and would forward that information for scheduling a date and time.

Payroll

Check Date: 05/05/2021

Payroll Checks
Total all funds: $2,393,503.78
Warrant #: 243139-243177
Direct Deposit #: 161741-162338

Payroll Deductions/Transfers
Total all funds: $2,311,252.27
Taxes #: 101210415, 101210501-101210511
ACH #: 1762-1768

Payroll Deductions/Warrants
Total all funds: $124,352.89
Warrant #: 217278-217287

Accounts Payable

Check Date: 05/11/2021

P-Cards #: 0521
Total all funds: $317,342.39

Check Date: 05/14/2021

Warrants #: 217431-217724
Total all funds: $2,268,287.29

EFT's #: 1769-1774
Transfers #: 05142101-05142108
Total all funds: $6,258,907.41

Resolutions

2021-391: Reimbursement Agreement w/WA Administrative Office of the Courts for Printers & Laptops
2021-392: Ratifying Agreement, #PSC-2021-GW-TRAP w/Goodwill Industries for Rent Assistance
2021-393: Ratifying Agreement, #PSC-2021-GW-CTRAP w/Goodwill Industries for Rent Assistance
2021-394: First Amended Contract w/Benton-Franklin Community Action Committee for Scope of Work Changes
2021-395: Approving Website Redesign From Municipal One
2021-396: Line Item Transfer, Fund No. 0115-101, Dept. 171
2021-397: Contract w/Michael Henry for Sex Offender Treatment Services
2021-398: Line Item Transfer, Fund No. 0148-101, Dept. 115 to 121
2021-399: Termination of Contract with Tri-Cities Chaplaincy dba Chaplaincy Health Care (Step-Up Program)
2021-400: Approval of Construction Plans & Authorization for Bid Process for Obsolete Bridge Removal Project
2021-401: Agreement w/Clean Harbors Environmental Services for Hazardous Waste Disposal Services
2021-402: Speed Limits on Shelby Road & Wamba Road
2021-403: Building – Purchase of Ford Escape From Clary Longview
2021-404: Corrections – First Amended Contract w/Apollo for Jail Boiler Replacement Project
2021-405: Public Works – Accepting Work Performed by Central Paving for Crack Sea
2021-406: Public Works – Agreement w/Christensen Inc for Purchase of Bulk Diesel
2021-407: Purchase Reimbursement Agreement w/WA State Administrative Office of the Courts for Computers, Monitors & Printers
2021-408: Transfer of Funds Within Current Expense Fund 0000101, Dept. No. 136
2021-409: In the Matter of Adopting the Face Covering Guidance Issued by The Washington State Department of Health Under Order of The Secretary Of Health 20-03.2 - Rescinding Resolution 2021-437

There being no further business before the Board, the meeting adjourned at approximately 9:20 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	5/25/2021
Subject:	Promotion Date MOU with Corrections Supervisors
Presenter:	
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:

- ☒ 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

When employees are promoted mid-month, their anniversary date/step increase date was moved to the first of the following month. In January and February 2021, the County received two (2) grievances regarding promotion dates, step increase dates, and anniversary dates for the Correction Supervisors union representing Corporals and Sergeants. Through multiple discussions with the union and Offices/Departments within the County, it was decided to not move the step increase date to the first of the following month, but rather make it that exact date. For example, if someone is promoted May 10, 2021, their step increase date will be May 10, 2022 rather than June 1, 2022. With the change in these dates, four (4) employees will receive back pay.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution and the Memorandum of Understanding regarding Promotion Dates with Teamsters 760 representing Corrections Corporals and Sergeants.

Suggested Motion

I move to approve the Resolution and the Memorandum of Understanding regarding Promotion Dates with Teamsters 760 representing Corrections Corporals and Sergeants.

cc: HR, Auditor, Hallstrom, Corrections Department, Teamsters 760 Prepared by: L. Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A MEMORANDUM OF UNDERSTANDING WITH TEAMSTERS 760 REPRESENTING CORRECTIONS CORPORALS AND SERGEANTS REGARDING PROMOTION DATES.

WHEREAS, an agreement has been reached to make the step increase date coincide with the promotion date for Corrections Corporals and Sergeants; **NOW THEREFORE**,

BE IT RESOLVED, the Benton County Commissioners approve the attached Memorandum of Understanding between Teamsters 760 representing Corrections Corporals and Sergeants regarding promotion dates.

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, Hallstrom, Corrections Department, Teamsters 760

Prepared by: L. Wingfield

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between Benton County (County) and Teamsters Local No. 760 (Union), representing Correctional Corporals and Sergeants, and has as its purpose to resolve any and all issues related to employees' promotion dates, step increases, and anniversary dates, and backpay for the grievances filed by Shane Grimm on 01/04/2021 and Teamsters Local 760 on 02/04/2021 on behalf of the bargaining unit.

WHEREAS, the parties have negotiated and agreed to a 2020 – 2022 Collective Bargaining Agreement (CBA) between Benton County and Teamsters Local No. 760 (Union); and

WHEREAS, the parties desire to resolve and settle all disputes arising out of the application of promotions and step increase dates as they relate to Article 26, Wage Rates and Other Compensations; and

WHEREAS, the parties agree that employees promoted mid-month will receive the promotions new rate of pay on the effective date of their promotion; and

WHEREAS, the parties agree that employees promoted mid-month will receive the subsequent step increases on the annual anniversary of the promotion date; and

WHEREAS, the parties expressly agree this MOU, except as specifically agreed upon herein, shall not set precedence in any manner and on any level, nor establish or otherwise be utilized to establish, and/or be utilized as evidence of, "current practice" or "past practice", in any manner, including without limitation, labor negotiations, grievances and/or arbitrations, involving the 2020 – 2022 CBA, stipulated by the parties as controlling regarding the subject matter of this MOU, or any successor CBA, between the parties.

NOW, THEREFORE, based on the above recitals, the parties have mutually agreed to the following:

1. The promotion date and connected pay for all members in positions covered by the 2020-2022 Correctional Corporals and Sergeants CBA will be as follows:

Employee	Position	Promotion Date
BELL, BRYCEN	Corporal	8/1/2008
BLAIR, CHAD	Corporal	3/12/2007
BULLINGTON, BRADLEY	Corporal	6/6/2019
COULSON, LARRY	Corporal	1/7/2008
FINLEY, DANIEL	Sergeant	9/1/1997
GRIMM, SHANE	Corporal	12/5/2019

HANNAMAN, GLENN	Sergeant	8/1/2020
MURRY JR, DALLAS	Corporal	3/1/2016
NELSON, JONATHAN	Corporal	6/6/2019
ORELLANA, AMANDA	Sergeant	12/5/2019
RUIZ, JOSE	Corporal	4/1/2017
SLATER, LACEY	Corporal	8/1/2020
VANDINE, CHAD	Sergeant	8/1/2012
WILLIAMS, COREY	Corporal	8/1/2020

2. The step increase following the promotion date will be on the anniversary of the promotional date, if the promotion or step increase fall mid-month, the monthly salary will be prorated, unless leave without pay or any other circumstance occurred/occurs that would push the anniversary date back per the CBA.

3. Employees who have not yet reached the top step within their classification will receive backpay for partial months as follows:

Employee	Position	Promotion Date	Step Increase	Back Pay Amount
BULLINGTON, BRADLEY	Corporal	6/6/2019	6/6/2020	$131.14
GRIMM, SHANE	Corporal	12/5/2019	12/5/2020	$154.94
NELSON, JONATHAN	Corporal	6/6/2019	6/6/2020	$123.00
ORELLANA, AMANDA	Sergeant	12/5/2019	12/5/2020	$160.88

4. Effective upon implementation of this Agreement, any and all grievances covered by this agreement, including the grievance filed individually by Shane Grimm and the grievance filled collectively for the bargaining Unit by Local 760, are hereby withdrawn with prejudice, and agrees to release any future actions, ULP's or causes of actions of any kind whatsoever on account of, or in any way related to, the subject matter of the grievances involved in, or forming the basis for this grievance and relating claims in this Agreement.

5. No language in the current 2020 – 2022 CBA, including but not limited to Article 26, is amended, or intended to be changed, altered or otherwise modified by this MOU.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly constituted and legal representatives, as follows:

BENTON COUNTY COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Constituting the Board of
Benton County Commissioners

Attest:

_____
Clerk of the Board

Date: _____

Approved as to form:

_____
Stephen Hallstrom, DPA

TEAMSTERS LOCAL NO. 760

Leonard J. Crouch
Leonard J. Crouch, Secretary Treasurer

Date: 5.11.21

ORIGINAL

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Approving the purchase of Two Dell Mobile Precision or comparable model laptops, Two Dell Thunderbolt docking stations, and Four Dell Monitors for Superior Court Judicial Officers from Dell, Inc.
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	Procurement

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

Superior Court Administration has an opportunity to receive funds from Administrative Office of the Courts (AOC) to reimburse costs needed to purchase seven judicial officers and seven administration staff's computer equipment which includes laptops, docks, and monitors. All but two of the judicial officer's workstations were budgeted in Central Services Replacement Fund (0132101). Neither the Central Services Replacement Fund nor Superior Court Administration 2021-2022 biennium budget included approved funds to purchase two laptops, two docks, and four monitors. IT recommends purchasing these two laptop setups so that all the judges computer equipment is included in Central Services Replacement Fund. 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. All purchased equipment will be enrolled into Central Services Replacement Fund.

Laptops, docking stations, and monitors 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: **$5,606 excluding WSST.**

Fund: **Approved Superior Court Administration 2021-2022 budgeted funds.**

Recommendation

Information Technology recommends that the Board approves the purchase of two Dell Mobile Precision or comparable model laptops, two Dell Thunderbolt docking stations, and four Dell monitors in an amount not to exceed $5,606 excluding WSST from Dell Inc.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF TWO DELL MOBILE PRECISION OR COMPARABLE MODEL LAPTOPS, TWO DELL THUNDERBOLT DOCKING STATIONS, AND FOUR DELL MONITORS FOR SUPERIOR COURT FROM DELL INC.

WHEREAS, Superior Court Administration has an opportunity to receive funds from Administrative Office of the Courts (AOC) to reimburse costs needed to purchase computer equipment for seven Superior Court Judicial Officers and seven administration staff, which includes laptops, desktops, and monitors; and

WHEREAS, all but two Judicial Officer's workstations were budgeted in Central Services Replacement Fund (0132101) or in Superior Court Administration's 2021-2022 Benton County budget; and

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

WHEREAS, Information Technology recommends purchasing two Dell Mobile Precision or comparable model laptops, two Dell Thunderbolt docking stations, and four Dell monitors from Dell Inc.; 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, the Purchasing Department has reviewed this purchase and found it complies with Procurement, Leasing, and Contracting Policy; **NOW THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves the purchase of two Dell Mobile Precision or comparable model laptops, two Dell Thunderbolt docking stations, and four Dell monitors for Superior Court Judicial Officers from Dell, Inc. in an amount not to exceed $5,606 excluding Washington State Sales Tax to be paid for using 2021-2022 Superior Court Administration Department funds; and

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

Dated this 25 day of May , 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, Superior Court Admin

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.	**3000085039493.1**	Sales Rep	Charles Anglin
Total	**$52,956.74**	Phone	(800) 456-3355, 6180469
Customer #	1710002	Email	Charles_Anglin@Dell.com
Quoted On	May. 06, 2021	**Billing To**	ACCOUNTS PAYABLE BENTON COUNTY CENTRAL SERVICES 620 MARKET ST PROSSER, WA 99350-1300
Expires by	Jun. 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	Quantity	Subtotal
Mobile Precision 3551	**$1,909.09**	**19**	**$36,272.71**
Dell 24 Monitor - P2419H	**$202.52**	**38**	**$7,695.76**
Dell Dock- WD19 130w Power Delivery 180w Power Supply	**$252.35**	**19**	**$4,794.65**

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

Subtotal:	**$48,763.12**
Shipping:	**$0.00**
Estimated Tax:	**$4,193.62**
Total:	**$52,956.74**

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

		Quantity	Subtotal
Mobile Precision 3551	**$1,909.09**	**19**	**$36,272.71**

Estimated delivery if purchased today:
Jun. 01, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Quantity	Subtotal
Intel Core Processor i7-10850H (6 Core, 12MB Cache, 2.70 GHz to 5.10 GHz, 35W, vPro)	379-BDXB	-	19	-
Windows 10 Pro English, French, Spanish	619-AHKN	-	19	-
No Microsoft Office License Included – 30 day Trial Offer Only	658-BCSB	-	19	-
16GB, 1X16GB, DDR4 2933Mhz Non-ECC Memory	370-AFFB	-	19	-
Nvidia Quadro P620 w/ 4GB GDDR5	490-BFBH	-	19	-
M.2 256GB PCIe NVMe Class 40 Solid State Drive	400-BDWT	-	19	-
No Additional Hard Drive	401-AAGM	-	19	-
Intel WiFi6 AX201 Wireless Card for WW	555-BFNV	-	19	-
Intel vPro Technology Enabled	631-ACLE	-	19	-
Dual Pointing Backlit US English Keyboard with numeric keypad	583-BGWN	-	19	-
No ENERGY STAR Qualified	387-BBCE	-	19	-
E5 US Power Cord	450-AAEJ	-	19	-
Regulatory Label included	389-BEYY	-	19	-
FCC Label	389-DPPX	-	19	-
SupportAssist	525-BBCL	-	19	-
System Driver for Mobile Precision 3551	631-ACLD	-	19	-
Dell(TM) Digital Delivery Cirrus Client	640-BBLW	-	19	-
Dell Optimizer for Precision	640-BBSC	-	19	-
Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps)	658-BBMR	-	19	-
Waves Maxx Audio	658-BBRB	-	19	-
Dell Power Manager	658-BDVK	-	19	-
Dell SupportAssist OS Recovery Tool	658-BEOK	-	19	-
Custom Configuration	817-BBBB	-	19	-
Dell Mobile Precision Workstation 3551 CTO	210-AVJY	-	19	-
Intel Core Processor i7-10850H with Nvidia Quadro P620 Graphics, Thunderbolt	329-BETI	-	19	-
Bottom door	354-BBCD	-	19	-
DP Palmrest w/ Touch Fingerprint Reader, FIPS Contacted +		-		

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

Contactless Smart Card Reader, NFC, TBT	346-BFZH		19	-
6 Cell 97Whr ExpressCharge Capable Battery	451-BCJI	-	19	-
Cable for 6 cell battery	470-ADOZ	-	19	-
WWAN Support	320-BDRS	-	19	-
Bezel, IR Camera & Mic	325-BDRQ	-	19	-
15.6" FHD 1920x1080, Anti-Glare Non-Touch, 45% color gamut	391-BEYZ	-	19	-
130W E5 Type C Power Adapter (EPEAT)	492-BCWZ	-	19	-
Thank you choosing Dell ProSupport. For tech support, visit //support.dell.com/ProSupport	989-3449	-	19	-
ProSupport: 7x24 Technical Support, 4 Years	997-1106	-	19	-
Dell Limited Hardware Warranty Plus Service	997-1129	-	19	-
ProSupport: Next Business Day Onsite, 4 Years	997-6029	-	19	-
Extended Battery Service for Years 2 and 3 of System Life	988-5552	-	19	-

		Quantity	Subtotal
Dell 24 Monitor - P2419H	**$202.52**	**38**	**$7,695.76**

Estimated delivery if purchased today:
May. 19, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Quantity	Subtotal
Dell 24 Monitor - P2419H	210-AQDX	-	38	-
Dell Limited Hardware Warranty	814-5380	-	38	-
Advanced Exchange Service, 3 Years	814-5381	-	38	-

		Quantity	Subtotal
Dell Dock- WD19 130w Power Delivery 180w Power Supply	**$252.35**	**19**	**$4,794.65**

Estimated delivery if purchased today:
May. 18, 2021
Contract # C000000010849
Customer Agreement # NASPO MNWNC-108/05815-003

Description	SKU	Unit Price	Quantity	Subtotal
Dell Dock- WD19 130w Power Delivery - 180w AC	210-ARIQ	-	19	-
Advanced Exchange Service, 4 Years	824-3985	-	19	-
Dell Limited Hardware Warranty	824-3993	-	19	-

Subtotal:	**$48,763.12**
Shipping:	**$0.00**
Estimated Tax:	**$4,193.62**
Total:	**$52,956.74**

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:	May 25, 2021
Subject:	Approving the purchase of one Apple iPad Pro 11" 128GB from Costco Wholesale Corp.
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	Procurement 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

Superior Court Administration has requested to purchase a new Apple iPad for one of their Judicial Officers. Resolution 2019-753 requires that all non-budgeted devices purchased over $500 be coded to the department's 3508 expenditure code and be approved by the Board of Benton County Commissioners.

Fiscal Impact

Amount: **$749.99 excluding WSST.**

Fund: **Approved Superior Court Administration 2021-2022 budgeted funds.**

Recommendation

Information Technology recommends that the Board approves the purchase of one Apple iPad Pro 11" 128GB from Costco Wholesale Corp. in an amount not to exceed $749.99 excluding WSST. All equipment purchased will be added to Central Services Replacement Fund (0132101).

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF ONE APPLE IPAD PRO 11" 128gb FROM COSTCO WHOLESALE CORP.

WHEREAS, the Superior Court Administration has made a request to purchase a new Apple iPad for one of their Judicial Officers; and

WHEREAS, Information Technology reviewed three quotes from three vendors in Best Buy Co., Inc., Amazon.com, and Costco Wholesale Corp; and

Best Buy Co., Inc.	Apple iPad Pro 11" 128GB	$799.99
Costco Wholesale Corp.	**Apple iPad Pro 11" 128GB**	**$749.99**
Amazon.com	Apple iPad Pro 11" 128GB	$799.00

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; and

WHEREAS, Information Technology recommends purchasing one Apple iPad Pro 11" 128GB from Costco Wholesale Corp.; and

WHEREAS, the Purchasing Department has reviewed this purchase and found it complies with Procurements, Leasing, and Contracting Policy; **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 Apple iPad Pro 11" 128GB in an amount not to exceed $749.99 excluding Washington State Sales Tax, to be paid for using approved 2021-2022 Superior Court Administration funds; and

BE IT FURTHER RESOLVED, newly purchased ipad will be enrolled into Central Services Replacement Fund (0132101).

Dated this 25 day of May , 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, Superior Court Admin

Prepared by: R. Heard

Apple

Apple - 11-Inch iPad Pro (Latest Model) with Wi-Fi - 128GB - Space Gray

Model: MHQR3LL/A **SKU:** 4265400 **Release Date:** 05/21/2021

Not yet reviewed | 2 Answered Questions

Interactive Tour and documents

Price Match Guarantee

$799.99 or **$66.67/mo.*** suggested payments with **12-Month Financing**

Show me how >

15-DAY FREE & EASY RETURNS

You get 15 days to return or exchange this item. Learn more >

Hot offer 15-Month Microsoft 365 Offer with Device

Carrier:

Wi-Fi

Total Storage Capacity:

128GB

Screen Size:

11"

Color: Space Gray

$799.99

$799.99

Protection for your iPad Pro

(249)

- [ ] AppleCare+ for iPad - Monthly Plan **$5.99**

Most popular protection plan for your product

- [ ] AppleCare+ for iPad - 2 Year Plan **$129.00**

Learn more

Pre-order yours now

Pickup: Not available for this item

FREE Shipping: Should ship on Wed, May 26

Estimates for 99336

VIDEO

Roll over image to zoom in

2021 Apple 11-inch iPad Pro (Wi-Fi, 128GB) - Space Gray

Visit the Apple Store

Price: $799.00 & FREE Returns

You're approved to **buy now and pay later.** We just need to **get you set up. Learn more**

Style: **WiFi**

WiFi | WiFi + Cellular

Size: **128GB**

1T | 2T | **128GB** | 256GB | 512GB

Color: **Space Gray**

- Apple M1 chip for next-level performance
- Stunning 11-inch Liquid Retina display with ProMotion, True Tone, and P3 wide color
- TrueDepth camera system featuring Ultra Wide front camera with Center Stage
- 12MP Wide camera, 10MP Ultra Wide camera, and LiDAR Scanner for immersive AR
- Stay connected with ultrafast Wi-Fi
- Go further with all-day battery life
- Thunderbolt port for connecting to fast external storage, displays, and docks

Show more

Share

$799.00
& FREE Returns

FREE delivery

Deliver to Benton - Prosser 99350

This item will be released on May 24, 2021.
Pre-order now.

Pre-order: Add to Cart

Secure transaction

Ships from Amazon.com
Sold by Amazon.com

Support: Free Amazon tech support included

Add a Protection Plan:

☐ 2-Year Protection for $79.99

Add an Accessory:

☐ Microsoft 365 Family | Premium Office Apps | 1TB O... $89.99

☐ Apple Pencil (2nd Generation) $124.98

☐ Apple Magic Keyboard (for iPad Pro 11-inch - 3rd G... $289.98

☐ Add a gift receipt for easy returns

Add to List

Special offers and product promotions

Central, you're approved to **buy now and pay later.** We just need to **get you set up.** Learn more

AppleCare+ Available

New Apple iPad Pro 11” 128GB (3rd Gen)

Item 1553008 | Model MHQT3LL/A

★★★★★ Write a review

Your Price $749.99

Shipping & Handling: $4.99*

AppleCare+ for iPad available

AppleCare+

Order now for expected ship week of 5/24/21

Features:

- Apple M1 8-core CPU is Up to 50 Percent Faster With All-day Battery Life²
- 11-inch Liquid Retina Display Delivers an Immersive Experience
- Thunderbolt Port Opens Up a Wider Ecosystem of Accessories
- 128GB of Storage Capacity
- Wi-Fi Only

Color : Space Gray

Space Gray | Silver

Costco

1

Add to Cart

Add to List

Members Only: Warehouse pick up is available for this item and standard delivery time will apply. Please note, only the bill-to credit card addressee may pickup the product. Valid state or government-issued photo ID is required at the time of pick up.

Compare Product

Share Print

Feedback

Product Details | Specifications | Warranty & Services | Shipping & Returns | Reviews

Product Details

Trade in your Mac, iPad or Apple Watch
and receive a **Costco Shop Card** as payment

phobio

Compare iPad Models

Learn More

Limit 2 per member.

iPad Pro delivers the ultimate iPad experience. The breakthrough M1 chip powers next-level performance and the Liquid Retina display is packed with advanced technologies. The TrueDepth camera features a new 12MP Ultra Wide camera with Center Stage, keeping you perfectly framed on video calls. Magic Keyboard combines a comfortable typing experience with a trackpad. And Apple Pencil (2nd generation)¹ delivers precision whether you’re writing, drawing, or designing. iPad Pro pushes the limits of what you can do on iPad.

Stunning Liquid Retina display:

- 11-inch Liquid Retina display is both portable and gorgeous and delivers an immersive experience with advanced technologies
- ProMotion automatically adjusts the display refresh rate for ultrasmooth scrolling and incredible responsiveness
- Enjoy stunning color accuracy with P3 wide color

Breakthrough Apple M1 chip:

- 8-core CPU with up to 50 percent faster performance delivers a powerful and responsive iPad experience and all-day battery life²
- 8-core GPU with up to 40 percent faster graphics performance is great for graphics-intensive apps and workflows²

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Approving a Crestron Standard Marketing Materials Release Form (Worldwide)
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	

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

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

Summary / Background Information

During COVID, the Board passed Resolution 2020-381 on June 9, 2020 which approved Meier Architecture and Engineering, Inc. to start reviewing technology improvements for the County's thirteen Superior Court and District Court courtrooms. Departments lead by the Director of Operations and Capital Assets, IT, Procurement, Corrections, Superior Court, and District Court worked as a team to make this project successful. Crestron, a leader in audio and video equipment played a huge part in the design of the courtrooms. After the project was completed, Crestron reached out to the County for comments about how Crestron's equipment helped the County achieve audio and video objectives required to conduct court. For Crestron to share our comments about the courtroom technology upgrade, the Board needs to approve and sign a release form. Crestron's release form has been reviewed and approved to form by the Prosecuting Attorney's Office, Civil Division.

Fiscal Impact

Amount: **No Cost**

Fund: **N/A**

Recommendation

Information Technology recommends that the Board approves signing the Crestron Standard Marketing Materials Release Form (Worldwide).

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A CRESTRON STANDARD MARKETING MATERIALS RELEASE FORM (WORLDWIDE)

WHEREAS, on June 9, 2020, per Resolution 2020-381 the Board of Benton County Commissioners signed an agreement between Benton County and Meier Architecture and Engineering, Inc. to begin drafting a design to update technology used in thirteen Superior Court and District Court courtrooms; and

WHEREAS, Crestron a worldwide leader in audio and video equipment was used throughout all thirteen courtrooms and played a huge part in the success of the overall project; and

WHEREAS, after Superior Court and District Court technology upgrades were complete, Crestron has asked Benton County to comment on the Crestron equipment used to achieve audio and video objectives required to conduct court; and

WHEREAS, for Crestron to share Benton County's comments about Superior Court and District Court technology upgrade commercially, Information Technology recommends signing the Crestron Standard Marketing Materials Release Form (Worldwide); and

WHEREAS, the Prosecuting Attorney's Civil Division has reviewed the Crestron Standard Marketing materials Release Form (Worldwide) and has approved to form; **NOW THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation approving the Chairman of the Board to sign the Crestron Standard Marketing Materials Release Form (Worldwide).

Dated this 25 day of May , 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,

Prepared by: R Heard

MMR# _____

CRESTRON	**CRESTRON STANDARD MARKETING MATERIALS RELEASE FORM (Worldwide)**

AUTHORIZATION TO USE MARKETING MATERIALS

1. Licensor hereby represents that Licensor has full authority to execute this Standard Marketing Materials Release Form ("Release") on behalf of the itself and the company listed below ("Company") and to grant the rights set forth herein.

2. Licensor hereby grants to Crestron Electronics, Inc., located at 15 Volvo Drive, Rockleigh, NJ, 07647, its affiliates, subsidiaries, distributors, employees, representatives, agents, and other parties authorized by Crestron Electronics (collectively "Crestron"), the non-exclusive, royalty free, perpetual, irrevocable, world-wide right to reproduce, publish, distribute, transmit, display, perform, and/or otherwise use the materials described in paragraph 7 in any and all business development related materials and matters including, but not limited to, advertisements, brochures, white papers, technical articles, case studies, video presentations, audio presentations, webcasts, podcasts, trade show/event displays, websites, email announcements/broadcasts, sell sheets, trade publications, and/or other marketing and business development publications and/or communications activities.

3. Licensor hereby represents that the persons portrayed in the materials as described in paragraph 7 have given their valid written consent: a) to Licensor for making such materials with respect to their image, voice, performance, likeness, or anything similar; and b) to Crestron for exercising the rights set out in paragraph 2 with respect to their image, voice, performance, likeness, or anything similar. In jurisdictions that so require, written consent for each person portrayed is attached hereto.

4. Licensor agrees to indemnify and hold harmless Crestron from any and all 3rd party claims for damages, including attorney's fees, arising from any misrepresentations made by Licensor herein.

5. Crestron will, at all times, use commercially reasonable efforts to ensure that proper credit is given to Licensor for this submission.

6. This Release is governed and construed in accordance with the laws of New York, United States, applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of laws provisions thereof. Each of the parties to this Release hereby irrevocably consents and agrees that any legal action, suit, or proceeding with respect to this Release shall be brought in a federal or state court located in New York City, New York, and each of them hereby irrevocably accepts and submits to the jurisdiction of such courts with respect to any such action, suit or proceeding. Licensor may have additional rights according to local laws, including laws governing data protection.

7. Description of Materials:
   photo assets and written case study
   _____
   _____
   _____
   _____
   _____
   _____
   _____

Licensor

Signature: _____

Print Name: Jerome Delvin

Company: Chairman, Board of Benton County Commissioners

Date: May 25, 2021

Approved as to Form
Eric Andrews, Benton County
Deputy Prosecuting Attorney

* * *

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 5/11/21 BC 5/25/21
Subject:	Personal Services Contract with Robert Stuyvesant, LCSW
Presenter:	N/A
Prepared By:	Rosa Garcia
Reviewed By:	Darryl Banks

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

Summary / Background Information

Benton-Franklin Counties Juvenile Justice Center wishes to contract with Robert Stuyvesant, LCSW to provide services and treatment for first time adjudicated sex offenders.

The attached Personal Services Contract commences upon execution of the Counties and expires on June 30, 2023.

Fiscal Impact

The fiscal amount shall not exceed $15,000.00. These services are paid from state funds under the SSODA treatment program. There is no fiscal impact to the county budgets.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Personal Services Contract between Robert Stuyvesant and Benton-Franklin Counties Juvenile Justice Center for services.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING ROBERT STUYVESANT A PERSONAL SERVICES CONTRACT TO PROVIDE SERVICES AND TREATMENT TO FIRST-TIME ADJUDICATED SEX OFFENDERS

WHEREAS, per resolution 2021-233, "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, Benton and Franklin Counties request to contract with Robert Stuyvesant to provide services and treatment to first-time adjudicated sex offenders; and

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

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington and by the Board of Franklin County Commissioners, Franklin County Washington the Boards concur with the Juvenile Administrator's recommendation and hereby awards the Personal Service Contract to Robert Stuyvesant, in an amount not to exceed $15,000.00; and

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

BE IT FURTHER RESOLVED, the term of the attached Contract commences upon execution of the Counties and shall expires on June 30, 2023.

DATED this ____ day of _____ 2021
BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this ____ day of _____ 2021
FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-Stuyvesant, 1-Juvenile

R. Garcia

BENTON-FRANKLIN COUNTIES
PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision of the State of Washington, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 West Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter collectively referred to as "COUNTIES"), and **Robert Stuyvesant, LCSW**, a corporation organized under the laws of the State of Washington with her principal office at 177 Cadillac Place, Reno, NV 89509(hereinafter "CONTRACTOR").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin upon execution of the Counties and shall expire on **June 30, 2023**. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

2. SERVICES PROVIDED

a. Pursuant to RCW 13.40.160, the CONTRACTOR shall provide the following services for selected first-time, adjudicated sex offenders:

1. Assess offenders prior to disposition of a sex offense to determine amenability to treatment and risk to the community. The assessment shall be completed by the Washington State certified sex offender treatment provider and shall include:

a. Respondent's version of the facts;
b. Official version of the facts;
c. Respondent's offense history;
d. Assessment of problems in addition to the alleged deviant behaviors;
e. Respondent's, social, educational, and employment situation;
f. Other evaluation measures used; and

g. Amenability to treatment and risk to the community.

2. Develop a proposed treatment plan that includes:
   a. Frequency and type of contact between offender and treatment providers;
   b. Specific issues to be addressed in the treatment and description of planned treatment modalities;
   c. Monitoring plans including any requirement regarding living conditions; lifestyle requirements, and monitoring by family members, legal guardians, or others;
   d. Anticipated length of treatment, and
   e. Recommended crime-related prohibitions.

3. Provide treatment that complies with WAC Chapter 246-930 and the rules adopted by the Department of Health, and that consists of a combination of services identified in the Sex Offender Treatment Provider assessment, and the Washington State Juvenile Court Risk Assessment, deemed most effective to decrease recidivism, increase youth protective factors, and decrease youth risk factors. Specifics of family, group, or individual sessions shall be identified in the provider treatment plan provided during assessment and shall be updated quarterly. Group and Individual treatment services may be provided by the CONTRACTOR in the group treatment room located at the Benton-Franklin Counties Juvenile Justice Center, 5606 W. Canal Place, Suite 106, Kennewick, WA, at the discretion of the Juvenile Justice Center Administrator.

4. Submit, at the request of the Juvenile Probation Counselor, a six-month Court Review Treatment Report, that includes at minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, respondent's relative progress in treatment, formal risk assessments to include at minimum the Structured Assessment of Violence Risk Youth (SAVRY) and Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR), modifications to the treatment plan, and any other material specified by the court at the time of disposition.

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

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

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

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

3. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Robert Stuyvesant, LCSW
177 Cadillac Place
Reno, NV 89509
Phone: (775) 827-7500
Email: robert@reno-therapy.com

b. For COUNTIES:

Darryl Banks
Benton-Franklin Juvenile Justice Center
5606 West Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 222-2316
Fax: (509)222-2311
Email: Darryl.Banks@co.benton.wa.us

4. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rate of $150.00 per hour for each hour of service provided for individual and/or family counseling. A quarterly report, as required by RCW 13.40.160 addressing client's treatment progress is to be included in this hourly rate.

b. At the flat rate of $75.00 for each six-month Court Review Treatment Report.

c. The maximum total amount payable by the Counties to the Contractor under this Contract shall not exceed Fifteen Thousand Dollars ($15,000.00).

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

e. The CONTRACTOR may submit invoices to the COUNTIES not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTIES during the billing period. The COUNTIES shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

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

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

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

5. AMENDMENTS AND CHANGES IN WORK

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

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

Amendment is duly executed by the COUNTIES.

6. HOLD HARMLESS AND INDEMNIFICATION

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

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

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

7. **INSURANCE**

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 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 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 COUNTIES with proof of all such insurance.

b. **Workers Compensation:** CONTRACTOR acknowledges and represents that Contractor currently does not have any employees and, therefore, does not maintain workers compensation insurance. To the extent Contractor hires any employees; however, Contractor shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract.

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

behalf of such employees. Any amount owed to COUNTIES by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTIES to CONTRACTOR for performance of this Contract.

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

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

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

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

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

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

d. **Automobile Liability:** The CONTRACTOR shall maintain, during

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

e. **Other Insurance Provisions:**

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

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

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

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

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

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

limits than the minimums required in this contract, the COUNTIES shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.

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

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

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

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

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington that have a A. M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton and Franklin 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 Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other

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

2. Certificates of Liability Insurance with endorsements attached, must be provided to the COUNTIES' Contract Representative referenced in Section 3.b.

3. All written notices under this Section **[7]** and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' Contract Representative referenced in Section 3.b.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton and Franklin Counties Risk Manager to the following address: Benton-Franklin Counties Juvenile Justice Center 5606 West Canal Place, Suite 106 Kennewick WA 99336.

8. TERMINATION

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

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

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

d. The CONTRACTOR shall have a right to terminate this Agreement upon ten (10) days advance written notice to the COUNTIES in the event the COUNTIES fails to comply with any of the provisions of this Agreement or upon thirty (30) days written notice without cause.

9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

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

10. NON-WAIVER OF RIGHTS

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

11. INDEPENDENT CONTRACTOR

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

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

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

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

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

12. COMPLIANCE WITH LAWS

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

13. OTHER PROVISIONS

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

a. Background Check/Criminal History

1. CONTRACTOR shall authorize Counties to conduct a background check of the CONTRACTOR. The background check may include, but is not limited to, a review of

records on file with the Washington State Patrol, the FBI National Criminal Information Computer (NCIC) and Interstate Identification Index (III), local law enforcement agencies, the Department of Licensing, courts of law, and other agencies, and also may, depending upon assignment of CONTRACTOR, involve fingerprinting.

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

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

b. Sexual Misconduct

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

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

14. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes. The CONTRACTOR shall also keep all fiscal and clinical books, records, documents and other material relevant to this Contract in accordance with WAC 388-805-320 and the WAC Implementation Guide.

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 COUNTIES. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTIES agree that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless 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 COUNTIES upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTIES.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTIES, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTIES at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTIES' Contract Representative or designee. All rulings,

orders, instructions and decisions of the COUNTIES' Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections **[6]** and **[17]**); extended reporting period requirements for professional liability insurance (Section **[7(a)]**); inspection and keeping of records and books (Section **[14]**); litigation hold notice (Section **[26]**); Public Records Act (Section **[27]**) and confidentiality (Section **[19]**).

26. LITIGATION HOLD NOTICE

In the event the COUNTIES learn of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section **[14]** of this Contract may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section **[14]** of this Contract.

27. PUBLIC RECORDS ACT

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

- 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 as of the date written below.

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

Robert Stuyvesant, LCSW	**Benton Franklin Counties Juvenile Justice Center**
Robert Stuyvesant 4/13/21 Date	Darryl Banks 4-26-2021 Date Juvenile Court Administrator
BENTON COUNTY APPROVAL Approved as to Form: Stephen Hallstrom, Deputy Prosecuting Attorney 04/23/21 Date By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____	FRANKLIN COUNTY APPROVAL Approved as to Form: _____ Civil Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Amendment of public defense contract with Joseph White
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

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

Type of Agenda Item:	**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 currently contracts with attorney Joseph White ("Attorney") for public defense services in Benton County District Court (executed through Resolution #2021-145 the "Contract").

Because of attorney's desire to terminate his contract early, it has become necessary to amend the Contract by providing for a shorter notice period but conversely, providing that attorney will complete all cases assigned to him without a need to transfer the cases. This is very beneficial to Benton County since there is a severe shortage of attorneys and the usual continued case responsibility mechanism for departing attorneys would provide for them to be able to request a transfer of their caseload after a certain fixed period of time post-termination.

The proposed amendment and resolution accomplish this. The resolution further acknowledges attorney White's notice of early contract termination and sets the date for its final effectiveness.

Fiscal Impact

None

Recommendation

Recommend approving the proposed contract amendment to the public defense contract with Joseph White, providing for a shorter notice period but conversely, providing that attorney will complete all cases assigned to him without a need to transfer the cases.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE DISTRICT COURT PUBLIC DEFENSE CONTRACT WITH ATTORNEY JOSEPH WHITE TO PROVIDE FOR A SHORTER NOTICE PERIOD BUT CONVERSELY, PROVIDING THAT ATTORNEY WILL COMPLETE ALL CASES ASSIGNED TO HIM WITHOUT A NEED TO TRANSFER THE CASES

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County District Court for Adult criminal cases ("Services"); and

WHEREAS, County has been contracting with attorney Joseph White ("Attorney") to provide Services; and

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of attorney's desire to terminate his contract early (by way of notice provided in writing, attached as Exhibit "A"); and

WHEREAS, it is therefore appropriate to amend the public defense contract with Attorney to provide for a shorter notice period but conversely, providing that attorney will complete all cases assigned to him without a need to transfer the cases; and

WHEREAS, in light of Attorney's notice of early termination, it is appropriate to acknowledge the termination and regard Attorney's contract as terminated with a final effective date of July 11, 2021, with compensation, continued case responsibility, and other provisions of termination as provided in the contract, as amended; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Joseph White, previously executed by and through Resolution #2021-145, ("Contract") is hereby amended as proposed, to provide for a shorter notice period but conversely, providing that attorney will complete all cases assigned to him without a need to transfer the cases; and

BE IT FURTHER RESOLVED that the Contract is also hereby regarded as terminated early, pursuant to written notice provided by Attorney, with a final effective date of July 11, 2021, with compensation, continued case responsibility, and other provisions of termination as provided in the contract, as amended.

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, Joseph White
Copy – Auditor, S Godinez

E. Hsu

AMENDED
PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC2122JDW001

CONTRACT SUMMARY			
Contract Type	**Reduced Monthly**		
Contract Number	**BCDC2122JDW001**	**Contract Holder**	**Joseph D. White**
WSBA #	**55045**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**250**	**Compensation**	**$4,086/mo (2021)** **$4,167/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Law Office of Joseph D. White, PLLC**		
Contract Slot Identifier: DCF-7			

THIS AGREEMENT previously entered into by and between **Joseph D. White,** attorney at law, Washington State Bar Association **# 55045** ("Attorney"), dba Law Office of Joseph D. White, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

IS HEREBY AMENDED AS FOLLOWS BASED ON THE FOLLOWING FACTS, CIRCUMSTANCES, AND RECITATIONS:

A. Attorney has tendered his notice of early termination of this agreement dated April 12, 2021 and the parties agree that it has been received.

B. In light of Attorney's circumstances (extreme workload and inability to take on any more cases ethically) the parties have agreed to cease court appointments to Attorney immediately upon notice (instead of the otherwise applicable 60 day delay).

C. In return, recognizing the difficulties and client inconvenience caused by case reassignments, Attorney has agreed to handle his existing (residual)

caseload to their conclusion without a need for reassignment (that would otherwise apply at the end of the Continued Representation period under the original underlying Agreement.

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

1. Notwithstanding any provisions to the contrary in the underlying Agreement, and pursuant to the Notice of Early Termination dated April 12, 2021 tendered by Attorney, Attorney shall not be appointed to any additional cases or matters pursuant to this Agreement effective April 12, 2021 (or shortly thereafter, if cases were already appointed).

2. Notwithstanding any provisions to the contrary in the underlying Agreement, Attorney shall retain continued responsibility for his entire appointed caseload existing at the time of the notice of early termination ("Residual Caseload") until such cases are resolved and, unless unable to handle any case due to a bona fide conflict of interest, shall not request that they be reassigned. Provided, however, that if a Residual Caseload case is on warrant for more than 90 days, then the case shall be reassigned to another attorney.

3. Attorney shall continue to receive his base monthly compensation for the entire 90 days after his notice date, which ends on July 11, 2021, with the monthly compensation for the month of July prorated accordingly.

4. Attorney shall continue to be eligible for trial per diem and other additional compensation and expense reimbursements as provided in the underlying Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (May 5, 2021 15:23 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date 05-03-21

Joseph White
Joseph White (May 3, 2021 13:02 PDT)

Joseph D. White, WSBA #55045

EXHIBIT A

Eric Hsu

From: Joseph White <lawoffice@josephdwhite.com>
Sent: Monday, April 12, 2021 10:22 AM
To: Eric Hsu
Subject: [EXTERNAL] BCSO Docket

EXTERNAL EMAIL WARNING!!!: 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.

Good morning Mr. Hsu,

I wanted to reach out to you to express my gratitude for putting me on this docket and giving me an opportunity to diversify my courtroom experience.

Having said that, John Jensen (my step-father) has one foot out the door and has been increasingly passing the majority of his potential clients to me and Franklin County OPD also has a contract opening for Superior Court. The combination of these factors along with the fact that I'm still doing the conflict and bindover docket on Wednesday afternoons and Thursday mornings in FCDC, makes it practically impossible to continue to fulfill my current obligations with the BCSO docket.

I am happy to fulfill my existing public defense obligations with you guys, but I am not going to be able to continue on this docket. There's only so much time in the week and I'm already spread too thin to continue to be competent for every client on every docket.

I didn't anticipate how fast my private practice would grow but can't pass up the opportunities before me. I sincerely apologize for seeking to resign from this docket so soon - but I don't really have another option and can't keep up with all the matters as is.

Thank you again, and I look forward to continuing to resolve all the existing matters before me on the BCSO docket over the next several months.

Please let me know at your earliest convenience if there's anything I need to do on my end to ensure this resignation runs smoothly.

Respectfully,
jw

--
Joseph D. White | *Attorney at Law*
Law Office of Joseph D. White, PLLC
www.lawofficeofjdw.com

This email and any documents attached herein may contain legally privileged and confidential information. If you are not the intended recipient, please immediately notify the sender, delete this email and destroy any copies. Any dissemination or action based on the contents of this email by anyone other than the intended recipient is strictly prohibited.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Amendment of public defense contract with Summer Rife
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

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

Type of Agenda Item:	**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 currently contracts with attorney Summer Rife ("Attorney") for public defense services in Benton County District Court (executed through Resolution #2020-886 (the "Contract") on cases not including cases docketed in Prosser ("Prosser Cases").

Because of the need to appoint Attorney to Prosser Cases (since the law firm assigned to Prosser cases has terminated their contract), it has become necessary to amend the Contract by providing for Attorney to take Prosser Cases for an increased compensation rate ($300 per case), commensurate to what was being paid to the law firm that was handling Prosser cases previously.

The proposed amendment accomplishes this.

Fiscal Impact

None

Recommendation

Recommend approving the proposed contract amendment to the public defense contract with Summer Rife, provide for Attorney to take Prosser cases for an increased compensation rate, commensurate to what was being paid to the law firm that was handling Prosser cases previously.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE DISTRICT COURT PUBLIC DEFENSE CONTRACT WITH ATTORNEY SUMMER RIFE TO PROVIDE FOR ATTORNEY TO TAKE PROSSER CASES FOR AN INCREASED COMPENSATION RATE, COMMENSURATE TO WHAT WAS BEING PAID TO THE LAW FIRM THAT WAS HANDLING PROSSER CASES PREVIOUSLY

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County District Court for Prosser docketed criminal cases ("Services"); and

WHEREAS, County has been contracting with attorney Summer Rife ("Attorney") to provide public defense services in District Court that did not include Services; and

WHEREAS, it has become necessary to modify the nature of the services provided by Attorney because of the need to appoint Attorney to Prosser cases (since the law firm assigned to Prosser cases has terminated their contract); and

WHEREAS, it is therefore appropriate to amend the public defense contract with Attorney to provide for Attorney to take Prosser cases for an increased compensation rate, commensurate to what was being paid to the law firm that was handling Prosser cases previously; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Summer Rife, previously executed by and through Resolution #2020-886, is hereby amended as proposed, to provide for Attorney to take Prosser cases for an increased compensation rate (of $300 per case), commensurate to what was being paid to the law firm that was handling Prosser cases previously.

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, [Contractor]
Copy – Auditor, S Godinez

E. Hsu

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122SMR001

CONTRACT SUMMARY			
Contract Type	**Conflict & Overflow Only**		
Contract Number	**BCDC2122SMR001**	**Contract Holder**	**Summer M. Rife**
WSBA #	**57150**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**100**	**Compensation**	**$210 per case** **$300 per Prosser case**
Assigned Court	**District Court**	**Compensation Structure**	**☒ By the case** **☐ Monthly** **☐ Hourly** **☐ By the case but paid monthly**
Compensation Payable To:	**Rodriguez, Interiano, Hanson & Rodgers, PLLC**		
Contract Slot Identifier: DCC-2			

THIS AGREEMENT by and between **Summer M. Rife,** attorney at law, Washington State Bar Association **# 57150** ("Attorney"), dba Rodriguez, Interiano, Hanson & Rodgers, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court, was previously entered into and executed by and through Resolution #2020-886 and was previously amended by and through Resolution #2020-1025. The Agreement is hereby further amended by adding the following provisions. All other remaining provisions remain in effect. This amendment shall apply retroactively to the inception of this agreement.

Attorney shall be compensated in the amount of $210 as a flat fee per appointed case. Provided, however, that for any case appointed that is heard on the Prosser docket, Attorney shall be compensated in the amount of $300 per case.

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (Apr 29, 2021 14:05 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date 4/29/2021

Summer Rife
Summer Rife (Apr 29, 2021 14:02 PDT)

Summer M. Rife, WSBA 57150

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	05/25/21
Subject:	Award of public defense contract to Trinity Orosco
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 legally obligated to provide public defense services in Benton County District Court on criminal cases docketed in Prosser ("Prosser Cases"), and to provide provisional representation during the Prosser arraignment dockets ("Arraignment Representation") collectively ("Services").

Because of an attorney/law firm departure, OPD is needing to award one or more additional contracts to provide Services.

Trinity Orosco ("Attorney") is qualified to provide Services and interested in contracting with Benton County to do so. The proposed contract and resolution effectuate a contract with Attorney for the provision of such Services on the terms contained therein, for the period from 05/01/21 to 12/31/21 at the rate of $300 per case for Prosser Cases and $250 per docket for Arraignment Representation.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute contract with attorney Trinity Orosco for public defense services in Benton County District Court for criminal cases docketed in Prosser, and the Prosser arraignment docket cases. Approve associated resolution as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY TRINITY OROSCO TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT FOR CRIMINAL CASES DOCKETED IN PROSSER, AND THE PROSSER ARRAIGNMENT DOCKET

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County District Court for criminal cases docketed in Prosser, and the Prosser arraignment docket cases ("Services"); and

WHEREAS, because of an attorney/law firm departure, it is necessary for County to award a public defense contract at this time to provide Services; and

WHEREAS, attorney Trinity Orosco is qualified to provide Services and interested in entering into a contract with County for such Services; and

WHEREAS, a proposed public defense contract with attorney Trinity Orosco for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed public defense contract with attorney Trinity Orosco, to provide public defense services in Benton County District Court for criminal cases docketed in Prosser, and the Prosser arraignment docket cases, for the time period from 05/01/21 to 12/31/21 for compensation not to exceed $300 per case for Prosser Cases, and $250 per docket for arraignment docket representation, plus other allowable expenses, premiums, and fees as detailed, is hereby approved and executed on behalf of Benton County.

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, Trinity Orosco
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2121TJO-01L

CONTRACT SUMMARY			
Contract Type	**By the case conflict/overflow/special docket**		
Contract Number	**BCDC2121TJO-01L**	**Contract Holder**	**Trinity J. Orosco**
WSBA #	**41366**	**Effective Dates**	**05/01/21 - 12/31/21**
Caseload Cap	**50**	**Compensation**	**$300 per Case**
Assigned Court	**District Court**	**Compensation Structure**	**By the Case**
Compensation Payable To:	**Trinity J. Orosco, Attorney at Law**		
Contract Slot Identifier: DCP-1			

THIS AGREEMENT is entered into by and between **Trinity J. Orosco,** attorney at law, Washington State Bar Association **# 41366** ("Attorney"), dba Trinity J. Orosco, Attorney at Law 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. While County has contracted with a number of attorney to regularly provide public defense services in Benton County District Court in return for a monthly flat fee ("Monthly Attorneys"), from time to time, it is necessary to

seek the services of additional attorneys aside from Monthly Attorneys for reasons of conflicts of interest or caseload overages. Therefore, County has elected to enter into this agreement with Attorney on a "conflict and overflow" basis whereby Attorney will be appointed cases only on an "as needed" basis on a flat fee per case basis and without a monthly or other periodic compensation payment.

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **1030 N. Center Parkway, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **509-492-6225** and **509-222-2223**respectively; and Attorney's current office/work e-mail address is **trinityorosco@yahoo.com**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) More specifically, Attorney shall accept Appointment Types and Assignments as listed in the following list (as each appointment type is defined in Section 5b) herein .Attorney shall not be responsible for appointment or assignment types not listed hertein in section 5a) even they are defined in section 5b):

1. New Criminal Cases
2. Arraignment Representation

Notwithstanding the above, Attorney's Appointment Types and Assignments shall be subject to the following restrictions: **For cases heard on Prosser Docket only with the further understanding that attorney is only available to attend, and is only expected to attend, Tuesday docket settings.**

b) **Definitions for Case Types and Assignments.** Please see preceding subsection for what specific Case Types and Assignments are specifically applicable to this Agreement.

1) **New Criminal Cases.** Any misdemeanor or gross misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

2) **Post Disposition Matters.** Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

3) **Material Witness.** Any material witness matter relating to a case or matter filed in Benton County District Court.

4) **Returned Appeal.** Any case or matter returned to the Benton County District Court from any higher court.

5) **Conflict Cases.** Any other type of Benton County District Court case or matter (limited to Specified Docket identified in previous subsection if applicable) in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.

6) **Juvenile Transfer.** Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

7) **Civil Contempt.** Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

8) **Post Conviction.** Any post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

9) **RALJ Appeals.** Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

10) **Arraignment Representation.** On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall

not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment. *Arraignment counsel assignment is optional for Attorney since this is only a conflict and overflow contract.*

11) **On-Call Cell Phone.** On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5b)11), if applicable to this Agreement, when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

c) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

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

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

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

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

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

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

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **50** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year,

then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

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

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

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

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

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

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

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

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

trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

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

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

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

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

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

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

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

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under

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

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

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

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

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

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

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

Base Compensation: $300 per Case.

Additional Compensation:

i) Trial Per Diem. 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.

ii) Arraignment Docket Compensation. Attorney shall receive $250 for each arraignment docket to which Attorney is assigned and does provide provisional docket representation as provided herein.

Automatic Compensation Increase: n/a

Since this is a "**By the case conflict/overflow/special docket**" contract and Attorney will only be assigned cases on an as-needed basis, the compensation shall be paid as cases are assigned and there is no guaranteed monthly, or other periodic payment.

All compensation shall be payable to: Trinity J. Orosco, Attorney at Law *since Attorney is a(n) principal with that firm.*

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

with case reporting provisions shall be cause to delay payment of compensation until such failure is remedied.

d. In order to receive compensation, Attorney shall file a Claim for Compensation, together with required supporting documents, in such form as is prescribed by the PDM from time to time. Attorney may file a Claim for Compensation for assigned cases as soon as Attorney has been appointed the case and has conducted a conflict check to confirm that Attorney can, in fact, take on the case.

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

13. **COSTS AND EXPENSES.**

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

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

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

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

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

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

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

15. **INSURANCE.**

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

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

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

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

employees. Any amount owed to Counties by Attorney pursuant to the indemnity agreement may be deducted from any payments owed by Counties to Attorney for performance of this Contract.

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

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

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

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

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

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

d. **Other Insurance Provisions**:

1. The Attorney's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the Counties, its elected and appointed officers, officials, employees and agents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. **TERMINATION.**

Cause for Termination and Notice

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In the event of automatic termination or termination pursuant to suspension or disbarment, Attorney shall be liable up to $5,000.00 for

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

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

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

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

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

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice.

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

1) County may continue to appoint cases to Attorney for the first 30 days of the 90 day notice period and Attorney shall receive full compensation for such appointments.

2) Attorney's contractual obligation to continue representation of clients on Attorney's caseload, remaining after either party has provided notice of Early Termination ("Residual Caseload"), shall conclusively terminate as of the end of the 90 day notice period. At that time, the parties shall reasonably cooperate, subject to approval by Benton County District Court, in reassigning Attorney's Residual Caseload to other public defense attorneys. Attorney shall be responsible for drafting and filing any court required substitution orders, and shall also forward any discovery already received on such cases to the new substitute attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. **OTHER APPOINTMENTS.**

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

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-

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

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

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

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

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

the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

Eric Hsu (Apr 29, 2021 11:35 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date 04/29/2021

Trinity Orosco
Trinity Orosco (Apr 29, 2021 11:08 PDT)

Trinity J. Orosco, WSBA 41366
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

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

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

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

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

Attorney acknowledgment:

Trinity Orosco
Trinity Orosco (Apr 29, 2021 11:08 PDT)

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021	**Memo Date:**	May 12, 2021
Subject:	Short Plat Vacation Resolution – SPV 2021 002 James & Brigetta Queener		
Presenter:	None		
Prepared By:	Peter McEnderfer		
Reviewed By:	Michelle Cooke		

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 April 27, 2021 the Board of County Commissioners held a public hearing on the vacation of approximately 170 feet of the ten (10) foot irrigation easement running through the southeast corner of Lot 2 of Short Plat 3000 and of Lot 3 of Short Plat 3614. The approval was conditioned upon the applicants recording a new irrigation easement to replace the portion to be vacated. The applicant has provided the Benton County Planning Division with a copy of the new irrigation easement which was recorded under Auditor's File Number 2021-021257, and the resolution is now ready for signature by the Board.

Fiscal Impact

None

Recommendation

It is the recommendation of the Planning Division that the Board of County Commissioners sign the resolution vacating the above-mentioned easement as the applicant has complied with the condition of approval as set forth by the Board.

Return to
Benton County Commissioners
P.O. Box 190
Prosser WA 99350

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF COUNTY PLANNING REGARDING THE PROPOSED VACATION OF 170 FEET OF THE TEN (10) FOOT IRRIGATION EASEMENT RUNNING THROUGH THE SOUTHEAST CORNER OF LOT 2 OF SHORT PLAT 3000 AND OF LOT 3 OF SHORT PLAT 3614, SECTION 3, TOWNSHIP 8 NORTH, RANGE 24 EAST, W.M. APPLICANT: JAMES AND BRIGETTA QUEENER, PARCEL NUMBER 1-0384-101-3614-003, FILE NUMBER - SPV 2021-002

WHEREAS, the Board of County Commissioners did conduct a virtual public hearing on Tuesday, April 27, 2021 at 9:00 a.m. in the Commissioners Meeting Room, Justice Center, Kennewick, Washington; and,

WHEREAS, the signature of the property owners of said application includes all properties affected by these easements; and,

WHEREAS, upon due notice as provided in RCW 58.17.080 and 58.17.090, the hearing before the Board of County Commissioners was held on such petition as indicated above; and,

WHEREAS, the Board of County Commissioners agrees with the summary report from the Benton County Planning Department, retained in File No. SPV 2021-002; and,

WHEREAS, approximately 170 feet of the ten (10) foot irrigation easement running through the southeast corner of Lot 2 of Short Plat 3000 and Lot 3 of Short Plat 3614 is proposed to be vacated (see Exhibit A attached hereto); and,

WHEREAS, it further appears that the vacation of the above-mentioned easement would not unduly jeopardize the health, safety, welfare and public good; NOW THEREFORE,

BE IT RESOLVED, that the vacation of approximately 170 feet of the ten (10) foot irrigation easement running through the southeast corner of Lot 2 of Short Plat 3000 and Lot 3 of Short Plat 3614 of Section 2, Township 8 North, Range 24 East, W.M. , as legally described on Exhibit A attached hereto, is hereby approved.

Dated this 25th day of May 2021.

_____
Chairman of the Board

_____
Member

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

Attest.....
Clerk of the Board

MLC:djh

EXHIBIT A

STRATTON SURVEYING & MAPPING, PC

313 NORTH MORAIN STREET
KENNEWICK, WA 99336
PHONE: (509) 735-7364
FAX: (509) 735-6560
E-MAIL: stratton@strattonsurvey.com

DATE: 2021-03-24
DRAWING: 5325SK6.DWG
IRRIGATION EASEMENT RELINQUISHMENT
PARCEL NUMBER 103841013614003

DESCRIPTION:

RELINQUISHMENT OF THAT PORTION OF THE 10.00 FOOT WIDE IRRIGATION EASEMENT SHOWN ON THE SHORT PLAT RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3000, RECORDS OF BENTON COUNTY, WASHINGTON, AFFECTING THAT PORTION OF LOT 3 OF THE SHORT PLAT RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3614, RECORDS OF BENTON COUNTY, WASHINGTON, THE CENTERLINE BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTH 88°54'28" WEST ALONG THE SOUTHERLY BOUNDARY THEREOF 36.68 FEET TO A POINT ON THE CENTERLINE OF ABOVE SAID IRRIGATION EASEMENT; THENCE NORTH 07°54'45" EAST ALONG SAID CENTERLINE 37.05 FEET TO THE TRUE POINT OF BEGINNING OF SAID RELINQUISHED PORTION; THENCE CONTINUING NORTH 07°54'45" EAST ALONG SAID CENTERLINE 113.58 FEET; THENCE NORTH 10°58'54" EAST ALONG SAID CENTERLINE 57.04 FEET TO THE POINT OF TERMINUS OF SAID RELINQUISHED PORTION..

SEE ATTACHED SKETCH

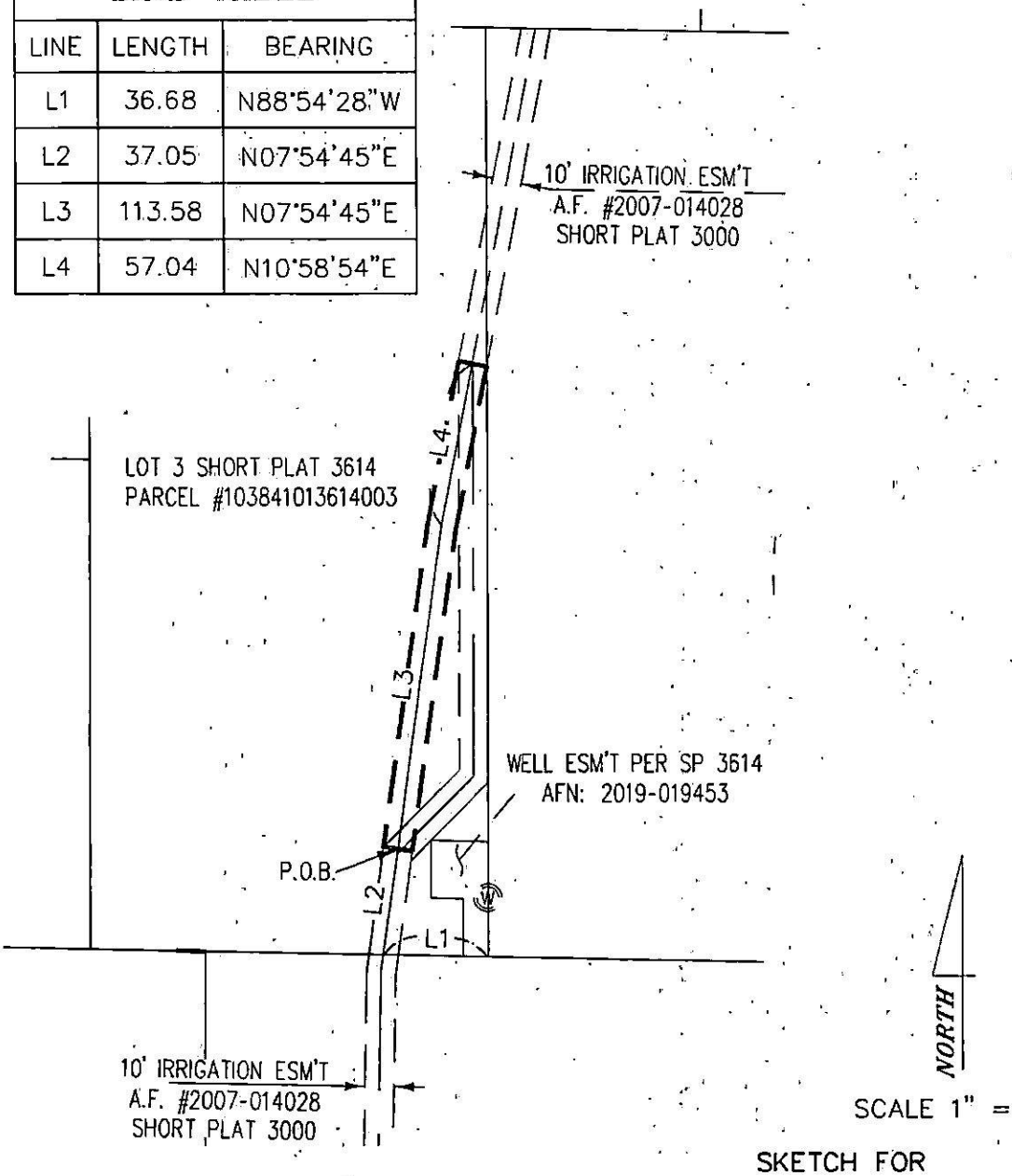
TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS, OF RECORD AND VIEW

03/24/2021

SKETCH TO ACCOMPANY DESCRIPTION

N.E. 1/4 OF SEC. 3, T8N, R24E, W.M.

LINE TABLE		
LINE	LENGTH	BEARING
L1	36.68	N88°54'28"W
L2	37.05	N07°54'45"E
L3	113.58	N07°54'45"E
L4	57.04	N10°58'54"E



SCALE 1" = 60'

SKETCH FOR

QUEENER

STRATTON SURVEYING & MAPPING, PC

313 NORTH MORAIN STREET
KENNEWICK, WA 99336
(509) 735-7364
FAX: (509) 735-6560
stratton@strattonsurvey.com

5325SK6.DWG	© 2021
DATE: 03/24/2021	SHT. 1 OF 1
DRAWN BY: AAD	JOB # 5325

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021	**Memo Date:**	May 7, 2021
Subject:	Altered Plat of Seitz River Tracts - SA 2020-001		
Presenter:			
Prepared By:	Michelle Cooke		
Reviewed By:	Greg Wendt		

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

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☒ Sign Letter / Documents	☐ Pass Ordinance
		☐ Execute Contract

Summary/Background Information

On February 25, 2020, the Benton County Board of County Commissioners approved a subdivision alteration request for Seitz River Tracts to add a Benton Irrigation District signature block which was previously omitted from the recorded plat map. An additional owner signature block has also been added to the amended plat as one of the lots has sold since the recording of the plat on June 26, 2019.

The applicant, Jeffery Seitz has met all conditions of approval for the alteration and has submitted the final plat map for the Chairman of the Board of County Commissioner's signature.

Fiscal Impact

None

Amount: Unknown **Fund:** Unknown

Recommendation

It is the recommendation of the Benton County Planning Division that the Altered Plat of Seitz River Tracts - SA 2020-001 be approved and that the Board sign the attached resolution authorizing the Chairman to sign the final plat.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING RE: THE ALTERED PLAT OF SEITZ RIVER TRACTS – FILE NO. SA 2020-001 BY JEFFERY SEITZ PARCEL NOS. 1-1196-302-0000-001, 1-1196-302-0000-002, 1-1196-302-0000-003, 1-1196-302-0000-004, 1-1196-302-0000-005, 1-1196-302-0000-006, 1-1196-302-0000-0017, 1-1196-302-0000-008, 1-1196-302-0000-009, 1-1196-302-0000-0010, 1-1196-302-0000-0011, 1-1196-302-0000-0012, 1-1196-302-0000-0013, 1-1196-302-0000-0014.

WHEREAS, on June 25, 2019, the Board of County Commissioners approved the Final Plat of Seitz River Tracts - SUB 2007-008; and,

WHEREAS, the plat was recorded on June 26, 2019 and shortly thereafter it was found that the signature block for Benton Irrigation District was inadvertently omitted on the final plat map of Seitz River Tracts; and,

WHEREAS, the Altered Plat of Seitz River Tracts - File No. SA 2020-001 was submitted to correct this error. This Altered Plat includes the omitted irrigation district signature block and adds an additional ownership block reflecting the new owner of Lot 2. No other changes were made, and the lots are not reconfigured in any way; and,

WHEREAS, it appears to be in the public's best interest to approve said altered plat of Seitz River Tracts - SA 2020-001, NOW THEREFORE,

BE IT RESOLVED that the Altered Plat of Seitz River Tracts - SA 2020-001 is hereby approved and the Chairman so indicate by signing the plat.

Dated this 25 day of May 2021.

_____
Chairman of the Board

_____
Member

_____
Member

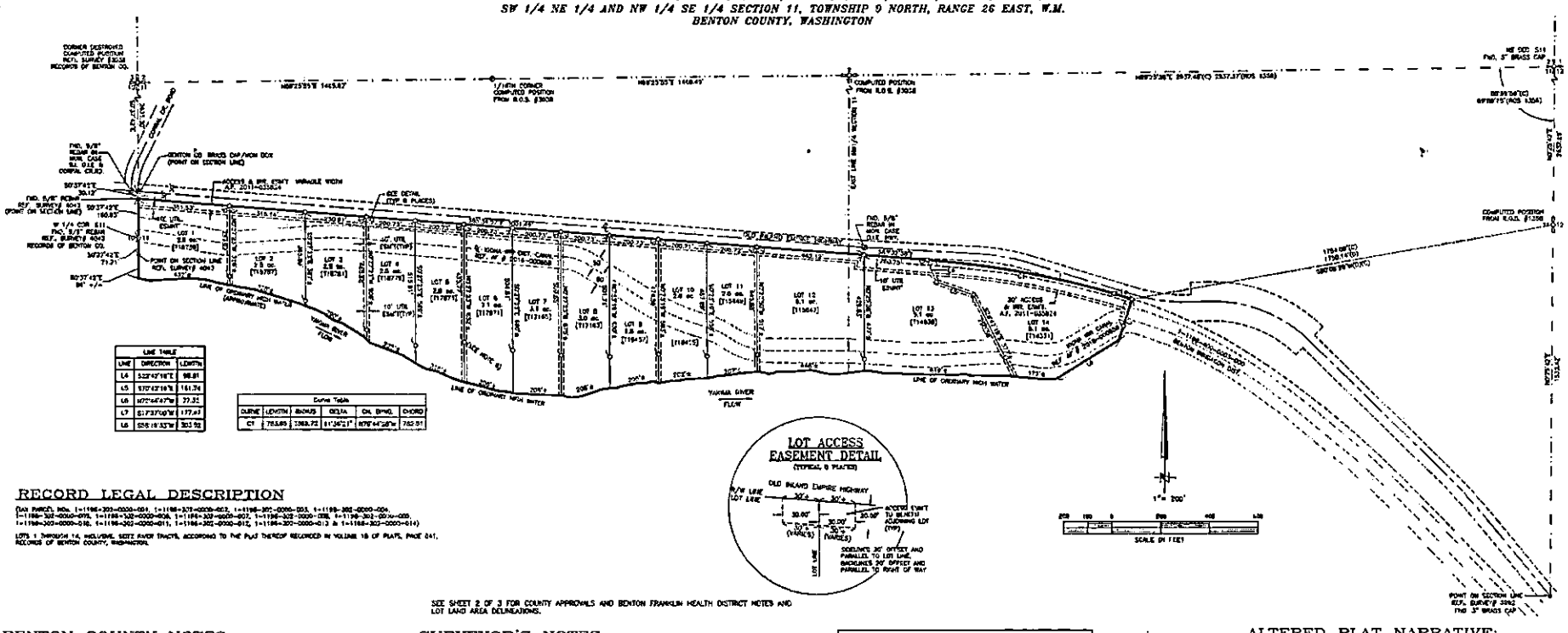
Constituting the Board of
County
Commissioners of Benton County
Washington.

Attest.....
Clerk of the Board

MC

ALTERED PLAT OF SEITZ RIVER TRACTS

AMENDING PLAT OF SEITZ RIVER TRACTS RECORDED IN VOL. 16 OF PLATS, PAGE 0641
LOCATED IN PORTIONS SW 1/4 NW 1/4, SE 1/4 NW 1/4, NW 1/4 SW 1/4, NE 1/4 SW 1/4, SW 1/4 NE 1/4 AND NW 1/4 SE 1/4 SECTION 11, TOWNSHIP 9 NORTH, RANGE 26 EAST, W.M.
BENTON COUNTY, WASHINGTON



RECORD LEGAL DESCRIPTION

(TAX PARCEL NOS. 1-1196-303-0000-001, 1-1196-303-0000-002, 1-1196-301-0000-003, 1-1196-302-0000-004, 1-1196-302-0000-005, 1-1196-302-0000-006, 1-1196-303-0000-007, 1-1196-302-0000-008, 1-1196-303-0000-009, 1-1196-303-0000-010, 1-1196-302-0000-011, 1-1196-302-0000-012, 1-1196-301-0000-013 & 1-1196-302-0000-014)

LOTS 1 THROUGH 14, INCLUSIVE, SEITZ RIVER TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 641, RECORDS OF BENTON COUNTY, WASHINGTON.

SEE SHEET 2 OF 3 FOR COUNTY APPROVALS AND BENTON FRANKLIN HEALTH DISTRICT NOTES AND LOT LAND AREA DELINEATIONS.

BENTON COUNTY NOTES:

1. PRIOR TO THE GRANTING OF A BUILDING OR FACTORY ASSEMBLED STRUCTURE (FAS) PERMIT FOR EACH LOT BY THE COUNTY, THE APPLICANT FOR A BUILDING OR FAS PERMIT MUST COMPLY WITH RCW 19.64.050 REGARDING PUBLIC GROUND WATER. THE APPLICANT FOR A BUILDING OR FAS PERMIT MUST DEMONSTRATE THAT POTABLE WATER IS LEGALLY AVAILABLE BY PROVIDING: (a) EVIDENCE OF A VALID WATER RIGHT PERMIT FROM THE WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR THE PROPOSED WELLS FOR EACH LOT; (b) A WATER WELL REPORT FILED AND RECORDED BY WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR AN EXEMPTED WELL THAT COMPLIES WITH THE 5,000 GALLON PER DAY EXEMPTION DESCRIBED IN RCW 90.44.050; OR (c) A WRITTEN APPROVAL OF THE WASHINGTON STATE DEPARTMENT OF HEALTH THAT A GROUP A OR GROUP B PUBLIC WATER SUPPLY SYSTEM HAS BEEN INSTALLED AND IS AVAILABLE FOR PROVIDING POTABLE WATER TO THE LOT.

2. DUE TO ALL LOTS FRONTING ON OLD INLAND EMPIRE HIGHWAY, NO TURNAROUND IS REQUIRED. HOWEVER, ALL LOTS ARE LABOR EXCLUSIVE TO HAVE A HOUSE SET BACK MORE THAN 200 FEET FROM THE COUNTY ROAD. IN SUCH A CASE, THE PRIVATE DRIVEWAY WILL BE REQUIRED TO HAVE A TURNAROUND AND COMPLY WITH THE APPLICABLE REQUIREMENTS OF BENTON COUNTY CODE 3.18.045 (MINIMUM ROAD REQUIREMENTS FOR FIRE SAFETY).

3. ACCESS EASEMENTS [SHOWN OR BRACKETED] ARE SUBJECT TO CHANGE UNTIL THE EXACT LOCATION OF ACCESS ONTO THE LOT IS DETERMINED.

4. LOTS SHALL HAVE THE CONSTRUCTED ROAD APPROACH CENTERED ON THE EASEMENTS. LOTS SHALL ONLY HAVE ONE ACCESS OFF OF OLE.

5. NO BUILDING OR FAS OCCUPANCY PERMIT WILL BE ISSUED FOR ANY LOT WITHIN THIS PLAT UNTIL A ROAD APPROACH PERMIT HAS BEEN OBTAINED FROM THE BENTON COUNTY ROAD DEPARTMENT.

6. THIS PROPERTY LIES IN THE VICINITY OF PARCELS USED FOR COMMERCIAL AGRICULTURAL PURPOSES. AT VARIOUS TIME OF THE DAY OR YEAR, A VARIETY OF CONSEQUENCES, FAVORABLE ACTIVITIES INCLUDING SPRAYING, OPERATING OF HEAVY FARM EQUIPMENT AND DAIRY OPERATIONS HAVE TRADITIONALLY OCCURRED IN THE AREA. NOISE, ODORS, AND INSECTS ATTENDANT WITH SUCH ACTIVITIES MAY NOT BE COMPATIBLE WITH RESIDENTIAL DEVELOPMENT. PLEASE CONTACT BENTON COUNTY PLANNING DEPARTMENT FOR FURTHER INFORMATION

SURVEYOR'S NOTES:

1. BASIS OF BEARING IS GRID, WASHINGTON GRID SYSTEM SOUTH ZONE, BASED ON RECORD OF SURVEY RECORDED IN BENTON COUNTY, WASHINGTON UNLESS SHOWN HEREON AND GROUND OBSERVATIONS UNLESS OTHERWISE NOTED

2. (M) = MEASURED (R) = RECORD (C) = COMPUTED (P) = PLAT

3. ○ =DENOTES SET 5/8" REBAR WITH CAP STAMPED "RSI CBM 20440"

4. ● =DENOTES FOUND 5/8" MONUMENT AS NOTED.

5. ⊙ =30' 5/8" REBAR & CAP ON PROPERTY LINE

6. THE LOCATION OF THE "LINE OF ORDINARY HIGH WATER" OF THE YAKIMA RIVER WAS DEFINED FROM GEO-REFERENCED AERIAL IMAGERY OBTAINED THROUGH "ARCGIS" FOR AUTOCAD. DUE TO THE EXISTENCE OF HEAVY BRUSH AND TREES ALONG THE YAKIMA RIVER BANK, IT WAS IMPOSSIBLE TO SURVEY THE PRECISE DAY LOCATION OF THE "LINE OF ORDINARY HIGH WATER".

BENTON-FRANKLIN HEALTH DIST. NOTES

1) LIMITED SOILS TESTING ON LOTS 1, 2, 4, 5, 6, 7, 8, AND 12 IN THIS SUBDIVISION HAVE REVEALED A TYPE 1 (GENERALLY TO EXTREMELY GRAVELLY SANDS) SOIL CONDITION. ANY SEWAGE DISPOSAL SYSTEM TO BE PERMITTED IN AREAS OF TYPE 1 SOILS WILL BE REQUIRED TO MEET TREATMENT LEVEL C. THE BENTON-FRANKLIN HEALTH DISTRICT SHOULD BE CONTACTED FOR FURTHER INFORMATION.

2) LOTS 1, 2, 3, 10, 11, AND 13, IN THIS SUBDIVISION MAY HAVE SPECIFIC LIMITATIONS AND/OR RESTRICTIONS FOR THE USE OF ON-SITE SEWAGE DISPOSAL SYSTEMS. THE BENTON-FRANKLIN HEALTH DISTRICT SHOULD BE CONTACTED FOR FURTHER INFORMATION.

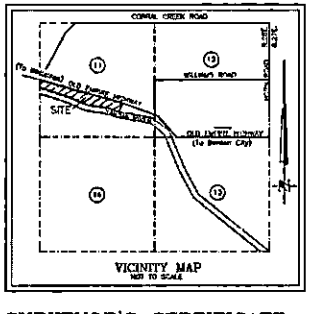
3) THIS RECOMMENDATION IS BASED ON PRESENT KNOWN SITE CONDITIONS AND DOES NOT GUARANTEE THE GRANTING OF AN ON-SITE SEWAGE DISPOSAL PERMIT. HEALTH DISTRICT APPROVAL OF ANY LOT WITHIN THIS PLAT MAY BE CONTINGENT UPON THAT LOT PASSING ADDITIONAL SOIL INSPECTION/PERCOLATION TESTS, AND/OR OTHER REQUIREMENTS AT A LATER DATE. SHOULD ADVERSE SITE CONDITIONS BE REVEALED AT A LATER DATE, THE HEALTH DEPARTMENT RESERVES THE RIGHT TO IMPOSE RESTRICTIONS OR DENY THE ISSUANCE OF ANY ON-SITE SEWAGE DISPOSAL PERMIT FOR THE LOTS WITHIN THIS PLAT.

4) PRIOR TO ISSUANCE OF AN ON-SITE SEWAGE DISPOSAL PERMITS, ADDITIONAL TEST HOLES MAY BE REQUIRED TO VERIFY ACCEPTABLE AREA FOR INITIAL AND REPLACEMENT SEWAGE DISPOSAL SYSTEM AND DESIGN CRITERIA SUCH AS TRENCH DEPTH ON EACH LOT.

5) USEABLE AREA MAY NOT INCLUDE EASEMENTS, OR AREA WITHIN 100' OF APPROVED WATER SUPPLY WELLS OR SURFACE WATERS.

6) USEABLE AREA MAY NOT INCLUDE AREAS WITH SLOPES OVER 30%

7) USEABLE AREA MAY NOT BE COVERED BY FILL MATERIAL WITH DEPTHS GREATER THAT 24 INCHES.



SURVEYOR'S CERTIFICATE

I, GARY B. ROGERS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF WASHINGTON (REGISTRATION NO. 20440) HEREBY CERTIFY THAT THE FINAL PLAT OF SEITZ RIVER TRACTS AS SHOWN HEREON IS BASED UPON AN ACTUAL FIELD SURVEY OF THE LAND DESCRIBED AND THAT ALL ANGLES, OFFSETS, AND COURSES ARE CORRECTLY SHOWN AND THAT THE MONUMENTS HAVE BEEN SET AND THE LOT CORNERS STAKED AS SHOWN ON THE PLAT

GARY B. ROGERS
CERTIFICATE # 20440

DATE

ALTERED PLAT NARRATIVE:

THE PLAT OF SEITZ RIVER TRACTS AS RECORDED IN VOLUME 16 OF PLATS, PAGE 641 WAS RECORDED WITHOUT AN IRRIGATION APPROVAL AS REQUIRED BY RCW 58.17.310(1) AND (2).

THE PURPOSE OF THIS ALTERED PLAT IS TO CORRECT THE INADVERTENT OMISSION OF SAID IRRIGATION APPROVAL BY ADDING THE "IRRIGATION APPROVAL BLOCK AS SHOWN ON PAGE 2 OF 3.

LOT 2 WAS CONVEYED TO KOTHENBEIL LLC ON DECEMBER 24, 2020. THEY HAVE BEEN ADDED TO THE CONCEPTS DEDICATION AS TO LOT 2, WHEREAS JEFF AND LAUREN SEITZ REMAIN OWNERS OF INTEREST IN LOT 1 AND LOTS 3-14.

AUDITOR'S CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF RICHARD SHAW, RECORDED IN VOLUME _____ OF PLATS,

PAGE _____, RECORDS OF BENTON COUNTY, WASHINGTON, AT _____ MINUTES PAST _____ M., THIS _____

DAY OF _____, 20___ A.D.

BENTON COUNTY AUDITOR

FEE NUMBER

KEY NAME

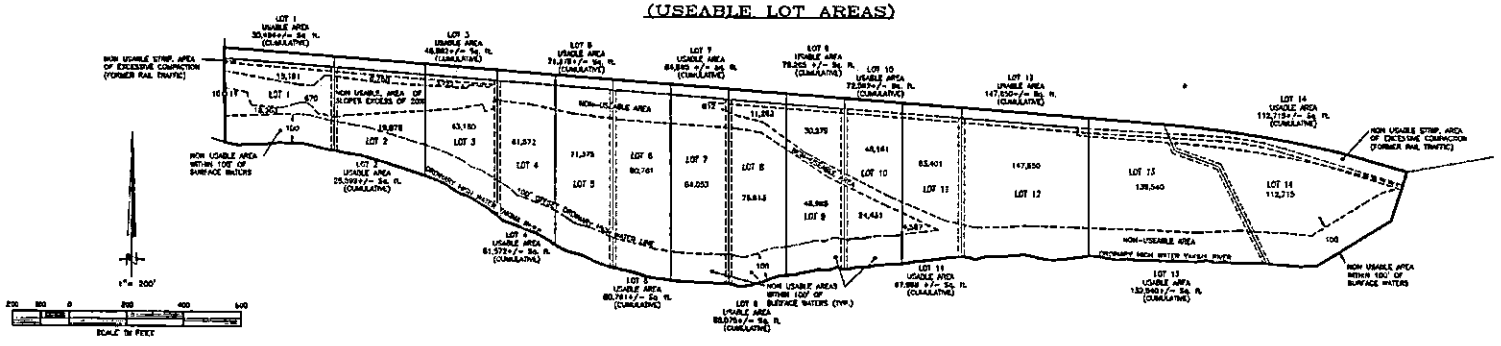
RSI ROGERS SURVEYING INC., P.S.
1455 COLUMBIA PARK TRAIL
RICHLAND, WA. 99352
PHONE (509) 783-1211
FAX (509) 783-2861
www.rogerssurveying.com

CLIENT	JEFF AND LAUREN SEITZ
JOB	33317
PROJECT	PLAT OF SEITZ RIVER TRACTS SEC. 11, T.9N., R.26E., W.M.
DRN. BY	BMD
SCALE	1" = 200'
F. B. NO.	NONE
ACAD VER	C2018
APPROVED	GBR
DATE	1/05/21
FILE	33317P-ALTERED
SHEET	1 OF 3

ALTERED PLAT OF SEITZ RIVER TRACTS

AMENDING PLAT OF SEITZ RIVER TRACTS RECORDED IN VOL. 15 OF PLATS, PAGE 0641
LOCATED IN PORTIONS SW 1/4 NW 1/4, SE 1/4 NW 1/4, NW 1/4 SW 1/4, NE 1/4 SW 1/4, SW 1/4 NE 1/4 AND NW 1/4 SE 1/4 SECTION 11, TOWNSHIP 9 NORTH, RANGE 26 EAST, W.M.
BENTON COUNTY, WASHINGTON

(USEABLE LOT AREAS)



OWNERS' CERTIFICATE/DEDICATION

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE ALL PARTIES HAVING OWNERSHIP INTEREST IN THE TRACT OF LAND DESCRIBED HEREON, HAVE GIVEN OUR FREE CONSENT AND IN ACCORDANCE WITH OUR DESIRES CAUSED SAID LAND TO BE SURVEYED AND PLATTED INTO LOTS AND TRACTS AS SHOWN HEREON UNDER THE NAME OF SEITZ RIVER TRACTS, DO HEREBY GRANT ALL EASEMENTS SHOWN HEREON FOR THE USES SHOWN THEREON, DO HEREBY DEDICATE ALL ROAD RIGHT OF WAYS TO THE PUBLIC, AND DO HEREBY WAIVE ON BEHALF OF OURSELVES AND OUR SUCCESSORS IN INTEREST, ALL CLAIMS FOR DAMAGES AGAINST BENTON COUNTY AND ANY OTHER GOVERNMENTAL AUTHORITY WHICH MAY OCCASIONED TO THE LAND ADJACENT TO SUCH DEDICATED ROAD RIGHT OF WAYS BY THE ESTABLISHED CONSTRUCTION, DRAINAGE AND MAINTENANCE OF SAID DEDICATED ROAD RIGHT OF WAYS.

AS TO LOT 1 & LOTS 3-14:

SIGNATURE — PRINTED NAME

SIGNATURE — LAUREN L. SEITZ

AS TO LOT 2:

SIGNATURE — TITLE

ATTORNEY-IN-FACT FOR [illegible], LLC, AN ARIZONA LIMITED LIABILITY COMPANY

ACKNOWLEDGMENT

STATE OF WASHINGTON } S.S.
COUNTY OF BENTON }

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT JEFFREY L. SEITZ AND LAUREN L. SEITZ HUSBAND AND WIFE SIGNED THIS INSTRUMENT, ON OATH STATED THAT THEY WERE AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED 3/10/2021

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

RESIDING AT: Richland, WA

MY APPOINTMENT EXPIRES: 10/05/2022

NOTARY STAMP (BLACK INK ONLY)

ACKNOWLEDGMENT

STATE OF [illegible] }
COUNTY OF [illegible] } ss.

ON THIS 1st DAY OF April 2021

BEFORE ME PERSONALLY APPEARED [illegible] TO ME KNOWN TO BE THE PRESIDENT, VICE PRESIDENT, SECRETARY, TREASURER, OR OTHER AUTHORIZED OFFICER OR AGENT, AS THE CASE MAY BE, OF THE CORPORATION THAT EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT HE OR SHE WAS AUTHORIZED TO EXECUTE SAID INSTRUMENT AND THAT THE SEAL AFFIXED IS THE CORPORATE SEAL OF SAID CORPORATION.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

NOTARY PUBLIC IN AND FOR THE STATE OF

RESIDING AT: Benton County

MY APPOINTMENT EXPIRES: May 16, 2021

NOTARY STAMP (BLACK INK ONLY)

3/10/21
DATE

UTILITY APPROVALS

THE UTILITY EASEMENTS SHOWN HEREON ARE APPROVED BY THE UTILITIES.

BENTON PUD NO. 1 — TITLE — DATE

IRRIGATION APPROVAL

I HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN IS LOCATED WITHIN THE BOUNDARIES OF THE BENTON IRRIGATION DISTRICT AND THAT THE IRRIGATION EASEMENTS SHOWN ON THIS SHORT PLAT ARE ADEQUATE TO SERVE ALL LOTS SHOWN HEREON. I FURTHER CERTIFY THAT THOSE LOTS SHOWN ARE ENTITLED TO IRRIGATION WATER UNDER THE OPERATING RULES AND REGULATIONS OF THE DISTRICT HAVE SATISFIED THE REQUIREMENTS OF RCW 58.17.310 AND THAT ALL ASSESSMENTS HAVE BEEN PAID THROUGH THE YEAR 2021

BENTON IRRIGATION DISTRICT — TITLE — DATE

BENTON COUNTY APPROVALS

THIS PLAT WAS BEEN EXAMINED AND APPROVED BY THE COUNTY OF BENTON, STATE OF WASHINGTON.

BENTON COUNTY ENGINEER — DATE

CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS — DATE

CHAIRMAN, BENTON COUNTY PLANNING COMMISSION — DATE

BENTON FRANKLIN HEALTH DISTRICT — 4/8/2021 DATE

TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT THE TAXES ON THE LAND DESCRIBED HEREON HAVE BEEN PAID TO AND INCLUDING THE YEAR 20___. PARCEL NOs 1-1188-302-0000-001, 1-1188-302-0000-002, 1-1188-302-0000-003, 1-1188-302-0000-004, 1-1188-302-0000-005, 1-1188-302-0000-006, 1-1188-302-0000-007, 1-1188-302-0000-008, 1-1188-302-0000-009, 1-1188-302-0000-010, 1-1188-302-0000-011, 1-1188-302-0000-012, 1-1188-302-0000-013 & 1-1188-302-0000-014

BENTON COUNTY TREASURER — DATE

BENTON COUNTY ASSESSOR — DATE

AUDITOR'S CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF RICHARD SHAW RECORDED IN VOLUME ____ OF PLATS, PAGE ____, RECORDS OF BENTON COUNTY, WASHINGTON, AT ____ MINUTES PAST ____ M. THIS ____ DAY OF ____, 20__ A.D.

BENTON COUNTY AUDITOR — FEE NUMBER

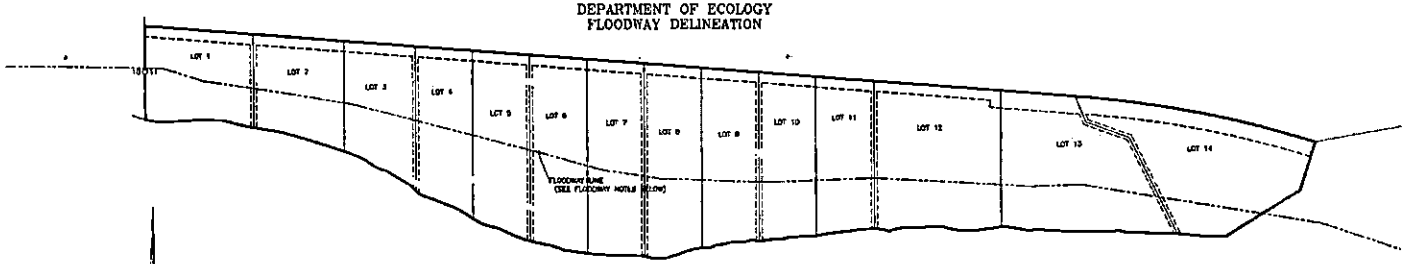
RSI ROGERS SURVEYING INC., P.S.
1408 COLUMBIA PARK TRAIL
RICHLAND, WA 99352
PHONE (509) 783-1144
FAX (509) 783-8884
www.rogerssurveying.com

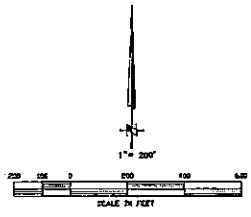
CLIENT	JEFF AND LAUREN SEITZ
JOB	20317
PROJECT	PLAT OF SEITZ RIVER TRACTS SEC. 11, T.9N., R.26E., W.M.
DRN. BY	BAC
SCALE	1" = 200'
F. B. NO.	NONE
APPROVED	CDW
DATE	1/05/21
ACAD VER.	C2018
FILE	20317-ALTERED
SHEET	1 OF 3

ALTERED PLAT OF SEITZ RIVER TRACTS

AMENDING PLAT OF SEITZ RIVER TRACTS RECORDED IN VOL. 15 OF PLATS, PAGE 0641
LOCATED IN PORTIONS SW 1/4 NW 1/4, SE 1/4 NW 1/4, NW 1/4 SW 1/4, NE 1/4 SW 1/4,
SW 1/4 NE 1/4 AND NW 1/4 SE 1/4 SECTION 11, TOWNSHIP 9 NORTH, RANGE 26 EAST, W.M.
BENTON COUNTY, WASHINGTON

DEPARTMENT OF ECOLOGY
FLOODWAY DELINEATION





FLOODWAY NOTE

1) THE FLOODWAY LINE SHOWN HEREON IS SHOWN ENTIRELY AT THE REQUEST OF THE BENTON COUNTY PLANNING DEPARTMENT AND THE WASHINGTON STATE DEPARTMENT OF ECOLOGY.

2) SAID FLOODWAY LINE WAS DERIVED FROM A WASHINGTON STATE DEPARTMENT OF ECOLOGY METADATA FILE PROVIDED BY THE DEPARTMENT OF ECOLOGY TO ROGERS SURVEYING, INC. THE SOURCE OF INFORMATION FROM WHICH SAID METADATA WAS DERIVED IS UNKNOWN. CONSEQUENTLY, THE LOCATION OF SAID FLOODWAY LINE IS SHOWN FOR "INFORMATION ONLY".

3) THIS SURVEYOR MAKES NO WARRANTY OR CLAIM REGARDING THE ACCURACY OF SAID FLOODWAY LINE.

5/19/21
DATE

AUDITOR'S CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF RICHARD SHIH. RECORDED IN VOLUME _____ OF PLATS,
PAGE _____, RECORDS OF BENTON COUNTY, WASHINGTON, AT _____ MINUTES PAST _____ M., THIS _____
DAY OF _____, 20__ A.D.

BENTON COUNTY AUDITOR

FILE NUMBER

RSI ROGERS SURVEYING INC., P.S.
1455 COLUMBIA PARK TRAIL
RICHLAND, WA. 99352
PHONE (509) 783-1112
FAX: (509) 943-8964
brian.rogersurveying@mg.com

EDI: NONE

CLIENT	JEFF AND LAUREN SEITZ	JOB 33317
PROJECT	PLAT OF SEITZ RIVER TRACTS SEC. 11, T.9N., R.26E., W.M.	
DRN. BY BAG	SCALE 1" = 200'	F. B. NO. NONE; HOA VOL — PAGE
APPROVED GEM	DATE 1/05/21	FB P.33317-NOTES

SHEET 3 OF 3

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25th, 2021
Subject:	Columbia Irrigation District; Franchise
Presenter:	N/A
Prepared By:	Cristina Woods
Reviewed By:	Douglas D'Hondt

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Columbia Irrigation District has submitted an application to establish their franchise within Benton County road right of way.

A public hearing was held April 20th, 2021 to consider the request of Columbia Irrigation District who has applied for a nonexclusive franchise to place an irrigation system and facilities in unincorporated Benton County.

Fiscal Impact

N/A

Recommendation

Benton County Public Works recommends that the Commissioners approve the Franchise Order and Agreement with Columbia Irrigation District, subject to the 6 items listed in the report to the Commissioners.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FRANCHISES RE: GRANTING A FRANCHISE TO COLUMBIA IRRIGATION DISTRICT TO PLACE AN IRRIGATION PIPELINE SYSTEM AND FACILITIES IN COUNTY ROAD RIGHTS OF WAY

WHEREAS, a public hearing was held April 20th, 2021 to consider the request of Columbia Irrigation District who has applied for a nonexclusive franchise to place an irrigation pipeline system and facilities in unincorporated Benton County; and

WHEREAS, after hearing the testimony regarding the request for a franchise, the Board finds as follows:

1. The term of the franchise shall be a ten-year (10) period, expiring May 25th, 2031, with an associated cost of $500.00;
2. The Grantee is to carry liability insurance with Benton County named as an insured with a minimum limit of $1,000,000.00. A copy of the proof of insurance is to be provided to Benton County yearly;
3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way;
4. Should Benton County require utility relocation work because of road construction, maintenance, or any other reason, said work shall be at the Grantee's expense;
5. The franchise is nonexclusive;
6. The Grantee is to sign the Order and Agreement for Nonexclusive Franchise;

WHEREAS, Columbia Irrigation District has agreed to the terms and has signed the Order and Agreement for Nonexclusive Franchise, said Order having been approved as to form by the Prosecuting Attorney's Office; **NOW, THEREFORE**

BE IT RESOLVED that Columbia Irrigation District franchise for an irrigation pipeline system and facilities in County road rights of way be approved and that the Board indicates its approval by its signatures on the Order and Agreement for Nonexclusive Franchise.

Dated this 25th day of May 2021

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works

C. Woods

Return to:
Benton County Public Works
P. O. Box 1001
Prosser, WA 99350

Grantor: Benton County
Grantee: Columbia Irrigation District

BEFORE THE BOARD OF COUNTY COMMISSIONERS

BENTON COUNTY, STATE OF WASHINGTON

IN THE MATTER OF THE APPLICATION OF COLUMBIA IRRIGATION DISTRICT FOR A NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE, USE, AND IF NECESSARY, REMOVE AN IRRIGATION PIPELINE SYSTEMS AND FACILITIES WITHIN THE COUNTY OF BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG, AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED CITY OR TOWN.	No._____ ORDER AND AGREEMENT FOR NONEXCLUSIVE FRANCHISE

FINDINGS

NOW, on this _____ day of _____ the petition and application of COLUMBIA IRRIGATION DISTRICT , for the authority and nonexclusive Franchise, for a term of ten (10) years, to install, locate, construct, maintain, operate, use, and, if necessary, remove AN IRRIGATION PIPELINE SYSTEMS AND FACILITIES under, upon, over, along and across Benton County roads, highways, streets, alleys, bridges, and rights-of-ways, or other County property, hereinafter called County roads or rights-of-ways, described in said application by reference to the sections, townships, and ranges in which said County roads or rights-of-ways are physically located within the County of Benton, State of Washington, and not within the

corporate limits of any incorporated city or town therein, coming on to be heard before this, the Board of County Commissioners of and from said Benton County, Washington, and this Board having heretofore fixed this time and place for the hearing of said petition, and it appearing that the County Engineer has given notice of the time and place of said hearing by posting in three places in the Benton County Courthouse with written or printed notices of the time and place of this hearing in accordance with the laws of the State of Washington, and also by publishing a like notice two (2) times in the Prosser Record Bulletin newspaper of general circulation published in Benton County, Washington, and it appearing that the notices so posted and published stated the name of the applicant and a description by reference to sections, townships and ranges in which the County roads or rights-of-ways to be included in the Franchise for which application is made are physically located, and also state the time and place fixed for said hearing, and after hearing all persons interested in the matter of said petition, and at which hearing the qualifications of the Grantee were heard, the Board deeming it for the public interest to grant the Franchise and authority so applied for.

ORDER

IT IS HEREBY ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

There is hereby granted to COLUMBIA IRRIGATION DISTRICT , hereafter called the Grantee, subject to all provisions, conditions, covenants and requirements of this order and agreement, the right, privilege and nonexclusive Franchise, to install, locate, construct, maintain, operate, use, and, if necessary, remove AN IRRIGATION PIPELINE SYSTEMS AND FACILITIES, and all necessary appurtenances thereto, hereinafter called the distribution system, under, upon, over, along, or across those portions of any and all County roads or rights-of-ways, which lie within those legal subdivisions within the County of Benton, State of Washington, set forth and described in "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, from such subdivisions any portion thereof which is within the corporate limits of any incorporated city or town, but including all portions of said subdivisions which are within any unincorporated town or community. Benton County Resolution No. 72-220, regarding Policy on Accommodation of Utilities on County Road Rights-of-Way, shall apply in all respects to this Franchise and the distribution system.

AGREEMENT

I. APPROVAL BY COUNTY ENGINEER

All locations, construction, installation, maintenance, relocation or removal of the distribution system or any portion thereof within County roads or rights-of-ways outside the corporate limits of any incorporated town shall be subject to the approval and pass inspection of the County Engineer.

II. PERMIT REQUIRED – MAP AND SPECIFICATIONS TO BE FILED APPROVAL BY COUNTY ENGINEER – PERFORMANCE BOND

Prior to commencement of any work on or construction of any portion of the distribution system, Grantee shall file with the County Engineer its application for permit to do such work or construction together with plans and specifications in form and number as approved by the County Engineer showing the position, depth, or height, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing County roads or rights-of-ways, upon plans drawn to scale indicating exact distance hereinafter collectively referred to as the "map of definite location". Grantee is hereby authorized to extend its facilities throughout the area authorized hereunder.

The distribution system shall be constructed in exact conformity with said map of definite location, except in instances in which deviation may be allowed by the prior written consent of the County Engineer pursuant to application by Grantee. The plans and specifications shall specify, as applicable, the class and type of materials and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, and road obstructions, and manner and means by which they affect County roads or rights-of-ways, will be restored to a condition as good as that which existed prior to such work or construction. No such work or construction shall be commenced until the Grantee has first secured a written permit from the County Engineer, which shall include approval by the County Engineer endorsed on one set of plans and specifications to be returned to the Grantee. All such work or construction shall require the inspection and approval of the County Engineer. The Grantee shall pay all reasonable costs and

expenses incurred in the examination, inspection, and approval of such work or construction by the County Engineer as herein provided.

The County Engineer may require a performance bond in a sum sufficient to guarantee to Benton County that any County roads or rights-of-ways, including the surfaces thereof, affected by any work or construction by the Grantee, shall be restored to a condition as good as that which existed prior to such work or construction, the amount of said bond to be fixed by the County Engineer. The County Engineer, upon notice to the Grantee, may at any time order any and all work that he considers necessary to restore to a safe condition any portion of the County roads or rights-of-ways, the condition of which has been rendered dangerous to the safety of persons or property by reason of any work, construction, of facilities of Grantee, and Grantee, upon demand, shall pay to Benton County all costs of such work, done by order of the County Engineer.

III. COUNTY ROADS TO BE RESTORED

In any work which requires breaking of surface of the County roads or rights-of-ways subject to this Franchise for the purpose of locating, constructing, installing, relocating, removing, maintaining and/or repairing the distribution system, and/or making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and strictly conform to the instructions set forth in the permit issued by the County Engineer for such work; and the Grantee, at its own expense and with all reasonable speed, shall complete the work for which the County roads or rights-of-ways, surface has been broken and repair and restore the affected County roads or rights-of-ways, and the surface thereof to a condition as good as that which existing before the work was commenced. Noxious weed control will be required, at the Grantee's expense, and shall meet all requirements of the Benton County Weed Board.

Except in cases of emergency as hereinafter provided, no breaking of surface of any County roads or rights-of-ways, shall be done until Grantee has first obtained a permit therefor issued by the County Engineer as specified in Section II of this Agreement.

PROVIDED, however, that in cases of emergency which occur out of office hours when immediate work may be necessary for the protection or safety of persons or property, the

emergency shall be immediately reported to the Benton County Sheriff and the necessary work may be immediately undertaken upon the express condition that an application for a permit for such work, as hereinabove provided, shall be submitted to the County Engineer on or before noon of the business day next following the commencement of the emergency work.

IV. INTERFERENCE WITH EXISTING FACILITIES

No location, construction, installation, maintenance, repair, removal or relocation of the distribution system or any portion thereof, performed along or under any County roads or rights-of-ways, shall in any way interfere with the grading or improvement of such County roads or rights-of-ways, or with the construction and maintenance of any existing utility, public or private, drain, drainage ditch or structure, or irrigation ditch or structure, located along or under such county roads, right-of-way or property. In the event that it is necessary to relocate any such county road or right-of-way or alter the grade of any such county road or right-of-way, requiring relocation of any utilities, including rights-of-way, preferences as to positioning of such utilities, shall be given in the order of the original location and installation of such utilities, the utility first having been located and installed being given first preference as to positioning and relocation.

V. MINIMUM INTERFERENCE WITH PUBLIC TRAVEL – GRANTEE LIABLE FOR DAMAGE

All work done under this Franchise shall be done in a thorough and workmanlike manner. All construction, installation, maintenance, repair, relocation, or removal of the distribution system, or any portion thereof, shall be conducted in a manner that will interfere as little as possible with public use of and travel upon County roads or rights-of-ways, shall include all due and necessary measures and precautions to prevent danger to persons or property. Specifically, where such construction, installation, maintenance, repair, relocation or removal involves open trenches, ditches, or tunnels which are left open at night, the Grantee shall place sufficient warning lights and barricades about such trenches, ditches or tunnels to give adequate warning of such work. The Grantee shall assume sole liability for any injury to persons or property which occurs by reason of any trenches, ditches, or tunnels dug or maintained by the Grantee.

VI. ALL COUNTY ROAD RIGHTS RESERVED

Benton County expressly reserves any and all rights which it now has or may hereafter acquire with respect to County roads or rights-of-ways, and this Franchise shall not be construed to in any way limit or restrict any authority, power, rights, or privileges which Benton County now has or may hereafter acquire to control and regulate the use of County roads or rights-of-ways covered by this Franchise.

VII. COUNTY MAY CHANGE AND IMPROVE ROADS WITHOUT LIABILITY

If Benton County shall at any time improve or change any County roads or rights-of-ways, subject to this Franchise by grading, regrading, surfacing , or paving the same, or by changing, altering, repairing, or relocating the grade thereof or by construction of drainage facilities, the Grantee shall, upon written notice from the County Engineer, at Grantee's sole expense, with all reasonable speed, change the location or readjust the elevation of its distribution system and other facilities so that the same shall not interfere with such county work and so such lines and facilities shall conform to such new grades as may be established. Benton County shall in no respect be held liable for any damages, costs, or expenses to said Grantee that may occur by reason of any of the County's improvements, changes or work above enumerated, except insofar as such damages, costs or expenses shall be caused by negligence of the County's employees or agents.

All work performed by the Grantee under this section shall be under the direction, approval, and shall pass the inspection of the County Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work.

VIII. REFERENCE MONUMENTS AND MARKERS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operation under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during

construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

IX. VACATION OF COUNTY ROADS – ALTERNATE ROUTE

If at any time Benton County shall vacate any County road, right-of-way, or other County property which is subject to rights granted by this Franchise the Board of County Commissioners for Benton County may, after granting an alternate route with the consultation of Grantee, by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to such County road, right-of-way, or other County property so vacated and said Benton County shall in no respect be liable for any damages, costs, or expenses to the Grantee that may occur by reason of such termination.

X. GRANTEE TO INDEMNIFY COUNTY – LIABILITY INSURANCE

The Grantee covenants, agrees and promises that it shall fully indemnify Benton County from any and all liability, loss, injury, damage, costs, charges or expenses of any nature whatever, occurring to any person, association, corporation or property of any kind by reason of any acts, actions, omissions, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system.

The Grantee further covenants, agrees and promises that, in the event that any claim, suit, or cause of action shall be brought against Benton County by reason of any act, action, omission, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system, it shall, at its own cost and expense, defend any such claim, suit, or cause of action, and shall pay any and all costs, charges, attorneys' fees, and other expenses therein, and any and all judgments that may be incurred by or obtained against Benton County in any such claim, suit, or cause of action.

The Grantee further covenants, agrees and promises that, in order to secure to the County full and complete performance of the covenants and conditions of this Section "X", it shall, at its own cost and expense, obtain and maintain in effect continually during the term of this Franchise, liability insurance in a company or companies to be approved by the County, such insurance to name the Grantee and Benton County as the insured and to have minimum limits of

not less than $1,000,000.00. Written evidence of such insurance in effect shall be furnished to the County Engineer no later than the date that any work or construction under the terms of this Franchise commences. Such additional written evidence of such insurance shall be furnished to the County Engineer from time to time as the County Engineer shall require; in any event, such additional written evidence shall be provided to the County Engineer at least annually during the term of this Franchise. The Grantee's compliance with the provisions of this paragraph relating to liability insurance shall in no way alter, affect, modify or limit any of the other covenants, conditions, and provisions of this paragraph. Acceptance or approval by the County of any work performed by the Grantee shall not constitute a waiver by the County of any of the provisions of this Section "X", and shall not excuse the Grantee from any of the covenants, provisions, or requirements set forth herein.

XI. FRANCHISE NOT EXCLUSIVE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit Benton County from granting other Franchises of a like nature or Franchises for public or private utilities under, along, across, over, and upon any of the County roads or rights-of-ways, subject to this Franchise and shall in no way restrict, prevent, or prohibit Benton County from constructing, altering, maintaining, or using any of said roads or rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other County property or affect its jurisdiction over them or any part of them with full power to make all necessary construction, alterations, changes, relocations, repairs, or maintenance, which the County may deem necessary.

XII. PROVISIONS HEREOF BIND SUCCESSOR

All provisions, conditions, covenants, and requirements herein contained shall be binding upon any and all successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned herein wherever the Grantee is mentioned, provided, however, that neither this Franchise nor any rights, privileges, or obligations granted in this order and agreement shall be assigned without the prior written approval of the County Engineer, unless such assignments is to a wholly-owned subsidiary of the Grantee or to a parent company owning

more than 50% of the Grantee, and unless Benton County is provided with prior written notice of such assignment giving the name and address of the subsidiary or parent company assignee.

XIII. REVOCATION FOR NON-COMPLIANCE

In the event that the Grantee substantially violates or fails to comply with any of the material provisions of this Franchise, the Grantee shall forfeit all rights conferred hereunder and this Franchise shall be revocable by the Board of Benton County Commissioners at their discretion, provided, however, the Board of County Commissioners shall provide the Grantee with written notice of its intention to revoke the Franchise, specifying the nature of such violation, failure, or neglect, and giving the Grantee thirty (30) days in which to cure such violation, failure, or neglect. The Grantee shall be entitled to a hearing, within such thirty-day period, before the Board of County Commissioners.

In the event such hearing is held, the Grantee shall be given prior written notice of the time and place for such hearing. Subject to applicable federal and state law, in the event the Board of County Commissioners, after such hearing, determines that Grantee is in default of any provision of the Franchise, the Board of County Commissioners may:

a. Foreclose on all or any part of any security provided under this Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;

b. Commence an action at law for monetary damage or seek other equitable relief;

c. In the case of substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

d. Seek specific performance of any provision, which reasonably leads itself to such remedy, as an alternative to damages.

XIV. CONFORMITY WITH STATE AND COUNTY

Benton County expressly reserves the right at any time, upon ninety (90) days written notice to the Grantee, to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any state statute, rule or regulation, or county ordinance, rule or regulation, relating to the regulation of highways or the public welfare, health, safety, as may

hereafter be enacted, adopted or promulgated, and the County further expressly reserves the right to terminate this Franchise at any time, in accordance with the procedures stated in Section "XIII" above, in the event that the Grantee's distribution system is not operated or maintained in accordance with such statute, ordinance, rule, or regulation.

XV. FEDERAL REGULATION

Any lawful modification required by amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one (1) year of adoption or at the time of Franchise renewal, whichever occurs first.

XVI. ACTS OF GOD

The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts that are solely the result of an Act of God or similar circumstance, power outages, or other events reasonably beyond its ability to control.

XVII. SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

XVIII. COMPLAINT PROCEDURES

The Grantee agrees to maintain a local business office which subscribers may telephone during regular business hours without incurring added message or toll charges so that service shall be promptly available. The Grantee agrees to notify each subscriber, at the time of initial subscription to the Grantee's service, of the procedures for reporting and resolving such complaints.

XIX. ACCEPTANCE BY GRANTEE

Written acceptance by the Grantee of the Franchise granted herein and all provisions, conditions, covenants, and requirements contained in this order and agreement shall be indicated by endorsement by the Grantee where indicated herein below, and a copy of this order and agreement so endorsed by the Grantee shall be filed with the Clerk of the Board of County Commissioners of Benton County within thirty (30) days from the date of acceptance by the Board. Such filing of the endorsed order and agreement within the period above specified shall be a condition precedent to this Franchise taking effect, and unless this order and agreement is accepted and filed within such time, it shall be null and void.

XX. TERM

This nonexclusive Franchise agreement shall be in full force and effect upon execution and shall expire _____ 2031.

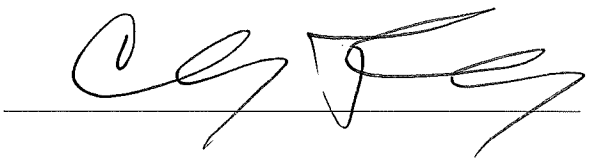
XXI. GRANTEE'S ADDRESS

Information for the Grantee is:

- Clancy Fynn, Secretary/Manager
- 10 E. Kennewick Avenue
  Kennewick, WA 99336
- Phone: (509) 586-6118
- E-mail: cid@columbiairrigation.com

Any notification required to be given to the Grantee may be given to the address above stated, provided that the Grantee may from time to time notify Benton County in writing of address to which notifications are to be sent.

FOR GRANTEE:



Date 3 May 2021

APPROVED AS TO FORM:

Benton County Deputy Prosecuting Attorney

Date 4/28/21

FOR BENTON COUNTY, WASHINGTON.

Chairman

Chairman Pro-Tem

Member

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

ATTEST:

Clerk of the Board

Date

EXHIBIT A

All unincorporated areas of Benton County

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25th, 2021
Subject:	Kiona Irrigation District; New Franchise
Presenter:	N/A
Prepared By:	Cristina Woods
Reviewed By:	Douglas D'Hondt

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Kiona Irrigation District has submitted an application to establish their franchise within Benton County road right of way.

A public hearing was held April 27th, 2021 to consider the request of Kiona Irrigation District who has applied for a nonexclusive franchise to place an irrigation water transmission system and facilities in unincorporated Benton County.

Fiscal Impact

N/A

Recommendation

Benton County Public Works recommends that the Commissioners approve the Franchise Order and Agreement with Kiona Irrigation District, subject to the 6 items listed in the report to the Commissioners.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FRANCHISES RE: GRANTING A FRANCHISE TO KIONA IRRIGATION DISTRICT TO PLACE AN IRRIGATION WATER TRANSMISSION SYSTEM AND FACILITIES IN COUNTY ROAD RIGHTS OF WAY

WHEREAS, a public hearing was held April 27th, 2021 to consider the request of Kiona Irrigation District who has applied for a nonexclusive franchise to place an irrigation water transmission system and facilities in unincorporated Benton County; and

WHEREAS, after hearing the testimony regarding the request for a franchise, the Board finds as follows:

1. The term of the franchise shall be a ten-year (10) period, expiring June 1st, 2031, with an associated cost of $500.00;
2. The Grantee is to carry liability insurance with Benton County named as an insured with a minimum limit of $1,000,000.00. A copy of the proof of insurance is to be provided to Benton County yearly;
3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way;
4. Should Benton County require utility relocation work because of road construction, maintenance, or any other reason, said work shall be at the Grantee's expense;
5. The franchise is nonexclusive;
6. The Grantee is to sign the Order and Agreement for Nonexclusive Franchise;

WHEREAS, Kiona Irrigation District has agreed to the terms and has signed the Order and Agreement for Nonexclusive Franchise, said Order having been approved as to form by the Prosecuting Attorney's Office; **NOW, THEREFORE**

BE IT RESOLVED that Kiona Irrigation District franchise for an irrigation water transmission system and facilities in County road rights of way be approved and that the Board indicates its approval by its signatures on the Order and Agreement for Nonexclusive Franchise.

Dated this 25th day of May 2021

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works

C. Woods

Return to:
Benton County Public Works
P. O. Box 1001
Prosser, WA 99350

Grantor: Benton County
Grantee: Kiona Irrigation District

BEFORE THE BOARD OF COUNTY COMMISSIONERS

BENTON COUNTY, STATE OF WASHINGTON

IN THE MATTER OF THE APPLICATION OF KIONA IRRIGATION DISTRICT FOR A NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE, USE, AND IF NECESSARY, REMOVE AN IRRIGATION WATER TRANSMISSION SYSTEM AND FACILITIES WITHIN THE COUNTY OF BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG, AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED CITY OR TOWN.	No._____ ORDER AND AGREEMENT FOR NONEXCLUSIVE FRANCHISE

FINDINGS

NOW, on this _____ day of _____ the petition and application of KIONA IRRIGATION DISTRICT, for the authority and nonexclusive Franchise, for a term of ten (10) years, to install, locate, construct, maintain, operate, use, and, if necessary, remove AN IRRIGATION WATER TRANSMISSION SYSTEM AND FACILITIES under, upon, over, along and across Benton County roads, highways, streets, alleys, bridges, and rights-of-ways, or other County property, hereinafter called County roads or rights-of-ways, described in said application by reference to the sections, townships, and ranges in which said County roads or rights-of-ways are physically located within the County of Benton, State of Washington, and not

within the corporate limits of any incorporated city or town therein, coming on to be heard before this, the Board of County Commissioners of and from said Benton County, Washington, and this Board having heretofore fixed this time and place for the hearing of said petition, and it appearing that the County Engineer has given notice of the time and place of said hearing by posting in three places in the Benton County Courthouse with written or printed notices of the time and place of this hearing in accordance with the laws of the State of Washington, and also by publishing a like notice two (2) times in the Prosser Record Bulletin newspaper of general circulation published in Benton County, Washington, and it appearing that the notices so posted and published stated the name of the applicant and a description by reference to sections, townships and ranges in which the County roads or rights-of-ways to be included in the Franchise for which application is made are physically located, and also state the time and place fixed for said hearing, and after hearing all persons interested in the matter of said petition, and at which hearing the qualifications of the Grantee were heard, the Board deeming it for the public interest to grant the Franchise and authority so applied for.

ORDER

IT IS HEREBY ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

There is hereby granted to KIONA IRRIGATION DISTRICT, hereafter called the Grantee, subject to all provisions, conditions, covenants and requirements of this order and agreement, the right, privilege and nonexclusive Franchise, to install, locate, construct, maintain, operate, use, and, if necessary, remove AN IRRIGATION WATER TRANSMISSION SYSTEM AND FACILITIES, and all necessary appurtenances thereto, hereinafter called the distribution system, under, upon, over, along, or across those portions of any and all County roads or rights-of-ways, which lie within those legal subdivisions within the County of Benton, State of Washington, set forth and described in "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, from such subdivisions any portion thereof which is within the corporate limits of any incorporated city or town, but including all portions of said subdivisions which are within any unincorporated town or community. Benton County Resolution No. 72-220, regarding Policy on Accommodation of Utilities on County Road Rights-of-Way, shall apply in all respects to this Franchise and the distribution system.

AGREEMENT

I. APPROVAL BY COUNTY ENGINEER

All locations, construction, installation, maintenance, relocation or removal of the distribution system or any portion thereof within County roads or rights-of-ways outside the corporate limits of any incorporated town shall be subject to the approval and pass inspection of the County Engineer.

II. PERMIT REQUIRED – MAP AND SPECIFICATIONS TO BE FILED APPROVAL BY COUNTY ENGINEER – PERFORMANCE BOND

Prior to commencement of any work on or construction of any portion of the distribution system, Grantee shall file with the County Engineer its application for permit to do such work or construction together with plans and specifications in form and number as approved by the County Engineer showing the position, depth, or height, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing County roads or rights-of-ways, upon plans drawn to scale indicating exact distance hereinafter collectively referred to as the "map of definite location". Grantee is hereby authorized to extend its facilities throughout the area authorized hereunder.

The distribution system shall be constructed in exact conformity with said map of definite location, except in instances in which deviation may be allowed by the prior written consent of the County Engineer pursuant to application by Grantee. The plans and specifications shall specify, as applicable, the class and type of materials and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, and road obstructions, and manner and means by which they affect County roads or rights-of-ways, will be restored to a condition as good as that which existed prior to such work or construction. No such work or construction shall be commenced until the Grantee has first secured a written permit from the County Engineer, which shall include approval by the County Engineer endorsed on one set of plans and specifications to be returned to the Grantee. All such work or construction shall require the inspection and approval of the County Engineer. The Grantee shall pay all reasonable costs and

expenses incurred in the examination, inspection, and approval of such work or construction by the County Engineer as herein provided.

The County Engineer may require a performance bond in a sum sufficient to guarantee to Benton County that any County roads or rights-of-ways, including the surfaces thereof, affected by any work or construction by the Grantee, shall be restored to a condition as good as that which existed prior to such work or construction, the amount of said bond to be fixed by the County Engineer. The County Engineer, upon notice to the Grantee, may at any time order any and all work that he considers necessary to restore to a safe condition any portion of the County roads or rights-of-ways, the condition of which has been rendered dangerous to the safety of persons or property by reason of any work, construction, of facilities of Grantee, and Grantee, upon demand, shall pay to Benton County all costs of such work, done by order of the County Engineer.

III. COUNTY ROADS TO BE RESTORED

In any work which requires breaking of surface of the County roads or rights-of-ways subject to this Franchise for the purpose of locating, constructing, installing, relocating, removing, maintaining and/or repairing the distribution system, and/or making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and strictly conform to the instructions set forth in the permit issued by the County Engineer for such work; and the Grantee, at its own expense and with all reasonable speed, shall complete the work for which the County roads or rights-of-ways, surface has been broken and repair and restore the affected County roads or rights-of-ways, and the surface thereof to a condition as good as that which existing before the work was commenced. Noxious weed control will be required, at the Grantee's expense, and shall meet all requirements of the Benton County Weed Board.

Except in cases of emergency as hereinafter provided, no breaking of surface of any County roads or rights-of-ways, shall be done until Grantee has first obtained a permit therefor issued by the County Engineer as specified in Section II of this Agreement.

PROVIDED, however, that in cases of emergency which occur out of office hours when immediate work may be necessary for the protection or safety of persons or property, the

emergency shall be immediately reported to the Benton County Sheriff and the necessary work may be immediately undertaken upon the express condition that an application for a permit for such work, as hereinabove provided, shall be submitted to the County Engineer on or before noon of the business day next following the commencement of the emergency work.

IV. INTERFERENCE WITH EXISTING FACILITIES

No location, construction, installation, maintenance, repair, removal or relocation of the distribution system or any portion thereof, performed along or under any County roads or rights-of-ways, shall in any way interfere with the grading or improvement of such County roads or rights-of-ways, or with the construction and maintenance of any existing utility, public or private, drain, drainage ditch or structure, or irrigation ditch or structure, located along or under such county roads, right-of-way or property. In the event that it is necessary to relocate any such county road or right-of-way or alter the grade of any such county road or right-of-way, requiring relocation of any utilities, including rights-of-way, preferences as to positioning of such utilities, shall be given in the order of the original location and installation of such utilities, the utility first having been located and installed being given first preference as to positioning and relocation.

V. MINIMUM INTERFERENCE WITH PUBLIC TRAVEL – GRANTEE LIABLE FOR DAMAGE

All work done under this Franchise shall be done in a thorough and workmanlike manner. All construction, installation, maintenance, repair, relocation, or removal of the distribution system, or any portion thereof, shall be conducted in a manner that will interfere as little as possible with public use of and travel upon County roads or rights-of-ways, shall include all due and necessary measures and precautions to prevent danger to persons or property. Specifically, where such construction, installation, maintenance, repair, relocation or removal involves open trenches, ditches, or tunnels which are left open at night, the Grantee shall place sufficient warning lights and barricades about such trenches, ditches or tunnels to give adequate warning of such work. The Grantee shall assume sole liability for any injury to persons or property which occurs by reason of any trenches, ditches, or tunnels dug or maintained by the Grantee.

VI. ALL COUNTY ROAD RIGHTS RESERVED

Benton County expressly reserves any and all rights which it now has or may hereafter acquire with respect to County roads or rights-of-ways, and this Franchise shall not be construed to in any way limit or restrict any authority, power, rights, or privileges which Benton County now has or may hereafter acquire to control and regulate the use of County roads or rights-of-ways covered by this Franchise.

VII. COUNTY MAY CHANGE AND IMPROVE ROADS WITHOUT LIABILITY

If Benton County shall at any time improve or change any County roads or rights-of-ways, subject to this Franchise by grading, regrading, surfacing , or paving the same, or by changing, altering, repairing, or relocating the grade thereof or by construction of drainage facilities, the Grantee shall, upon written notice from the County Engineer, at Grantee's sole expense, with all reasonable speed, change the location or readjust the elevation of its distribution system and other facilities so that the same shall not interfere with such county work and so such lines and facilities shall conform to such new grades as may be established. Benton County shall in no respect be held liable for any damages, costs, or expenses to said Grantee that may occur by reason of any of the County's improvements, changes or work above enumerated, except insofar as such damages, costs or expenses shall be caused by negligence of the County's employees or agents.

All work performed by the Grantee under this section shall be under the direction, approval, and shall pass the inspection of the County Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work.

VIII. REFERENCE MONUMENTS AND MARKERS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operation under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during

construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

IX. VACATION OF COUNTY ROADS – ALTERNATE ROUTE

If at any time Benton County shall vacate any County road, right-of-way, or other County property which is subject to rights granted by this Franchise the Board of County Commissioners for Benton County may, after granting an alternate route with the consultation of Grantee, by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to such County road, right-of-way, or other County property so vacated and said Benton County shall in no respect be liable for any damages, costs, or expenses to the Grantee that may occur by reason of such termination.

X. GRANTEE TO INDEMNIFY COUNTY – LIABILITY INSURANCE

The Grantee covenants, agrees and promises that it shall fully indemnify Benton County from any and all liability, loss, injury, damage, costs, charges or expenses of any nature whatever, occurring to any person, association, corporation or property of any kind by reason of any acts, actions, omissions, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system.

The Grantee further covenants, agrees and promises that, in the event that any claim, suit, or cause of action shall be brought against Benton County by reason of any act, action, omission, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system, it shall, at its own cost and expense, defend any such claim, suit, or cause of action, and shall pay any and all costs, charges, attorneys' fees, and other expenses therein, and any and all judgments that may be incurred by or obtained against Benton County in any such claim, suit, or cause of action.

The Grantee further covenants, agrees and promises that, in order to secure to the County full and complete performance of the covenants and conditions of this Section "X", it shall, at its own cost and expense, obtain and maintain in effect continually during the term of this Franchise, liability insurance in a company or companies to be approved by the County, such insurance to name the Grantee and Benton County as the insured and to have minimum limits of

not less than $1,000,000.00. Written evidence of such insurance in effect shall be furnished to the County Engineer no later than the date that any work or construction under the terms of this Franchise commences. Such additional written evidence of such insurance shall be furnished to the County Engineer from time to time as the County Engineer shall require; in any event, such additional written evidence shall be provided to the County Engineer at least annually during the term of this Franchise. The Grantee's compliance with the provisions of this paragraph relating to liability insurance shall in no way alter, affect, modify or limit any of the other covenants, conditions, and provisions of this paragraph. Acceptance or approval by the County of any work performed by the Grantee shall not constitute a waiver by the County of any of the provisions of this Section "X", and shall not excuse the Grantee from any of the covenants, provisions, or requirements set forth herein.

XI. FRANCHISE NOT EXCLUSIVE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit Benton County from granting other Franchises of a like nature or Franchises for public or private utilities under, along, across, over, and upon any of the County roads or rights-of-ways, subject to this Franchise and shall in no way restrict, prevent, or prohibit Benton County from constructing, altering, maintaining, or using any of said roads or rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other County property or affect its jurisdiction over them or any part of them with full power to make all necessary construction, alterations, changes, relocations, repairs, or maintenance, which the County may deem necessary.

XII. PROVISIONS HEREOF BIND SUCCESSOR

All provisions, conditions, covenants, and requirements herein contained shall be binding upon any and all successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned herein wherever the Grantee is mentioned, provided, however, that neither this Franchise nor any rights, privileges, or obligations granted in this order and agreement shall be assigned without the prior written approval of the County Engineer, unless such assignments is to a wholly-owned subsidiary of the Grantee or to a parent company owning

more than 50% of the Grantee, and unless Benton County is provided with prior written notice of such assignment giving the name and address of the subsidiary or parent company assignee.

XIII. REVOCATION FOR NON-COMPLIANCE

In the event that the Grantee substantially violates or fails to comply with any of the material provisions of this Franchise, the Grantee shall forfeit all rights conferred hereunder and this Franchise shall be revocable by the Board of Benton County Commissioners at their discretion, provided, however, the Board of County Commissioners shall provide the Grantee with written notice of its intention to revoke the Franchise, specifying the nature of such violation, failure, or neglect, and giving the Grantee thirty (30) days in which to cure such violation, failure, or neglect. The Grantee shall be entitled to a hearing, within such thirty-day period, before the Board of County Commissioners.

In the event such hearing is held, the Grantee shall be given prior written notice of the time and place for such hearing. Subject to applicable federal and state law, in the event the Board of County Commissioners, after such hearing, determines that Grantee is in default of any provision of the Franchise, the Board of County Commissioners may:

a. Foreclose on all or any part of any security provided under this Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;

b. Commence an action at law for monetary damage or seek other equitable relief;

c. In the case of substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

d. Seek specific performance of any provision, which reasonably leads itself to such remedy, as an alternative to damages.

XIV. CONFORMITY WITH STATE AND COUNTY

Benton County expressly reserves the right at any time, upon ninety (90) days written notice to the Grantee, to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any state statute, rule or regulation, or county ordinance, rule or regulation, relating to the regulation of highways or the public welfare, health, safety, as may

hereafter be enacted, adopted or promulgated, and the County further expressly reserves the right to terminate this Franchise at any time, in accordance with the procedures stated in Section "XIII" above, in the event that the Grantee's distribution system is not operated or maintained in accordance with such statute, ordinance, rule, or regulation.

XV. FEDERAL REGULATION

Any lawful modification required by amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one (1) year of adoption or at the time of Franchise renewal, whichever occurs first.

XVI. ACTS OF GOD

The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts that are solely the result of an Act of God or similar circumstance, power outages, or other events reasonably beyond its ability to control.

XVII. SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

XVIII. COMPLAINT PROCEDURES

The Grantee agrees to maintain a local business office which subscribers may telephone during regular business hours without incurring added message or toll charges so that service shall be promptly available. The Grantee agrees to notify each subscriber, at the time of initial subscription to the Grantee's service, of the procedures for reporting and resolving such complaints.

XIX. ACCEPTANCE BY GRANTEE

Written acceptance by the Grantee of the Franchise granted herein and all provisions, conditions, covenants, and requirements contained in this order and agreement shall be indicated by endorsement by the Grantee where indicated herein below, and a copy of this order and agreement so endorsed by the Grantee shall be filed with the Clerk of the Board of County Commissioners of Benton County within thirty (30) days from the date of acceptance by the Board. Such filing of the endorsed order and agreement within the period above specified shall be a condition precedent to this Franchise taking effect, and unless this order and agreement is accepted and filed within such time, it shall be null and void.

XX. TERM

This nonexclusive Franchise agreement shall be in full force and effect upon execution and shall expire June 1st, 2031.

XXI. GRANTEE'S ADDRESS

Information for the Grantee is:

- Randal Bricker
- PO BOX 300
  Benton City, WA 99320
- Phone : (509) 588-7414
- E-mail : kiid@owt.com

Any notification required to be given to the Grantee may be given to the address above stated, provided that the Grantee may from time to time notify Benton County in writing of address to which notifications are to be sent.

FOR GRANTEE:

Date 5-6-2021

APPROVED AS TO FORM:

Benton County Deputy Prosecuting Attorney

Date 4/28/21

FOR BENTON COUNTY, WASHINGTON.

Chairman

Chairman Pro-Tem

Member

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

ATTEST:

Clerk of the Board

Date

EXHIBIT A

All unincorporated areas of Benton County

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Contract w/ Gram Northwest, LLC for Cultural Resource Survey at Rattlesnake Mountain Shooting Facility
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

Resolution 2020-275 authorized the design of a new shooting range at Rattlesnake Mountain Shooting Facility.

During the SEPA Review/Permitting process, a Cultural Resource Survey was requested on the proposed site of the new shooting range at Rattlesnake Mountain Shooting Facility.

A Service Contract has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney and signed by Gram Northwest, LLC.

Fiscal Impact

Amount: $5,500.00 excluding W.S.S.T.

Fund: Various Funds

Recommendation

Approve the Contract with Gram Northwest, LLC for Cultural Resource Survey at the Rattlesnake Mountain Shooting Facility.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING A SERVICE CONTRACT WITH GRAM NORTHWEST, LLC FOR A CULTURAL RESOURCE SURVEY AT RATTLESNAKE MOUNTAIN SHOOTING FACILITY

WHEREAS, Resolution 2020-275 authorized the design of a new shooting range at Rattlesnake Mountain Shooting Facility; and

WHEREAS, during the SEPA Review/Permitting process, a Cultural Resource Survey was requested on the proposed site of the new shooting range at Rattlesnake Mountain Shooting Facility; and

WHEREAS, a Service Contract has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney, and signed by Gram Northwest, LLC; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby approves the Service Contract with Gram Northwest, LLC, of Richland, Washington, to perform a Cultural Resource Survey at the Rattlesnake Mountain Shooting Facility with a maximum total amount payable not to exceed $5,500.00, excluding Washington State Sales Tax, unless agreed to by amendment by both parties; and

BE IT FURTHER RESOLVED, the term of this Contract commences on this date and terminates on July, 30, 2021.

Dated this 25th day of May 2021.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Department P. Schut
c: Auditor, CM

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 **GRAM NORTHWEST, LLC** a corporation organized under the laws of the State of Washington with its principal offices at 1201 Jadwin Ave., Ste 203, Richland, WA 99352 (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 – Proposal & Fees; and

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on July 30, 2021. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall perform a Cultural Resources Survey of the sight of the proposed shooting range at the Rattlesnake Shooting Facility. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Proposal & Fees", 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:	Nathan Bowles, PE
Address:	1201 Jadwin Ave.. Ste 203 Richland, WA 99352
Phone:	509-946-1376
Email:	Nathan.Bowles@gramnorthwest.com

b. For COUNTY:

Name:	Robert Blain
Address:	7122 W Okanogan Place; BLDG A Kennewick, WA 99336
Phone:	509-737-2704
Email:	Robert.Blain@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Five Thousand Five Hundred Dollars and Zero Cents ($5,500.00), excluding W.S.S.T., in accordance with Exhibit A, "Proposal & Fees", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Five Thousand Five Hundred Dollars and Zero Cents ($5,500.00), 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 A, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

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

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

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. <u>TERMINATION</u>

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 thirty (30) 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.

- 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:_____

FOR: GRAM NORTHWEST, LLC

Signature

Title:

Print Name

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: _____

FOR: GRAM NORTHWEST, LLC

_____
Signature

_____
Title:

_____
Print Name

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: May 12, 2021

FOR: GRAM NORTHWEST, LLC

_____
Signature

Managing Member, Operations
Title:

Nathan A. Bowles
Print Name

GRAM
NORTHWEST, LLC

May 5, 2021

Robert Blain
Director of Operations & Capital Programs, Benton County
620 Market Street
Prosser, WA 99350

Sent via email: Robert.Blain@co.benton.wa.us

Re: Proposal for Cultural Resource Services to Benton County, Washington – Supporting Expansion of the Rattlesnake Mountain Shooting Facility in Benton County, Washington

Dear Robert:

On behalf of GRAM Northwest, LLC (GRAM NW), we are pleased to propose our support to the subject project. The scope of work and associated schedule are summarized in the proposal attached to this letter. The terms and conditions for this agreement are also attached to this letter.

The fixed price will be $5,500.00.

If you accept this proposal and agree to the terms and conditions, please sign in the place provided below and return this proposal in its entirety to me as soon as possible.

We look forward to you supporting you, and we are available to begin work on this right away. Should you have any questions, please do not hesitate to contact me (509.392.2568) or Stacie Sexton (509.713.6806).

Sincerely,

Nathan Bowles, PE
Managing Member, Operations

I accept the proposal and agree to the terms and conditions as presented above and as contained in the attachments to this letter.

_____

Signature Date

1201 Jadwin Ave., Ste. 203
Richland, Washington 99352

Proposal for Cultural Resource Services to Benton County, Washington – Supporting Expansion of the Rattlesnake Mountain Shooting Facility in Benton County, Washington

1 INTRODUCTION

GRAM Northwest, LLC, (GRAM NW) is offering to conduct a professional evaluation of cultural resources overlapping a tract of land located on Rattlesnake Mountain in Benton County, Washington to provide relevant information prior to development of the land. This project includes construction of the new shooting range, support buildings, parking areas, and any other required infrastructure (utilities, earthwork berms, signage, etc). on a tract of land approximately 2.0 hectares (5.0 acres) in size, as depicted in Figure 1.

1.1 PROJECT LOCATION

The project area is an approximately 2.0 hectares (5.0 acres) area located in Benton County, Washington, in Section 17 of Township 10N, Range 27E. This project is located within a portion of the larger 115-hectare (285-acre) parcel of land uniquely identified as Benton County Tax Lot 11707200000000. This property is currently managed by the Washington Department of Fish and Wildlife (WDFW) but leased by Benton County (WA).

2 APPROACH & METHODOLOGY

2.1 RECORDS REVIEW

GRAM NW will consult with The Client (Benton County, WA) and/or The Agency (or Agencies) to determine the area to be evaluated for the project. Upon finalization of the project area, GRAM Northwest will conduct a review of records using the Washington Information System for Architectural and Archaeological Records Data (WISAARD) electronic database, local historical museum and public library records for any existing information related to archaeological or building site records/surveys, historical documents, or ethnographic information in the area. The records review will include land within a one-mile radius of the project area as required by the Washington Department of Archaeology and Historic Preservation (DAHP). Information obtained will be provided in the final report.

2.2 FIELDWORK

Archaeological fieldwork is highly recommended in areas with limited or no existing cultural resources data. As such, pedestrian survey and shovel testing is recommended as a minimum level of effort for this project.

Pedestrian Survey

Pedestrian survey will be conducted throughout the project area using transects spaced no more than 10 meters (33 feet) apart. All potential cultural resources encountered will be recorded in the field and evaluated to determine eligibility as a recorded archaeological site. Recorded data will include a description of the items encountered (including dimensions), photographs, Global Positioning System (GPS) co-ordinates, environmental context, and any other relevant observations.

Subsurface Testing

Shovel test units (STUs) are recommended at a minimum of five (5) units for this project (1 per acre). STUs will consist of an approximately 30-centimeter (12 inch) diameter excavation extending approximately 1 meter (39.3 inches) below the ground surface, where possible. STUs may be abandoned prior to 1 meter (39.9 inches) in depth upon refusal (inability to further excavate due to geologic or other prohibiting factors). Excavated sediments will be passed through ¼ inch hardware cloth to allow for identification of potential cultural resources. All STUs will be recorded as positive/negative for cultural resources encountered, and all potential cultural resources will be recorded and described in the field. GPS coordinates and photographs of each unit will be collected prior to backfill.

If an archaeological site is identified during survey, additional funding may be required to determine if the site is eligible for listing in the National Register of Historic Places (NRHP). If the site is found not eligible, no further investigation will be necessary. If the site is found to be eligible for listing in the NRHP, mitigation may be necessary.

In the event human remains are discovered during field work, all activities in the immediate area of the discovery will be terminated. The client will be informed of the find, and the county coroner and DAHP will be notified.

Please note that Federal or State agencies (including, in this case, the WDFW) may require additional fieldwork including expanded shovel testing or unit excavation in order to comply with applicable regulations/guidelines. As per the assumptions listed below, a revised scope of work and adjusted funding will be required if supplementary fieldwork is necessary.

2.3 SCHEDULE AND DELIVERABLES

2.3.1 Schedule

The project schedule below is estimated and may shorten or lengthen based on the results of fieldwork, transmittal dates, and/or comments received from The Client, The Agency (or Agencies), or Consulting Parties. State and local agencies may have specific regulatory processes that alter schedule activities and/or durations.

Activity	Duration (Business Days)
Draft Project Area Description	5
Archaeological Fieldwork	2
Draft Archaeological Survey Report and Inadvertent Discovery Plan (IDP)	10
Client Review of Archaeological Survey Report and IDP	5
Agency Review of Archaeological Survey Report and IDP	5
Revise and Finalize Report and IDP	3
Total	**30**

2.3.2 Deliverables

DAHP requires all cultural resources technical reports to follow state guidelines. This includes:

- Cultural Resources Report Cover Sheet and Title Page
- Introduction (project description, project background, project area maps, etc.)
- Environmental Setting

- Cultural Setting
- Literature Review
- Research Design (objectives/expectations & field and laboratory methodology)
- Survey Results (dates of fieldwork, list of personnel, field conditions, summary of field methodology used, summary of subsurface testing or justification against subsurface testing (as applicable), map of survey area, etc.)
- Analysis (analysis of cultural resources encountered, results of analysis, eligibility recommendations, etc.)
- Conclusions and Recommendations
- Bibliography
- Consultation Records
- Appendices, as necessary

An Inadvertent Discovery Plan will also be developed for this project.

Once the draft technical report has been compiled, it will be provided to The Client for review and comment. GRAM Northwest will address comments and revise the report, as necessary. The final technical report will then be submitted to The Client as an electronic PDF.

2.4 ASSUMPTIONS

This proposal is based upon the following assumptions:

- A Cultural Resources Survey will be completed in compliance with the State Environmental Protection Act (SEPA) and Executive Order 05-05. No additional state or federal regulations are applicable to this project.
- No permits from federal, state, or local agencies will be required prior to commencement archaeological fieldwork.
- No Traditional Cultural Properties (TCP) studies will be conducted.
- No archaeological sites will be identified during background research or fieldwork.
- No Historic Properties (NRHP eligible irrigation canals, historic buildings, or other archaeological sites) are located within the project area.
- One set of draft report comments provided by The Client will be addressed.
- One set of draft report comments provided by The Agency will be addressed.
- Required fieldwork will be limited to pedestrian survey and excavation of 5 STUs within the project area. A revised scope of work and adjusted funding will be required if supplementary fieldwork is necessary.
- No mitigation, site evaluations, or cultural resources monitoring will be required. If monitoring is required, a revised scope of work and additional funding will be required.
- Methodology for fieldwork may be altered based on conditions encountered at the time of survey. This may include but is not limited to the presence or absence of crops/buildings/facilities, geologic conditions, or other limiting environmental factors.
- All estimates for project completion are based on optimal site access and weather conditions. Adverse weather conditions may impede fieldwork and lengthen project schedules.
- **If the WDFW determines that an increased level of effort is required for this project, additional funding may be necessary.**

3 COST TO COMPLETE PROJECT

3.1 ESTIMATED HOURS

The following level-of-effort is estimated for this project:

Activity	Estimated Hours
Project Area Description	5
GIS Analysis	5
Review of Literature	10
Fieldwork	20
Report Development	10
Internal Review	2
Technical Edit	5
Comment Resolution and Report Finalization	3
Final Review, Edit, and Issuance	2
Inadvertent Discovery Plan	2
Total	**64**

The fixed price for this work is **$5,500.00**.

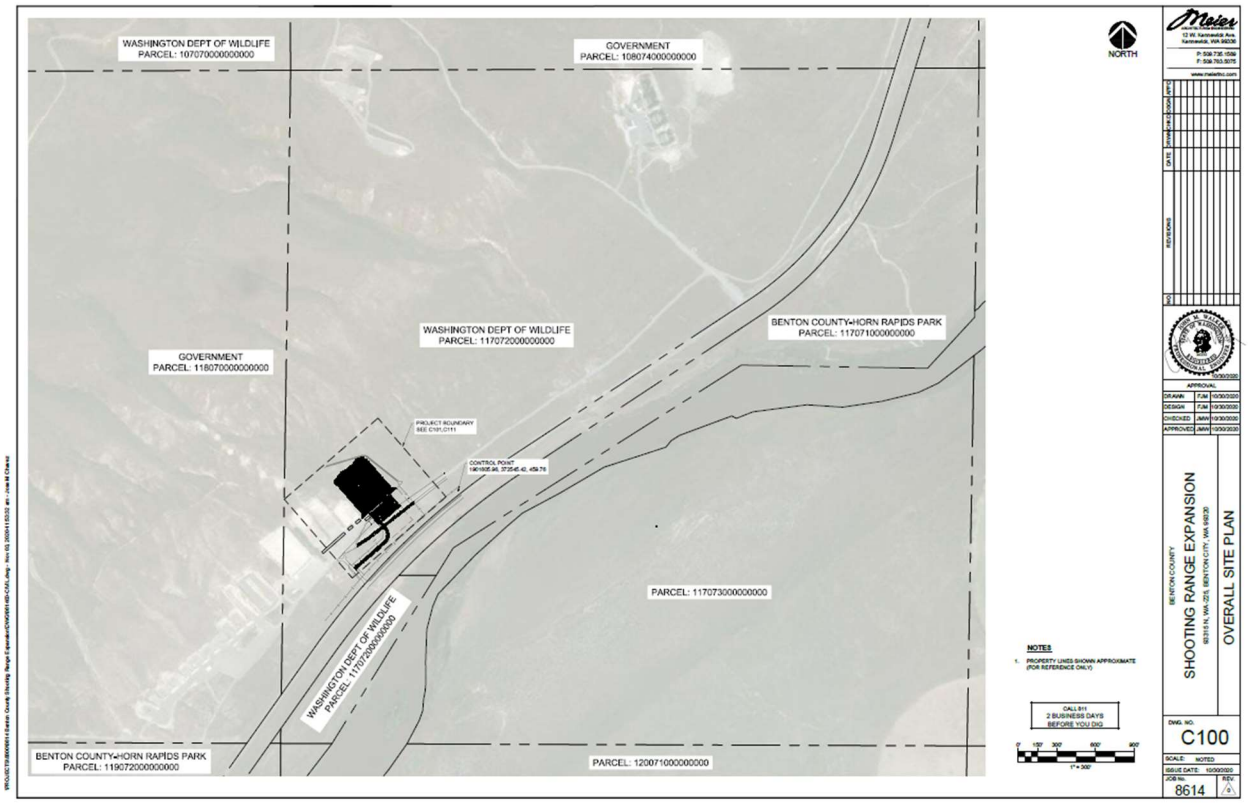


Figure 1. Proposed Project Area for Expansion of the Rattlesnake Mountain Shooting Facility in Benton County, WA

Terms and Conditions of Agreement

1 Scope of Services

The purpose of this Agreement is to provide a statement of the rights and duties of the parties for projects supported by GRAM Northwest, LLC (GRAM NW). All work performed by GRAM NW shall proceed according to the written Proposal as provided to Benton County, Washington (The Client) by GRAM NW. It is understood and agreed that the underlying Agreement between The Client and GRAM NW shall control to the extent that any conflict arises.

2 Term of Agreement

This Agreement will begin on the latter of the dates of signature and will end on July 31, 2021, unless sooner renewed or extended by the written agreement of the parties. It is further provided, however, that the Agreement of GRAM NW with The Client is subject to termination for convenience or for default. In such event, GRAM NW shall be entitled to payment for the work performed up to the time of such termination or suspension, and an equitable price adjustment will be mutually agreed.

3 Compensation for Services

The Client, in full consideration of the services to be performed under this Agreement, agrees to pay GRAM NW a sum outlined in the Proposal and Agreement within 30 calendar days of receiving an invoice from GRAM NW. Payments shall be submitted to:

GRAM Northwest, LLC
P.O. Box 928
Richland, WA 99352-0928
Attention: Suzanne Bowles
Email: suzanne.bowles@gramnorthwest.com

4 Indemnification

Each party shall indemnify, defend, and save harmless the other, its officers, agents, and employees from and against all liability, claims, damages, losses, expenses and actions, and suits and related costs and attorney fees, whatsoever, including injury or death of others or any employee caused by or arising out of the other's negligent performance, act or omission in the performance of the duties arising under this Agreement.

5 Compliance with Laws, Permits and Licenses

GRAM NW will perform work in accordance with all applicable laws, regulations, ordinances, permits, licenses, and other rules of the state, territory, or political subdivisions where the Work is to be performed and/or provided and in effect as of the execution date of this Agreement.

6 Modification

This Agreement may be extended or modified in any fashion, but only upon the prior written consent of both parties.

7 Disputes

Any controversy, claim, or dispute shall be construed and enforced in accordance with the laws of the State of Washington.

8 Production of Documents

If GRAM NW is requested to respond to any mandatory orders for the production of documents or witnesses on The Client's behalf regarding work performed by GRAM NW, then The Client agrees to pay all costs incurred by GRAM NW not reimbursed by others in responding to such order, including staff time at current billing rates and reproduction expenses, except if such order arises in a dispute between the parties to this Agreement.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Contract w/ Intermountain Cleaning Svs, Inc. for Janitorial Services at the Voting Center
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

The Election Division of the Auditor's Office has leased a Board-approved off-site Voting Center.

Intermountain Cleaning Svs, Inc. has agreed to provide weekly cleaning services through the end of the lease.

A Service Contract has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney and signed by Intermountain Cleaning Svs, Inc.

Fiscal Impact

Amount: $7,800.00 excluding W.S.S.T.

Fund: Election Reserve Fund

Recommendation

Approve the Contract with Intermountain Cleaning Svs, Inc. for Janitorial Services at the Voting Center

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING A SERVICE CONTRACT WITH INTERMOUNTAIN CLEANING SVS, INC. FOR JANITORIAL SERVICES AT THE VOTING CENTER

WHEREAS, the Election Division of the Auditor's Office has leased a Board-approved off-site Voting Center; and

WHEREAS, Intermountain Cleaning Svs, Inc. has agreed to provide weekly cleaning services through the end of the lease; and

WHEREAS, a Service Contract has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney, and signed by Intermountain Cleaning Svs, Inc.; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby approves the Service Contract with Intermountain Cleaning Svs, Inc., of Yakima, Washington, for Janitorial Services at the Voting Center with a maximum total amount payable not to exceed $7,800.00, excluding Washington State Sales Tax, unless agreed to by amendment by both parties; and

BE IT FURTHER RESOLVED, the term of this Contract commences on this date and terminates on December 31, 2022.

Dated this 25th day of May 2021.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Department P. Schut
c: Auditor, CM

BENTON COUNTY
SERVICE 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 **INTERMOUNTAIN CLEANING SVC INC.**, a corporation organized under the laws of the State of Washington with its principal offices at 515 N 20th Ave, Yakima, WA 98902 (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 – Monthly Rates
b. Exhibit B – Washington State Prevailing Wage Rates
c. Exhibit C – Background Check Form
d. Exhibit D – Weekly Schedule

2. DURATION OF CONTRACT

The term of this Contract shall begin immediately upon execution by both parties and shall terminate 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 agrees to perform janitorial cleaning services at the Benton County Voting Center as Exhibit D, 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.

e. 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.

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

g. The CONTRACTOR agrees to submit a COVID-19 Safety Plan in compliance with the Washington State Stay Home, Stay Healthy Proclamation before work can begin.

h. Each of the CONTRACTOR'S employees or subcontractors who will be working onsite at the Jail facility are required to submit a Benton County Background Check Authorization and Release form and be approved to work on the site by COUNTY, as further outlined in Section 29.

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

J. 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:	Jamie Fate
Address:	515 N. 20th Ave
	Yakima, WA 98902
Phone:	509-586-0744
Email:	jamie@intermountaincleaning.com

b. For COUNTY:

Name:	Jeff Jones, Facilities Manager
Address:	7122 W. Okanogan Pl., Bldg. A
	Kennewick, WA 99336
Phone:	509-736-2704
Email:	Thomas.Jones@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 A, "Monthly Rates", 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 six thousand six hundred and zero cents ($7,800.00), including W.S.S.T. 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. 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

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.

21. ENTIRE AGREEMENT

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

22. NOTICES

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

23. SEVERABILITY

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

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

24. LITIGATION HOLD NOTICE

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

25. PUBLIC RECORDS ACT

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

require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

26. SURVIVABILITY

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

27. CONFIDENTIALITY

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

28. SECURITY BACKGROUND CHECK

The CONTRACTOR, its employees, subcontractors, and employees who will be working onsite will be required to complete in full the Security Background Check form attached hereto and referenced herein as Exhibit C. Successful completion of the background check, as determined by the COUNTY, is required prior to the first day of work or entry into the jail. The completed form should be emailed to BCCDRecords@co.benton.wa.us or faxed to (509) 222-3784 attention: BCCDRecords. The CONTRACTOR agrees to remove any of its employees, or subcontractor employees, prior to performance hereunder if the sole discretion of the COUNTY said employees fail the Security Background Check. CONTRACTOR agrees to provide the COUNTY notice if during the performance of work hereunder any of its' employees, or subcontractors' employees, are charged with or convicted of any crime. If the CONTRACTOR, its employees, subcontractors, or their employees discover that a friend or family member is in the jail's custody they must immediately notify jail staff.

It will be solely determined by the County if the CONTRACTOR, its employees, subcontractors, and the subcontractor employees will be required to complete the CJIS online training. This is a web-based training accessible from any computer.

- This section was intentionally left blank –

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and it is effective upon signature of both parties.

Date:_____	Date: 5/14/2021
BENTON COUNTY	**INTERMOUNTAIN CLEANING SVS, INC.**
_____	_____
Jerome Delvin, Chairman Benton County Commissioners	Signature
	manager
Approved as to Form:	Title
_____	Jamie Fate
Eric Andrews, Civil DPA	PRINTED NAME

Attachment "A"
Pricing Analysis

Benton County Voting Center

All services performed, per attached service schedule, plus on the job supervision and management is as follows:

ITEM	MONTHLY BILLING
Janitorial one (1) day per week;	$390.00 per month

Intermountain Cleaning Service, Inc. will provide all cleaning equipment and supplies. However, expendable items such as handsoap, toilet paper, paper liners, paper towels, etc., to be provided by customer or may be provided by ICS at an additional cost. Customer is responsible for providing large trash bags for packaging gathered trash in their facility.

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 April 21, 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; Bldg. A, 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

Exhibit C

A minimum of two business days required for processing.

STAFF USE ONLY

Comments: Completed by / Date:

Badging Required? YES NO CJIS Required? YES NO CJIS Completed Date:_____

Approved / Denied Date

BENTON COUNTY BACKGROUND CHECK AUTHORIZATION AND RELEASE

I am a (**circle one**): **CONTRACTOR** **VOLUNTEER**

Location to obtain access (**circle all that apply**): **JAIL** **JUSTICE CENTER**

Last Name First Name Middle Name Sex: M F

All Other Previous Names Used Date of Birth

Driver's License Number/State Social Security Number

Primary Phone number Alternate Phone number Email address

Company/Organization Name Position/Title

Reason for Access Request / Services to be Performed Duration of Access Needed / End Date

ADVERSE HISTORY INFORMATION

The following information pertains to all incidents, whether under Washington State law, the law of another State, or federal law. If you answer "yes" to any question, please provide details including the date, location/jurisdiction, case number, charge if applicable, and arresting agency if applicable.

Have you **ever** been convicted of, or are you currently charged with, any crime (this includes adjudications as a juvenile unless expunged or vacated)? YES / NO

Have you **ever** been found by way of any judicial, administrative, or employer process or investigation to have committed sexual harassment or to have engaged in any other forcible or nonconsensual sexual conduct? YES / NO

Have you **ever** been terminated from employment or a previous position (including volunteer positions), or permitted to resign in lieu of termination? YES / NO

If requesting access to the jail, do you currently have any family members or friends in custody at the Benton County Jail? If so, who is in jail and what is their relationship to you? YES / NO

If you answered YES to any of the above, please describe the circumstances below:

ACKNOWLEDGEMENT:

A background check is required of all Benton County employees and volunteers, as well as contractors assigned to work in secure areas and for individuals needing jail access. Successful completion of the background check, as determined by Benton County, is required prior to the first day of work or entry into the jail. If you are visiting the Benton County Jail for business and discover that a friend or family member is in custody you must immediately notify jail staff. **Jail access will be for official business only. No personal business is authorized. I understand that employment, jail access or volunteer status with Benton County is contingent upon the results of a background check. I understand that adverse findings during my background check may result in denied jail access, withdrawal of any offer of employment/assignment with Benton County, and/or termination of my employment/assignment with Benton County. I further understand that if I am found to have made any false or misleading statements in my application or background check materials, I may be denied access or have my employment/volunteer status terminated even after I have started work, and may subject myself to criminal prosecution.**

AUTHORIZATION AND RELEASE

I hereby authorize Benton County (including but not limited to Personnel Resources Department, Corrections Department, Sheriff's Office, Juvenile Justice Center, and/or Prosecutor's Office personnel) to conduct a background check in connection with my application for jail access and/or employment/assignment with Benton County. **I understand that this background check may include, but is not limited to, a review of records on file with the Washington State Patrol, the FBI National Crime Information Computer (NCIC) and Interstate Identification Index (III), local law enforcement agencies, the Department of Licensing, courts of law, and other agencies, and also may, depending on my employment or assignment, involve fingerprinting. I understand that a more comprehensive background check is required for certain Benton County positions and may include review of records relating to arrests and/or other contacts with law enforcement.**

I hereby authorize and request any person, government entity, law enforcement or criminal justice agency, and/or other organization (public or private) to provide any information and/or records solicited by Benton County in connection with my application for jail access and/or work with Benton County. I hereby release those persons and entities, and Benton County, its elected officials, judges, directors, appointees, managers, employees, volunteers, agents, and assigns, from any and all liability that may result from providing and/or soliciting such information and/or records. A facsimile copy or photocopy of this waiver shall have the same force and effect as a copy with my original signature.

CONTINUING NATURE OF ADVERSE HISTORY INFORMATION

I understand that during all times I have jail access, am employed by, or have volunteer status with, Benton County, that I am required to inform my immediate supervisor or jail staff any time I am charged with or convicted of any crime, and any time I am named as a defendant/respondent in any lawsuit or complaint alleging sexual harassment or other forcible or nonconsensual sexual conduct. I understand that failure to make such notification within one business day of such action, excluding any time I am incarcerated or otherwise incapable of making such notification, shall be grounds for denied access into the jail and/or immediate termination of my employment or volunteer status with Benton County.

AUTOMATIC DISQUALIFIERS

- Felony convictions within the past five (5) years
- Violent misdemeanors or domestic violence convictions within the past five (5) years
- Drug related convictions within the past five (5) years

All applications are reviewed on a case by case basis. Absence of automatic disqualifiers does not guarantee background clearance. Some exemptions may also apply on a case by case basis.

I have read, fully understand, and voluntarily provide this Authorization and Release. By signing below, I also certify, under penalty of perjury as provided by the laws of the State of Washington, that I am the person identified above, and that all of the biographical, adverse history, and other information provided above is true, correct, and complete to the best of my knowledge.

Signature

Date

Benton County Jail PREA, Sexual Abuse, Sexual Harassment and Sexual Misconduct Information

PREA

The Prison Rape Elimination Act (PREA) was passed in 2003 with unanimous support from both parties in Congress. The purpose of the act was to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape." (Prison Rape Elimination Act, 2003)

Staff Sexual Misconduct

The Department maintains a zero-tolerance policy with regard to staff sexual misconduct and inappropriate staff/offender relationships. The policy also applies to contract staff, vendors and volunteers. Any Contractor or Volunteer who attempts to or engages in sexual abuse shall be prohibited from further contact with inmates and all allegations of staff sexual misconduct will be investigated and will be referred to law enforcement when appropriate.

What is sexual misconduct?

RCW 9A.44.160, RCW 9A.44.170, and RCW 72.09.225 all contain detailed descriptions of what constitutes sexual misconduct and staff misconduct of a sexual nature.

Forms of sexual misconduct include, but are not limited to:

-Any behavior of a sexual nature directed toward an offender by a Department staff, contract staff, or volunteer.

-Inappropriate touching between offenders and staff.

-All completed, attempted, threatened, or requested sexual acts between Department staff and the offender.

-Sexual comments and conversations with sexually suggestive innuendos or double *meanings.*

-Display or transmittal of sexually suggestive posters, objects, or messages.

An Abuse of Power

Due to the imbalance of power between offenders and staff in correctional settings, sexual interactions between staff (who have power) and offenders (who lack power) are unprofessional, unethical and illegal. Some offenders who lack power may become sexually involved with staff in an effort to equalize the imbalance of power. Occasionally an offender may try to use sex to improve his/her standing or circumstances (e.g., better job, avoid disciplinary action, affect a release plan, gain privileges, etc.). Because of the imbalance of power between offenders and staff, contractors, vendors and volunteers, there can never be a consensual relationship between offenders and persons working or volunteering for the Department. The law states "consent" is not a defense to prosecution.

Any staff member, contractor, or volunteer involved in an inappropriate relationship with an inmate is considered a security threat to the Benton County Jail and the public.

Any staff member, contractor, or volunteer involved in an inappropriate relationship with an inmate will be prohibited from the having any contact with inmates housed within the Benton County Jail and will be reported to law enforcement for criminal charges.

Red Flags:

The following are behaviors or 'red flags' that may signal you or someone you work with is in danger of engaging in sexual misconduct with an offender:

- Spending a lot of time with a particular offender
- Change in appearance of an offender or staff member
- Deviating from agency policy for the benefit of a particular offender
- Sharing personal information with an offender
- Horseplay
- Overlooking infractions of a particular offender
- Doing favors for an offender
- Consistently volunteering for a particular assignment or shift
- Coming to work early/staying at work late
- Flirting with an offender
- Standing too close to an offender
- Taking up an offender's cause or grievance
- Changing duty assignments of a particular offender
- Getting into conflicts with co-workers over an offender
- Bringing things into the facility for the offender
- Doing favors for an offender's family
- Feeling the effects of major life changes (divorce, etc)
- Believing an offender is indispensable

<u>What can I do to avoid inappropriate staff/offender relationships?</u>

Most staff/offender sexual misconduct occurs only after seemingly innocent professional boundaries have been crossed. The following behaviors will assist you in maintaining appropriate boundaries:

- Maintain professional distance
- Focus behavior on duties and assignments
- Do not become overly close with any particular offenders
- Do not share your own or other staff person's personal information with our around offenders.
- Do not discuss issues you may have with other staff or management with or around offenders.
- When speaking to offenders about other staff refer to the staff person as Ms. or Mr. or by their title.
- When speaking to offenders refer to them as Ms. or Mr. and their last name
- Do not accept gifts or favors from offenders
- Be knowledgeable of Departmental policy and procedure, rules of conduct and laws regarding sexual misconduct and sexual harassment.

A Duty to Report

Staff, contractors, volunteers, and visitors must report any inappropriate staff/offender behavior immediately. The presence of illegal and unethical behavior by any staff compromises the security and safety of offenders and the agency. Any staff, including contractors, volunteers, and visitors that fail to report such behavior will be held accountable and sanctioned, possibly with dismissal. All efforts will be made to ensure the confidentiality of the reporting staff member.

By signing this form, I acknowledge that I have received and understand information pertaining to the Benton County Corrections Department zero tolerance policy pertaining to sexual assault and sexual harassment of inmates in custody of this agency.

Company:

_____

Printed Name:

_____

Signature:

_____

Date:

Benton County Voting Center

Service Schedule

Offices, Lobby	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	January	February	March	April	May	June	July	August	September	October	November	December	As Needed	Extra Charge
Empty waste baskets						X															
Gather recycling for removal																					X
Vacuum carpets						X															
Dusting 6' and below						X															
Detail dusting 6' and below								X	X	X	X	X	X	X	X	X	X	X	X		
High dusting 6' and above - to include vents								X	X	X	X	X	X	X	X	X	X	X	X		
Edge vacuuming								X	X	X	X	X	X	X	X	X	X	X	X		
Sweep & mop all hard floors						X															
Clean floor mats & chair rungs						X															
Clean & sanitize telephones								X	X	X	X	X	X	X	X	X	X	X	X		
Properly position furniture, etc.						X															
Spot clean partition glass						X															
Spot clean doors, frames, wall & vertical surfaces						X															
Dust venetian blinds								X	X	X	X	X	X	X	X	X	X	X	X		
Spot clean entry door glass						X															
Clean drinking fountains						X															
Vacuum upholstery furniture								X			X			X			X				
Restrooms																					
Clean & sanitize toilets, urinals & sinks						X															
Empty waste receptacles						X															
Refill dispensers to normal levels						X															
Sweep & mop rest room floors						X															
Polish mirrors & fixtures						X															
Spot Clean walls next to toilets						X															
Completely wash down all walls								X	X	X	X	X	X	X	X	X	X	X	X		
Dust vents and tops of partitions								X	X	X	X	X	X	X	X	X	X	X	X		
Exterior																					
Police exterior of the main entry for trash			N/A																		
Empty trash containers and ashtrays			N/A																		

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Awarding and executing a contract with Benjamin's Carpet One for the installation of a new countertop for the Commissioner's Hearing Room at the Prosser Courthouse
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

Bids were solicited for the installation of a new countertop for the Commissioner's Hearing Room in Prosser using the MRSC Small Works Roster, and only one bid was received in the amount below:

Benjamin's Carpet One, Kennewick, WA (BENJACO044BG) $ 8,780.25

Fiscal Impact

Amount: $8,780.25 excluding W.S.S.T.

Fund: Capital Projects Fund (Fund # 0305-101)

Recommendation

Award the contract for the installation of a new quartz countertop for the Commissioner's Hearing Room in an amount not to exceed $8,780.25 to Benjamin's Carpet One and authorize the Chairman to sign the said 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 THE CONTRACT FOR THE INSTALLATION OF A NEW COUNTERTOP TO BENJAMIN'S CARPET ONE, OF KENNEWICK, WA AND AUTHORIZING THE CHAIRMAN TO SIGN THE SAID CONTRACT

WHEREAS, bids were solicited for the installation of a new countertop for the Commissioner's Hearing Room in the Prosser Courthouse utilizing the MRSC Small Works Roster; and

WHEREAS, one bid was received in the amount below:

Benjamin's Carpet One, Kennewick, WA (BENJACO044BG) $ 8,780.25

WHEREAS, the Director of Operations and Capital Programs recommends award of the bid to Benjamin's Carpet One, Kennewick, WA; and

WHEREAS, a contract has been prepared, reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney from the Civil Division, and has been executed by Benjamin's Carpet One; and

WHEREAS, the Director of Operations and Capital Programs recommends the Chairman sign said contract; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Director of Operations and Capital Program's recommendations and awards the bid for the installation of a new countertop to Benjamin's Carpet One, Kennewick, Washington in a not to exceed the amount of $8,780.25 excluding Washington State Sales Tax; 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 Benjamin's Carpet One; and

BE IT FURTHER RESOLVED, said contract expires July 30, 2021.

Dated this 25th day of May, 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

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

Orig.: Purchasing P. Schut
c: Auditor

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 **BENJAMIN'S CARPET ONE**, a corporation organized under the laws of the State of Washington with its principal offices at 223 n Benton Street, 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 – Bid Form
b. Exhibit B – Drawings & Specifications; and
c. Exhibit C – Washington State Prevailing Wage Rates for Public Works Contracts.

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed]>> and shall expire on July 30, 2021. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide install quartz countertop in the Commissioners' Hearing in the Prosser Courthouse. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit B, "Drawing & Specifications", 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 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:	Andrea Numerick
Address:	223 N Benton Street Kennewick, WA 99336
Phone:	509-946-4506
Email:	Andrea@benjamincarpet1.com

b. For COUNTY:

Name:	Jeff Jones
Address:	7122 W Okanogan Place; Bldg. A Kennewick, WA 99336
Phone:	509-783-3118
Email:	Thomas.Jones@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Eight Thousand Seven Hundred Eighty Dollars and Twenty-Five Cents ($8,780.25), excluding W.S.S.T., in accordance with Exhibit A, " Bid Form", 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 Eight Thousand Seven Hundred Eighty Dollars and Twenty-Five Cents ($8,780.25), excluding W.S.S.T.

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 an additional 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 thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit C, which is attached hereto and incorporated herein by reference, shall be

paid to all employees, agents, subcontractors, and sub-subcontractors who do any work for the CONTRACTOR on this project. The CONTRACTOR shall ensure that all subcontractors or sub-subcontractors sign an agreement to pay these same wages and that the signed agreement is submitted to the COUNTY prior to subcontractor commencing any work on the project. This schedule of prevailing wages is duplicated from the Washington State Department of Labor and Industries website, it is provided for informational purposes only, and the COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies, then the CONTRACTOR is responsible for contacting the Washington State Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. NONDISCRIMINATION

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

19. DISPUTES

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

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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.

- This section was intentionally left blank –

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

Date: _____

BENTON COUNTY

_____
Chairman
Benton County Board of County Commissioners

Approved as to Form:

_____
Civil Deputy Prosecuting Attorney

Date: 05/18/2021

BENJAMIN'S CARPET ONE

Andrea K Numerick
Signature

Commercial Estimator
Title:

ANDREA NUMERICK
PRINTED NAME

BID FORM

COURTHOUSE COUNTERTOP REPLACEMENT

Company Name Benjamin's Carpet One

ACKNOWLEDGEMENT OF ADDENDA:
The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:

Addendum No. 1, dated 04/29/2021

Addendum No. 2, dated _____

BID AMOUNT:

LUMP SUM (excluding sales tax) $ $8780.25

LUMP SUM (excluding sales tax), in words Eight Thousand Seven Hundred Eighty & 25/100 —

GENERAL ACKNOWLEDGEMENT:
The undersigned hereby certifies that they have examined the location of the work outlined in the request for proposal, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this project, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this project in accordance with the said plans, specifications and contract, and the above lump sum price.

BID BOND:
The undersigned hereby certifies that a proposal guaranty in an amount of five percent (5%) of the total bid, and in one of the forms as indicated below, is attached hereby:

Cashier's Check	_____	In the Amount of Four Hundred thirty nine & 01/100 —
Certified Check	_____	($ 439.01) Payable to the County Treasurer of Benton County, Washington.
Bid Bond	_____	In the amount of 5% of the Bid.

CONTRACTOR'S LICENSE:

The undersigned states that it is a duly licensed contractor, for the type of work proposed, in the State of Washington, and that all fees, permits, etc., pursuant to submitting this bid have been paid in full.

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 hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

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.

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date 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 judgement entered by a court of limited or general jurisdiction.

SUBMISSION OF BID

Respectfully submitted this 7th day of May 2021.

COMPANY NAME: Benjamin's Carpet One

AUTHORIZED SIGNATURE: Andrea K Numerick

TYPE OR PRINT NAME: ANDREA NUMERICK

TITLE: COMMERCIAL ESTIMATOR

STREET ADDRESS: 223 N BENTON STREET

CITY, STATE, ZIP: KENNEWICK WA 99336

TELEPHONE NO.: 509-946-4506 MAIN 509-827-7420 DIRECT

EMAIL: andrea@benjaminscarpet1.com

CONTRACTOR'S LICENSE NO.: Benjaco 044bg

UBI NO.: 601358869

WASHINGTON STATE EMPLOYMENT SECURITY NO.: 739757-00-9

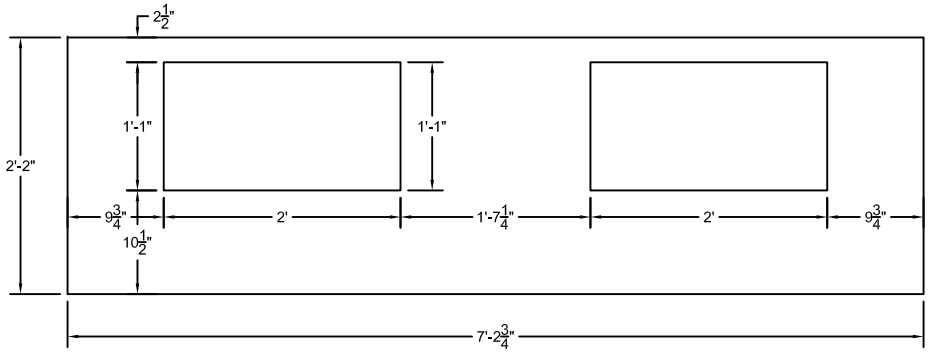
Exhibit B

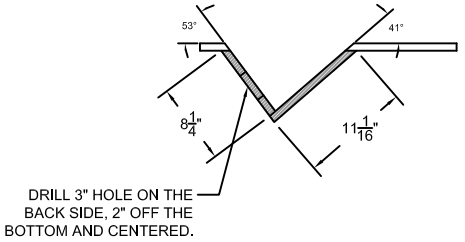
Countertop Specifications:

Manufacturer: Teltos

Material: Quartz

Color: Marengo





DETAIL A

SEE DETAIL A

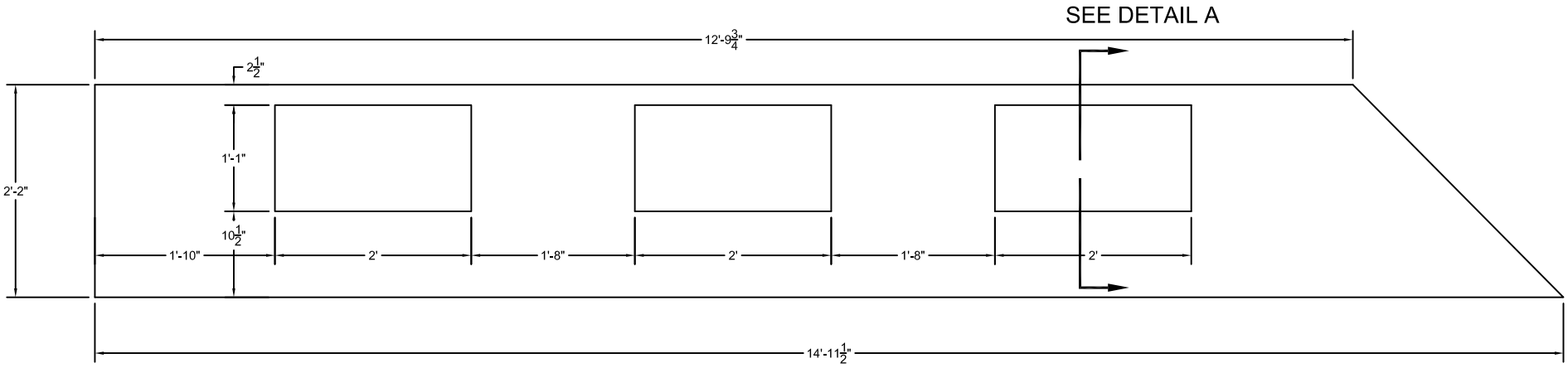


EXHIBIT C

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 May 7, 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; Bldg. A, 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:	May 25, 2021
Subject:	Vactor Truck Rental – One.7, Inc.
Presenter:	
Prepared By:	R. Blain
Reviewed By:	R. Blain

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

Resolution 2021-233 (Procurement Policy) requires solicitation of three quotes from the Vendor List for purchases between $10,000 and $50,000. The Road Maintenance Manager has determined a need to rent a vactor truck for use by the Road Department crew for road culvert maintenance activities. Staff estimated rental rates at $12,000 - $15,000 per month, and in keeping the budget less than $50,000 it was determined we could expect a 3-month rental. A solicitation was prepared and was sent to vendors on the MRSC Roster – Equipment Rental list. Four quotes were received from vendors and are compiled on the attached bid tabs.

The quotes were lower than expected so the projected rental will be 4 months instead of 3 months, which will allow crews to clean out more culverts. The lowest responsible vendor was One.7, Inc. with a total projected price of $40,000.00 for four months rental.

Fiscal Impact

An amount not to exceed $49,999.00 out of the 2021-2022 Road Fund Budget.

Recommendation

Approve and authorize the Chairman to sign the attached Rental Agreement and Hold Harmless & Release of Liability form for the rental of a vactor truck for use by the Benton County Public Works Department from One.7, Inc., Ravensdale, WA in an amount not to exceed $49,999.00 including WSST and any other taxes and fees incurred with the rental.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE RENTAL OF A VACTOR TRUCK FOR USE BY THE BENTON COUNTY PUBLIC WORKS DEPARTMENT FROM ONE.7, INC, RAVENSDALE, WASHINGTON

WHEREAS, per Resolution 2021-233, the Board of Benton County Commissioners approved a County-Wide Procurement, Leasing and Contracting Policy; and

WHEREAS, per Section 2.2.3 (Purchases or Leases between $10,000 and $50,000), County departments are required to obtain quotations from at least three (3) vendors on the vendor list and such purchase or lease is to be approved by the Board of Benton County Commissioners by Resolution; and

WHEREAS, multiple companies were solicited to provide quotes for the rental of a vactor truck by the Benton County Public Works Department; and

WHEREAS, four quotes were received and reviewed by the Road Maintenance Manager who recommends signing the rental agreement with One.7, Inc.; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby approves of and authorizes the Chairman to sign the Rental Agreement and Hold Harmless & Release of Liability form for the rental of a vactor truck for use by the Benton County Public Works Department from One.7, Inc., Ravensdale, WA in an amount not to exceed $49,999.00 including WSST and any other taxes and fees incurred with the rental; and

BE IT FURTHER RESOLVED, the Board authorizes the County Engineer, or his designee, to sign the delivery documents at the time the machine is delivered.

Dated this 25th day of May 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing
c: Auditor

RB

Public Works Department

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

APPROVED AS TO FORM:

The Vactor Truck Rental Agreement and Hold Harmless & Release of Liability forms between Benton County and One.7, Inc. have been reviewed and approved as to form.

Reid Hay, Civil Deputy Prosecuting Attorney

One.7, Inc.

RENTAL AGREEMENT

P.O. Box 474, Ravensdale, WA 98051 Phone (425) 413-1211 Fax (425) 413-1181

Rental Date: June 1, 2021

Bill To: Benton County

One.7, Inc. agrees to rent to the above named Customer the described equipment for the rental and pursuant to the terms and provisions set forth herein. One.7, Inc., reserves the right to substitute similar equipment at any time during the rental period. One.7 Inc., is responsible for any travel costs associated with the substituting of equipment and will make every effort to do so according to the Customer's schedule. **BY TAKING DELIVERY OF THE EQUIPMENT THE CUSTOMER AGREES TO PAY THE RENTAL AT THE RATES SPECIFIED, OR THE MINIMUM CHARGE, IF THAT IS GREATER, AND AGREES TO THOSE TERMS, CONDITIONS AND AGREEMENTS SET FORTH ON THIS PAGE.**

PAYMENT – $9,500.00 A MONTH + applicable sales tax per week

CUSTOMER IS RESPONSIBLE FOR ALL MAINTENANCE, SERVICE & REPAIRS

Customer, is responsible for all Maintenance, Service and Repairs needed on this unit while under the Rental Agreement. Customer understands they are responsible for repairing any damages to unit, either from negligence or daily usage. Customer understands they must immediately notify One.7, Inc., of any damages, which have occurred, and will be responsible for all costs associated with repairing the unit should it be necessary. Customer is responsible for performing daily, weekly and monthly servicing on unit as indicated by manufacturer. Customer may be asked to provide monthly proof of all service and maintenance done to this unit while on lease.

_____ _____

(Customer acknowledges acceptance of Maintenance, Service & Repair Policy) (Date)

Year and Make of Rental Equipment: 2008 Vactor Truck #: TBD VN#TBD
2100 Combo Truck

"Customer will do Environmental clean-up/process at time of rental unit return. Customer may be charged the cost to clean the unit if not done upon return"

TERMS OF LEASE: The term of this lease shall begin upon physical pick-up of equipment and end upon Lessor's retaking possession and control of the equipment. Rental begins: June 1, 2021 and ends: Approximately September 30, 2021

MONTHLY RENTAL RATE: Monthly rate per is based on one 8-hour shift per 5 days each week, unless otherwise specified. Additional use beyond basic shift shall be charged on a prorated basis. Rental rates shall not be subject to deductions for non-working time. The above rates do not include federal, state, and local taxes as may be applicable. The rental price is per month, and the customer agrees to pay loading and unloading costs and all transportation charges to and from the job site. Customer further agrees to pay for any repairs caused by themselves to the equipment while in their possession. 1) Customer shall purchase and maintain Commercial General Liability Insurance $1,000,000. Per occurrence , with a general aggregate of $2,000,000; Products – Completed Operations Aggregate- $2,000,0000. Automobile Liability $1,000,000; Excess/Umbrella Liability - $1,000,000 each occurrence; Workers' Compensation/Employers Liability- E.I. Each Accident - $500,000, E.I. Disease-EA Employee- $500,000, and E.I. Disease – Policy Limit $500,000. The insurance shall include Hired car Physical Damage, Pollution Liability Endorsements, including clean - up costs. Equipment must be insured for any loss or damage up to the full replacement value of the Equipment at $: 200,000.00 One.7, Inc. shall be named as an additional insured on all such insurance policies relating to loss or damage to the Equipment. Customer to sign Hold Harmless & Release of Liability. *CUSTOMER IS RESPONSIBLE FOR OBTAINING THE ABOVE INSURANCE SEE ATTACHED LETTER TO SUBMIT TO YOUR COMPANY.. THIS AGREEMENT IS FOR RENTAL ONLY- CUSTOMER HAS NO OWNERSHIP INTEREST AND NO RIGHTS TO PURCHASE THIS EQUIPMENT UNLESS A SEPARATE PURCHASE OPTION AGREEMENT HAS BEEN EXECUTED. RENTAL QUOTE GOOD FOR 30 DAYS.*

ACKNOWLEDGEMENT OF TERMS

Customer Signature	X _____	Print Name:	Jerome Delvin, Chairman, Board of County Commissioners	Date:	_____
One.7, Inc. Signature	X _____	Print Name:	_____	Date:	_____

Below will be filled in when equipment is returned.

EQUIPMENT RETURNED ACKNOWLEDGEMENT

DATE OFF RENTAL: _____ **DATE RETURNED:** _____

Customer Signature	X _____	Print Name:	_____	Date:	_____
One.7, Inc. Signature	X _____	Print Name:	_____	Date:	_____

PO BOX 474
Ravensdale, WA 98051
425-413-1211

HOLD HARMLESS & RELEASE OF LIABILITY

THE FOLLOWING SIGNEE AGREES TO HOLD HARMLESS, ONE.7, INC., IT'S AGENTS, OWNERS,EMPLOYEES OR CONTRACTORS FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES AND LIABILITIES TO OR BY THIRD PARTIES ARISING FROM, RESULTNG FROM, OR CONNECTED WITH THE PURCHASE OR RENTAL OF ANY EQUIPMENT OR VEHICLES FROM ONE.7, INC.

CUSTOMER NAME : Benton County

SIGNATURE OF AUTHORIZED AGENT____:_____
Jerome Delvin, Chairman
Board of County Commissioners

DATED: May 25, 2021

COMPANY ADDRESS: 620 Market Street

Prosser, WA 99350

STOCK #/YEAR AND MAKE OF RENTAL EQUIPMENT:

Truck # TBD
Make & Model: 2008 Vactor 2100 Combo
VN# TBD

BENTON COUNTY VACTOR TRUCK RENTAL

Quotes due: May 12, 2021, 11:00 a.m.

	AAA EQUIPMENT CO. LLC				ONE.7, INC.			
Item	Weekly	Monthly	Total Bid 3 Months	Total Bid 4 Months	Weekly	Monthly	Total Bid 3 Months	Total Bid 4 Months
Vactor Truck as described in specs	$ 3,500.00	$ 10,500.00	$ 31,500.00	$ 42,000.00	$ 2,500.00	$ 9,500.00	$ 28,500.00	$ 38,000.00
Delivery charge to Kennewick			$ 250.00	$ 250.00			$ 1,000.00	$ 1,000.00
Pick-up charge from Kennewick			$ 250.00	$ 250.00			$ 1,000.00	$ 1,000.00
Environmental Fee			$ -	$ -			$ -	$ -
Any other fees								
Vehicle Permits			$ -	$ -			$ -	$ -
Damage Deposit			$ -	$ -			$ -	$ -
Additional Miles Fees			$ -	$ -			$ -	$ -
Total			$ 32,000.00	$ 42,500.00			$ 30,500.00	$ 40,000.00

	OWEN EQUIPMENT				SWS EQUIPMENT, INC.			
Item	Weekly	Monthly	Total Bid 3 Months	Total Bid 4 Months	Weekly	Monthly	Total Bid 3 Months	Total Bid 4 Months
Vactor Truck as described in specs	$ 3,991.00	$ 11,975.00	$ 35,925.00	$ 47,900.00	$ 2,944.00	$ 9,500.00	$ 28,500.00	$ 38,000.00
Delivery charge to Kennewick	$ 500.00		$ 500.00	$ 500.00			$ 580.00	$ 580.00
Pick-up charge from Kennewick	$ 500.00		$ 500.00	$ 500.00			$ 350.00	$ 350.00
Environmental Fee		$ 15.95	$ 47.85	$ 63.80			$ -	$ -
Any other fees								
Vehicle Permits			$ -	$ -		$ 120.00	$ 360.00	$ 480.00
Damage Deposit			$ -	$ -			$ 3,500.00	$ 3,500.00
Additional Miles Fees			$0.9/MI over 1250	$0.9/MI over 1250			$ -	$ -
Total			$ 36,972.85	$ 48,963.80			$ 33,290.00	$ 42,910.00

QUOTE
FOR VACTOR TRUCK RENTAL

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	ITEM	PRICE
1	Vactor Truck as described in specifications	$ 9,500.00 /Month
2	Vactor Truck as described in specifications	$ 2,500.00 /Week
3	Delivery charge to Kennewick	$ 1,000.00
4	Pick-up charge from Kennewick	$ 1,000.00
5	Environmental Fee	$ N/C
6	Additional Mileage Fee	$ N/C /Mile
		Over 0 miles
7	Any other fees _____	$ _____
	_____	$ _____

DATED this 11th day of May, 2021.

FIRM NAME: One.7, Inc.

ADDRESS: 27034 SE Kent Kangley Rd. PO Box 474
Ravensdale WA 98051

EMAIL ADDRESS: Sales@1point7.com

TELEPHONE: (425) 413-1211

WASHINGTON STATE UNIFORM BUSINESS IDENTIFIER NO.: 602472325

BY: Tina McDonough — Tina McDonough, President
Authorized Signature — Print Name and Title

QUOTE
FOR VACTOR TRUCK RENTAL

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	ITEM	PRICE
1	Vactor Truck as described in specifications	$ 10,500.00 /Month
2	Vactor Truck as described in specifications	$ 3500.00 /Week
3	Delivery charge to Kennewick	$ 250.00
4	Pick-up charge from Kennewick	$ 250.00
5	Environmental Fee	$ 0
6	Additional Mileage Fee	$ 0 /Mile
		Over NA miles
7	Any other fees _____	$ _____
	_____	$ _____

DATED this 10 day of May, 2021.

FIRM NAME: AAA Equipment Co. LLC

ADDRESS: 3808 N Sullivan Rd. Bldg 107 B
Spokane Valley WA 99216

EMAIL ADDRESS: tom@aaaequipco.com

TELEPHONE: (509) 994-0922

WASHINGTON STATE UNIFORM BUSINESS IDENTIFIER NO.: 604651252

BY: Thomas C. Binder — Tom Binder, Territory Sales
Authorized Signature — Print Name and Title

QUOTE
FOR VACTOR TRUCK RENTAL

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	ITEM	PRICE
1	Vactor Truck as described in specifications	$ 11,975.00 /Month
2	Vactor Truck as described in specifications	$ 3,991.00 /Week
3	Delivery charge to Kennewick	$ 500.00
4	Pick-up charge from Kennewick	$ 500.00
5	Environmental Fee	$ 15.95 /Month
6	Additional Mileage Fee	$ .90 /Mile
		Over 1250 miles
7	Any other fees _____	$ _____
	_____	$ _____

DATED this 7th day of May, 2021.

FIRM NAME: Owen Equipment

ADDRESS: 13101 NE Whitaker Way
Portland, OR 97294

EMAIL ADDRESS: rwheelhouse@owenequipment.com

TELEPHONE: (509) 389-9529

WASHINGTON STATE UNIFORM BUSINESS IDENTIFIER NO.: 600-721-197

BY: _____ Randy Wheelhouse Acct. Mgr
Authorized Signature — Print Name and Title

QUOTE
FOR VACTOR TRUCK RENTAL

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	ITEM	PRICE
1	Vactor Truck as described in specifications	$ 9,500.00 /Month
2	Vactor Truck as described in specifications	$ 2,944.00 /Week
3	Delivery charge to Kennewick	$ 580.00 (includes training)
4	Pick-up charge from Kennewick	$ 350.00
5	Environmental Fee	$ 0.00
6	Additional Mileage Fee	$ N/A /Mile
		Over N/A miles
7	Any other fees Vehicle permits/licensing & handling	$ 120.00 / Month
	Damage/Cleaning Deposit	$ 3,500.00

DATED this 12th day of May, 2021.

FIRM NAME: SWS Equipment, Inc.

ADDRESS: 6515 E. Nixon Spokane Valley, WA 99212

EMAIL ADDRESS: SkylerS@SWSEquipment.com

TELEPHONE: (509) 994-2171

WASHINGTON STATE UNIFORM BUSINESS IDENTIFIER NO.: 601-245-968

BY: _____ Skyler Sharpe - Territory Manager

Authorized Signature — Print Name and Title

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS, BENTON COUNTY, WASHINGTON

RE: RE-APPOINTING BOB LEGARD TO THE BENTON-FRANKLIN WORKFORCE DEVELOPMENT COUNCIL, BENTON COUNTY DIVISION OF THE SOUTHEAST WASHINGTON OFFICE, TO A TERM EXPIRING JUNE 30, 2024.

WHEREAS, in compliance with Section 107 of the Workforce Innovation and Opportunity Act of 2014, the Board of County Commissioners is required to make appointments to the Workforce Development Council after appropriate nomination; and

WHEREAS, Bob Legard has expressed his interest and willingness to be re-appointed on the Workforce Development Council; and

WHEREAS Bob Legard has been nominated by Central Washington Building and Construction Trades Council to fill Labor representation; and

WHEREAS, the Benton County Board of Commissioners deems this to be in the best interest of the county;

NOW, THEREFORE, BE IT RESOLVED the Benton County Board of Commissioners hereby appoints Bob Legard to the Labor position for Labor representation on the Workforce Development Council, with said term expiring June 30, 2024.

APPROVED this ___ day of _____.

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

_____
Chair

_____
Chair Pro Tem

Attest:

_____
Clerk to the Board

_____
Member

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS, BENTON COUNTY, WASHINGTON

RE: RE-APPOINTING JIM SMITH TO THE BENTON-FRANKLIN WORKFORCE DEVELOPMENT COUNCIL, BENTON COUNTY DIVISION OF THE SOUTHEAST WASHINGTON OFFICE, TO A TERM EXPIRING JUNE 30, 2024.

WHEREAS, in compliance with Section 107 of the Workforce Innovation and Opportunity Act of 2014, the Board of County Commissioners is required to make appointments to the Workforce Development Council after appropriate nomination; and

WHEREAS, Jim Smith has expressed his interest and willingness to be re-appointed on the Workforce Development Council; and

WHEREAS Jim Smith has been nominated by Central Washington Building and Construction Trades Council to fill Labor representation; and

WHEREAS, the Benton County Board of Commissioners deems this to be in the best interest of the county;

NOW, THEREFORE, BE IT RESOLVED the Benton County Board of Commissioners hereby appoints Jim Smith to the Labor position for Labor representation on the Workforce Development Council, with said term expiring June 30, 2024.

APPROVED this ___ day of _____.

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

_____
Chair

_____
Chair Pro Tem

Attest:

_____
Clerk to the Board

_____
Member

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS, BENTON COUNTY, WASHINGTON

RE: RE-APPOINTING MICHAEL BOSSE TO THE BENTON-FRANKLIN WORKFORCE DEVELOPMENT COUNCIL, BENTON COUNTY DIVISION OF THE SOUTHEAST WASHINGTON OFFICE, TO A TERM EXPIRING JUNE 30, 2024.

WHEREAS, in compliance with Section 107 of the Workforce Innovation and Opportunity Act of 2014, the Board of County Commissioners is required to make appointments to the Workforce Development Council after appropriate nomination; and

WHEREAS, Michael Bosse has expressed his interest and willingness to be re-appointed on the Workforce Development Council; and

WHEREAS Michael Bosse has been nominated by Central Washington Building and Construction Trades Council to fill Labor representation; and

WHEREAS, the Benton County Board of Commissioners deems this to be in the best interest of the county;

NOW, THEREFORE, BE IT RESOLVED the Benton County Board of Commissioners hereby appoints Michael Bosse to the Labor position for Labor representation on the Workforce Development Council, with said term expiring June 30, 2024.

APPROVED this ___ day of _____.

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

_____
Chair

_____
Chair Pro Tem

Attest:

_____
Clerk to the Board

_____
Member

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS, BENTON COUNTY, WASHINGTON

RE: RE-APPOINTING CAROL MOSER TO THE BENTON-FRANKLIN WORKFORCE DEVELOPMENT COUNCIL, BENTON COUNTY DIVISION OF THE SOUTHEAST WASHINGTON OFFICE, TO A TERM EXPIRING JUNE 30, 2024.

WHEREAS, in compliance with Section 107 of the Workforce Innovation and Opportunity Act of 2014, the Board of County Commissioners is required to make appointments to the Workforce Development Council after appropriate nomination; and

WHEREAS, Carol Moser has expressed her interest and willingness to be re-appointed on the Workforce Development Council; and

WHEREAS Bob Legard has been nominated by Benton-Franklin Community Health Alliance to fill Business representation; and

WHEREAS, the Benton County Board of Commissioners deems this to be in the best interest of the county;

NOW, THEREFORE, BE IT RESOLVED the Benton County Board of Commissioners hereby appoints Carol Moser to the Business position for Business representation on the Workforce Development Council, with said term expiring June 30, 2024.

APPROVED this ___ day of _____.

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

_____
Chair

_____
Chair Pro Tem

Attest:

_____
Clerk to the Board

_____
Member

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS, BENTON COUNTY, WASHINGTON

RE: RE-APPOINTING MICHAEL LEE TO THE BENTON-FRANKLIN WORKFORCE DEVELOPMENT COUNCIL, BENTON COUNTY DIVISION OF THE SOUTHEAST WASHINGTON OFFICE, TO A TERM EXPIRING JUNE 30, 2024.

WHEREAS, in compliance with Section 107 of the Workforce Innovation and Opportunity Act of 2014, the Board of County Commissioners is required to make appointments to the Workforce Development Council after appropriate nomination; and

WHEREAS, Michael Lee has expressed his interest and willingness to be re-appointed on the Workforce Development Council; and

WHEREAS Michael Lee has been nominated by the Columbia Basin College to fill Education representation; and

WHEREAS, the Benton County Board of Commissioners deems this to be in the best interest of the county;

NOW, THEREFORE, BE IT RESOLVED the Benton County Board of Commissioners hereby appoints Michael Lee to the Education position for Higher Education representation on the Workforce Development Council, with said term expiring June 30, 2024.

APPROVED this ___ day of _____.

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

_____
Chair

_____
Chair Pro Tem

Attest:

_____
Clerk to the Board

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25th, 2021
Subject:	Col Solare LLP; Franchise Renewal
Presenter:	Cristina Woods, Public Works
Prepared By:	Cristina Woods, Public Works
Reviewed By:	Douglas D'Hondt, County Engineer

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

Type of Agenda Item:

- ☐ 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 has received an application to renew a Franchise Order and Agreement for an irrigation system and associated facilities from Col Solare LLP.

Fiscal Impact

None

Recommendation

Benton County Public Works recommends the Commissioners approve the Franchise Order and Agreement with Col Solare LLP, subject to the 6 items listed in the report to the Commissioners.

Suggested Motion

Move to approve the Franchise Order and Agreement with Col Solare LLP, subject to the 6 items listed in the report to the Commissioners.

Public Works Department

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

May 25th, 2021

BOARD OF COUNTY COMMISSIONERS
Benton County Courthouse
Prosser, WA 99350

RE: Application for Franchise: Col Solare LLP

Commissioners:

Col Solare LLP has filed a petition for a nonexclusive franchise to have an irrigation system and associated facilities within Benton County road right of way.

This office has reviewed the request and based upon our current franchise requirements recommends approval of the request subject to the following conditions:

1. The term of the franchise be for a ten (10) year period.

2. The Grantee shall carry liability insurance with Benton County named as an insured with a minimum limit of $1,000,000.00. A copy of the proof of insurance is to be provided to Benton County.

3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way.

4. Should Benton County require utility relocation work because of road reconstruction, maintenance, or any other reason, said work shall be at the Grantee's expense.

5. The franchise is nonexclusive.

6. The Grantee sign the Order and Agreement for Nonexclusive Franchise, which will be prepared based upon the requirements set forth at the public hearing.

If you have any questions, please contact this office.

Sincerely,

Douglas D'Hondt, P.E., L.E.G
County Engineer

BEFORE THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPLICATION OF
COL SOLARE LLP FOR A
(Please print name of company exactly as it will appear in franchise)
NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE USE REPAIR, AND IF NECESSARY REPLACE A
IRRIGATION SYSTEM AND FACILITIES WITHIN THE COUNTY OF
(Please print exact wording as it will appear in franchise)
BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED CITY OR TOWN.

(County use:)

No. 11 430
APPLICATION FOR FRANCHISE PURSUANT TO RCW 36.55.040.

TO THE HONORABLE BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON:

COL SOLARE LLP, duly authorized to transact business in the State of Washington (Grantee), hereby applies for the authority and a nonexclusive franchise, to be granted to said Grantee to locate, construction, maintain, operate, use, repair, and, if necessary, remove facilities upon, over, under, along and across any and all Benton County roads, highways, streets, alleys and bridges of which all or portions thereof are physically located in the Sections, Townships, and Ranges within the County of Benton, State of Washington, as set forth in the schedule marked "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, any portions thereof which are within the corporate limits of any incorporated city or town, but including all portions which are within any unincorporated town or community.

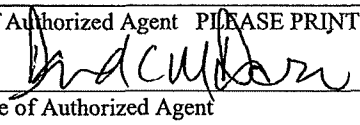
Grantee requests that the Board of County Commissioners fix a time and place for hearing this application, and cause the County Engineer of Benton County to give public notice of said hearing at the expense of said applicant, by posting notices of said hearings in three (3) public places in the county seat of said Benton County, at least fifteen days before the day fixed for said hearing, and also cause to be published a like notice, at the expense of said applicant, two (2) times in the official newspaper of the Benton County, the last publication of such notice to be not less than five (5) days before the day fixed for said hearing; which notice shall state the name of the applicant, shall describe the Benton County roads, highways, streets, alleys, bridges or portions thereof within said Benton County to be included in the franchise for which this application is made by reference to the Sections, Townships, and Ranges in which they are physically located, and shall show the time and place fixed for said hearing.

The Franchise Application fee in the amount of $500.00, in the form of check (cash or check), accompanies this application and is non-refundable. Upon approval, the franchise term will be for a period of ten (10) years.

Dated this 7th day of May, 2021.

Respectfully submitted by:

David Dearie, President & CEO
Name of Authorized Agent PLEASE PRINT


Signature of Authorized Agent

14111 NE 145th Street
Address of Applicant

Woodinville WA 98072
City State Zip

david.dearie@smwe.com
E-mail address

425-488-1133
Phone Number of Applicant

425-415-3340
FAX Number of Applicant

2nd Name of Authorized Agent PLEASE PRINT (if required)

2nd Signature of Authorized Agent (if required)

EXHIBIT A

All unincorporated areas of Benton County

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25th, 2021
Subject:	Cascade Natural Gas Corporation; Franchise Renewal
Presenter:	Cristina Woods, Public Works
Prepared By:	Cristina Woods, Public Works
Reviewed By:	Douglas D'Hondt, County Engineer

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

Type of Agenda Item:

- ☐ 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 has received an application to renew a Franchise Order and Agreement for a natural gas distribution system and associated facilities from Cascade Natural Gas Corporation.

Fiscal Impact

None

Recommendation

Benton County Public Works recommends the Commissioners approve the Franchise Order and Agreement with Cascade Natural Gas Corporation, subject to the 6 items listed in the report to the Commissioners.

Suggested Motion

Move to approve the Franchise Order and Agreement with Cascade Natural Gas Corporation, subject to the 6 items listed in the report to the Commissioners.

Public Works Department

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

May 25th, 2021

BOARD OF COUNTY COMMISSIONERS
Benton County Courthouse
Prosser, WA 99350

RE: Application for Franchise: Cascade Natural Gas Corporation

Commissioners:

Cascade Natural Gas Corporation has filed a petition for a nonexclusive franchise to have a natural gas distribution system and associated facilities within Benton County road right of way.

This office has reviewed the request and based upon our current franchise requirements recommends approval of the request subject to the following conditions:

1. The term of the franchise be for a ten (10) year period.

2. The Grantee shall carry liability insurance with Benton County named as an insured with a minimum limit of $1,000,000.00. A copy of the proof of insurance is to be provided to Benton County.

3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way.

4. Should Benton County require utility relocation work because of road reconstruction, maintenance, or any other reason, said work shall be at the Grantee's expense.

5. The franchise is nonexclusive.

6. The Grantee sign the Order and Agreement for Nonexclusive Franchise, which will be prepared based upon the requirements set forth at the public hearing.

If you have any questions, please contact this office.

Sincerely,

Douglas D'Hondt, P.E., L.E.G
County Engineer

BEFORE THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPLICATION OF
Cascade Natural Gas Corporation FOR A
(Please print name of company exactly as it will appear in franchise)
NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE USE REPAIR, AND IF NECESSARY REPLACE A
Natural Gas Distribution System & facilities WITHIN THE COUNTY OF
(Please print exact wording as it will appear in franchise)
BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED CITY OR TOWN.

(County use:)

No. _____
APPLICATION FOR FRANCHISE PURSUANT TO RCW 36.55.040.

TO THE HONORABLE BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON:

Cascade Natural Gas Corporation, duly authorized to transact business in the State of Washington (Grantee), hereby applies for the authority and a nonexclusive franchise, to be granted to said Grantee to locate, construction, maintain, operate, use, repair, and, if necessary, remove facilities upon, over, under, along and across any and all Benton County roads, highways, streets, alleys and bridges of which all or portions thereof are physically located in the Sections, Townships, and Ranges within the County of Benton, State of Washington, as set forth in the schedule marked "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, any portions thereof which are within the corporate limits of any incorporated city or town, but including all portions which are within any unincorporated town or community.

Grantee requests that the Board of County Commissioners fix a time and place for hearing this application, and cause the County Engineer of Benton County to give public notice of said hearing at the expense of said applicant, by posting notices of said hearings in three (3) public places in the county seat of said Benton County, at least fifteen days before the day fixed for said hearing, and also cause to be published a like notice, at the expense of said applicant, two (2) times in the official newspaper of the Benton County, the last publication of such notice to be not less than five (5) days before the day fixed for said hearing; which notice shall state the name of the applicant, shall describe the Benton County roads, highways, streets, alleys, bridges or portions thereof within said Benton County to be included in the franchise for which this application is made by reference to the Sections, Townships, and Ranges in which they are physically located, and shall show the time and place fixed for said hearing.

The Franchise Application fee in the amount of $500.00, in the form of Check (cash or check), accompanies this application and is non-refundable. Upon approval, the franchise term will be for a period of ten (10) years.

Dated this 28TH day of April, 2021.

Respectfully submitted by:

Eric Martuscelli: V.P. Field Operations
Name of Authorized Agent PLEASE PRINT

509-736-5543
Phone Number of Applicant

Signature of Authorized Agent

FAX Number of Applicant

200 N Union St.
Address of Applicant

2nd Name of Authorized Agent PLEASE PRINT (if required)

Kennewick WA 99336
City State Zip

2nd Signature of Authorized Agent (if required)

Steve.Kessie@CNGC.Com
E-mail address

Please Send All Correspondence ATTN Steven Kessie
Region Director
200 N Union St
Kennewick WA
99336

Revised 08-06-2013

EXHIBIT A

All unincorporated areas of Benton County

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	Public Hearing for Community Development Block Grant
Presenter:	Kyle Sullivan, Diana Young of Benton/Franklin Community Action Committee
Prepared By:	Tammy McKeirnan
Reviewed By:	Kyle Sullivan

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 applying to the state Department of Commerce for funding assistance. It is necessary that certain conditions be met as part of the application requirements. Kyle Sullivan Manager of Benton County Department of Human Services is authorized to submit this application to the state of Washington on behalf of Benton County.

Benton-Franklin Community Action Connections is submitting quarterly reports which are acceptable to Benton and Franklin Counties Department of Human Services.

Benton County authorizes submission of this application to the state Department of Commerce to request $65,884.00 and any amended amounts to fund public service activities in coordination.

Fiscal Impact

Amount: Total grant amount of $65,884.00
Fund: 0108-101 Human Services Budget

Recommendation

Approve signing the resolution allowing Benton County Department of Human Services to close out last year's (2020) grant and apply for the upcoming 2021-22 grant.

Suggested Motion

Move to close out Contract # 20-62210-002 Community Development Block Grant (CDBG) Public Services Grant and applying for 2021-22 CDBG Public Services Grant between Washington State Department of Commerce, Local Government Division and Benton County.

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF CLOSING OUT CONTRACT NUMBER: 20-62210-002 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG), PUBLIC SERVICES GRANT AND APPLYING FOR 2021-22 CDBG PUBLIC SERVICES GRANT BETWEEN WASHINGTON STATE DEPARTMENT OF COMMERCE, LOCAL GOVERNMENT DIVISION, AND BENTON COUNTY

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

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

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

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

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

WHEREAS, the grant will exclusively benefit residents of non-entitlement areas for eligible costs incurred between July 1, 2021 and June 30, 2022; and

NOW, THEREFORE, BE IT RESOLVED, Benton County delegates Benton County Board of Commissioner Chairman Jerome Delvin, Benton County Administrator Jerrod MacPherson, and Benton County Department of Human Services Manager Kyle Sullivan as the authorized Chief Administrative Official and authorized representatives to act in all official matters in connection with the 2021-22 application and Benton County's participation in the Washington State CDBG Program; and

BE IT FURTHER RESOLVED, that the Benton County Commissioners accepts the current 2020 grant expenditures and considered this grant closed.

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

_____
Chairman of Board

_____
Member

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

Attest: _____
Clerk of the Board

Originals: Benton Commissioners, Human Services T.McKeirnan

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	05/25/2021
Subject:	LIT – transferring funds from a vacant Corrections Corporal to a Custody Officer
Presenter:	S. Souza and L. Wingfield
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 the current Jail operational needs and in an effort to lower expenses, we are requesting to hire an additional Custody Officer rather than a recently vacant Corrections Corproal.

Fiscal Impact

No supplemental required

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolutions and the LIT to move funds from position 1833, Corrections Corporal to position 1416, Custody Officer.

Suggested Motion

I move to approve the resolution and attached LIT to move funds from a Corrections Corporal to a Custody Officer.

cc: Corrections, 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 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 _____, 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: Corrections Dept Nbr: 120

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
523.620	1833	Corrections Corporal	$128,286	523.620	1416	Custody Officer	$128,286
TOTAL			$128,286	TOTAL			$128,286

Explanation:

2021-2022 Budget. Due to current Jail operational needs and in an effort to lower expenses, we will hire an additional Custody Officer rather than a recently vacant Corrections Corporal.

Prepared by: L. Wingfield Date 19-May-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021 Memo Date: May 17, 2021
Subject:	Horse Heaven Wind Farm Project- Scoping Comments for EIS
Presenter:	Greg Wendt and Michelle Cooke
Prepared By:	Greg Wendt
Reviewed By:	N/A

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 Community Development Department has prepared a letter for Board consideration regarding the scope of Environmental Impact Statement (EIS) comments associated with the Horse Heaven Wind Farm Project.

EFSEC and the Scout Clean Energy have agreed that an EIS will be prepared under RCW 43.21C.0303 (2)(c). At a minimum the EIS will include a no action alternative and the applicant proposal. EFSEC will determine the full scope of the EIS, after all comments are reviewed at the end of the scoping period which is June 10, 2021.

The attached letter encourages a comprehensive analysis of the project's probable significant adverse impacts including all direct, indirect, and cumulative impacts.

Fiscal Impact

None Known at this time.

Recommendation

It is the recommendation of the Community Development Department that the Board approve the comment letter for submittal to EFSEC and their consideration in determining the scope of the EIS.

Suggested Motion

I move that the Board of County Commissioners approve the comment letter for submittal to EFSEC and their consideration in determining the scope of the EIS.

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

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

May 25, 2021

Energy Facility Site Evaluation Council
Attn: Amy Moon
621 Woodland Square Loop SE
Lacey, WA 98504-3172
amy.moon@utc.wa.gov

RE: Horse Heaven Wind Farm Project – Scope of EIS Comments

Dear Ms. Moon:

The Benton County Board of Commissioners approved the submission of the following scoping comments to the Energy Facility Site Evaluation Council (EFSEC) on May 25, 2021. The comments are submitted to you for consideration in determining the scope of the Environmental Impact Statement (EIS) for the proposed Horse Heaven Wind Farm Project in Benton County.

The Horse Heaven Wind Farm Project, as proposed, includes the construction of a renewable energy generation facility that combines wind and solar facilities, and battery energy storage systems, with an energy generating capacity of up to 1,150 megawatts. With this, the applicant is requesting the permitting authorization for up to 244 wind turbine locations, along with a solar and battery component to the project.

EFSEC issued a Determination of Significance (DS) and a request for comments on the scope of the EIS for this project on May 11, 2021 to provide further analysis and discussion on numerous environmental elements associated with the project, including wildlife/habitat, visual/aesthetics, and land use. In the DS, EFSEC identified a number of areas which require additional information before determining the level of review in the EIS, including air, water, plants, energy and natural resources, environmental health, noise, light and glare, historic resources and cultural resources.

Benton County requests all the above identified probable significant environmental impacts and the above identified environmental elements be considered for not only the 244 wind turbines, but the solar and battery components as well.

The 26-mile project, consisting of a total project area of approximate 72,000 acres, is situated in an area of the Horse Heaven Hills with geological features comprised of naturally vegetated steep slopes, native habitat, commercially significant agricultural land, and unique views. The Horse Heaven Hills is one of the County's primary areas for dryland wheat production and in turn one the County's most valuable areas designated for long term commercially significant agriculture. The Comprehensive Plan policies direct the County to conserve and maintain agricultural land of long-term commercial significance, sustain the County's agricultural economy while discouraging incompatible uses, reduce the inappropriate conversation of agricultural lands, and protect critical areas, and visually prominent naturally vegetated steep slopes and elevated ridges that define the Columbia Basin landscape.

While Benton County is not in support of this project as proposed, the County encourages EFSEC to require a comprehensive analysis of the probable significant adverse environmental impacts of the entire project. The County requests that all direct, indirect, or cumulative impacts be considered. In many instances the impacts should be evaluated on a site-specific basis for each turbine, solar array, and/or battery facility, taking into account the road, infrastructure, construction, and facility impact of each.

The overall potential impacts of the project that should be reviewed in the EIS should include those impacts to long-term commercially significant agricultural lands, birds, wildlife, plants, habitat, water supply, public health, property values, tourism, emergency services, roads, and views/ aesthetics.

Please consider the following significant adverse impacts for further analysis and study in the EIS:

1. Consistency/compliance with RCW 36.70A, the Washington State Growth Management Act.
2. Consistency/compliance with the Benton County Comprehensive Plan.
3. Consistency/compliance with the Benton County Zoning Ordinance.
4. Consistency/compliance with the Benton County Critical Area Regulations.
5. Loss and impact to the County's long-term commercially significant agricultural lands.
6. Compatibility/incompatibility and impact to the County's agricultural lands.
7. Loss and impact to the County's open space and natural resources.
8. Loss and impact to the County's natural resources, including, but not limited to, habitat and plants, habitat connectivity, corridors, along with the County's locally significant habitat species and areas.
9. Loss, alteration, degradation and impact to the County's functions and values (quantitative and qualitative) of habitat.
10. Impact to ephemeral and intermittent stream channels and associated Fish and Wildlife Conservation Areas.

11. Impact to Critical Aquifer Recharge Areas, impacts to hydrology and groundwater contamination.
12. Impact to the County road system. A complete, independent, site specific analysis for each portion of the County road system that will be impacted by the project.
13. Individual site impacts of shadow flicker and compliance with industry standards.
14. Fire risks including, impact to public safety, emergency services and fire suppression. An analysis of the project's impact to local emergency responders, the need for on-site fire flow for each facility, and a study of the equipment needed to provide emergency services.
15. Impact to visual and aesthetic resources. The project will cover approximately 43% of the entire Horse Heaven Hill ridgeline which is an iconic geological feature that visually defines Benton County. The project will be seen by 83% of the area within 10 miles of the project; Impacts to urban areas; Impacts to rural residential areas.
16. Impact to the economy, including the wine and agricultural industries, and tourism.
17. Impacts and setbacks for solar array proposals including screening, traffic impacts, glare, and specific site locations.
18. Impact and analysis related to public health, noise, and vibrations. The public benefits of open spaces for health, well-being and overall sustainability and quality of human habitat.

Benton County appreciates the opportunity to provide comments on the scope of the project's EIS. The County encourages a comprehensive analysis of the probable significant adverse environmental impacts including a site- specific evaluation for each facility site in the proposed project.

Sincerely,

BOARD OF BENTON COUNTY COMMISSIONERS

_____
Jerome Delvin, Chairman

_____
Shon Small, Member

_____
Will McKay, Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	May 25, 2021
Subject:	EnerGov Software Purchase from Tyler Technologies
Presenter:	Jerrod MacPherson, Greg Wendt, and Robert Blain
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

In 2020, the County moved forward with the purchase of a permitting softwere to help simplyfiy the process and manage records. Some unforeseen difficulties have arisen that have prevented the software company from moving forward with the full implementation.

County personnel has worked together to identify another software that will accomplish the same tasks as the previous software but also directly integrates with our new Munis Financial Software.

An Agreement has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney and signed by Tyler Technologies.

Fiscal Impact

Amount: $491,963.00 plus 5% Contingency excluding W.S.S.T.

Fund: Capital Project Fund (0305-101)

Recommendation

Approve the Agreement with Tyler Technologies for the purchase of EnerGov Permitting Software.

Suggested Motion

The Board of Benton County Commissioners hereby approves the Agreement with Tyler Technologies for the purchase of EnerGov Pemiting Software as it is presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE PURCHASE OF ENERGOV PERMITTING SOFTWARE FROM TYLER TECHNOLOGIES THROUGH THE SOURCEWELL COOPERATE PURCHASING PROGRAM

WHEREAS, some unforeseen difficulties have arisen that have prevented the County from moving forward with the full implementation of the permitting software purchased in 2020; and

WHEREAS, County personnel has worked together to identify another software that will accomplish the same tasks as the previous software but also directly integrates with our new Munis Financial Software; and

WHEREAS, by Resolution 2020-504 dated July 28, 2020, the Board of County Commissioners approved an Agreement for Cooperative Purchasing between Benton County and Sourcewell; and

WHEREAS, Sourcewell has a contract with Tyler Technologies for purchasing public administration software; and

WHEREAS, an Agreement has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney, and signed by Tyler Technologies; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners, Benton County, Washington, hereby approves the purchase of EnerGov Permitting Software from Tyler Technologies in an amount of $491,963.00 plus WSST; and

BE IT FURTHER RESOLVED, the Board of County Commissioners hereby authorizes the Chairmain to sign the attached agreement; and

BE IT FURTHER RESOLVED, the Board of County Commissioners hereby also approves an additional 5% contingency for unforeseen issues that come up during the implementation phase.

Dated this 25th day of May 2021.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Department P. Schut
c: Auditor, CM

LICENSE AND SERVICES AGREEMENT

This License and Services Agreement is made between Tyler Technologies, Inc. ("Tyler") and Benton County, Washington ("Client").

WHEREAS, Client is a member of Sourcewell (formerly known as National Joint Powers Alliance) ("Sourcewell") under member number 25418.

WHEREAS, Tyler participated in the competitive bid process in response to Sourcewell RFP #090320 by submitting a proposal, on which Sourcewell awarded Tyler a Sourcewell contract, numbered 090320-TTI (hereinafter, the "Sourcewell Contract");

WHEREAS, documentation of the Sourcewell competitive bid process, as well as Tyler's contract with and pricing information for Sourcewell is available at https://sourcewell-mn.gov/cooperative-purchasing/; and

WHEREAS, Client desires to purchase off the Sourcewell Contract to procure EnerGov software functionality from Tyler, which Tyler agrees to deliver pursuant to the Sourcewell Contract and under the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **"Agreement"** means this License and Services Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client**" means Benton County, Washington.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Named Users"** means the maximum number of named users that are authorized to use the EnerGov labeled modules identified in the Investment Summary, if any.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date by which both your and our authorized representatives have

signed the Agreement.

- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the software, products, and services attached as Exhibit A.
- **"Invoicing and Payment Policy"** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **"Maintenance and Support Agreement"** means the terms and conditions governing the provision of maintenance and support services to all of our customers. A copy of our current Maintenance and Support Agreement is attached as Exhibit C.
- **"Support Call Process"** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 1 to Exhibit C.
- **"Statement of Work"** means the industry standard implementation plan describing how our professional services will be provided to implement the Tyler Software, and outlining your and our roles and responsibilities in connection with that implementation. The Statement of Work is attached as Exhibit E.
- **"Third Party Hardware"** means the third party hardware, if any, identified in the Investment Summary.
- **"Third Party Products"** means the Third Party Software and Third Party Hardware.
- **"Third Party Services"** means the third party services, if any, identified in the Investment Summary.
- **"Third Party Software"** means the third party software, if any, identified in the Investment Summary.
- **"Third Party Terms"** means, if any, the end user license agreement(s) or similar terms for the Third Party Software, as applicable and attached as Exhibit D.
- **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.
- **"Tyler Software"** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **"we", "us", "our"** and similar terms mean Tyler.
- **"you"** and similar terms mean Client.

SECTION B – SOFTWARE LICENSE

1. License Grant and Restrictions.

1.1 We grant to you a license to use the Tyler Software for your internal business purposes only, in the scope of the internal business purposes disclosed to us as of the Effective Date. You may make copies of the Tyler Software for backup and testing purposes, so long as such copies are not used in production and the testing is for internal use only. Your rights to use the Tyler Software are perpetual but may be revoked if you do not comply with the terms of this Agreement.

1.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.

1.3 You may not: (a) transfer or assign the Tyler Software to a third party; (b) reverse engineer, decompile, or disassemble the Tyler Software; (c) rent, lease, lend, or provide commercial hosting services with the Tyler Software; or (d) publish or otherwise disclose the Tyler Software or Documentation to third parties.

1.4 The license terms in this Agreement apply to updates and enhancements we may provide to you or make available to you through your Maintenance and Support Agreement.

1.5 The right to transfer the Tyler Software to a replacement hardware system is included in your license. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance from us associated with such transfer.

1.6 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at https://www.tylertech.com/about-us/compliance, and in the event of any change in our status, will comply with applicable notice requirements.

1.7 We reserve all rights not expressly granted to you in this Agreement. The Tyler Software and Documentation are protected by copyright and other intellectual property laws and treaties. We own the title, copyright, and other intellectual property rights in the Tyler Software and the Documentation. **The Tyler Software is licensed, not sold.**

2. License Fees. You agree to pay us the license fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.

3. Escrow. We maintain an escrow agreement with a third party under which we place the source code for each major release of the Tyler Software. You may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the annual beneficiary fee set forth in the Investment Summary. You will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the Tyler Software is strictly governed by the terms of the escrow agreement.

4. Limited Warranty. We warrant that the Tyler Software will be without Defect(s) as long as you have a Maintenance and Support Agreement in effect. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect as set forth in the Maintenance and Support Agreement.

5. SaaS Services. Tyler Software provided as SaaS is subject to the Tyler SaaS Services Terms and Service Level Agreement found here: https://www.tylertech.com/terms/tyler-saas-services.

SECTION C – PROFESSIONAL SERVICES

1. Services. We will provide you the various implementation-related services itemized in the Investment Summary and described in the Statement of Work.

2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.

3. Additional Services. The Investment Summary contains, and the Statement of Work describes, the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.

4. Cancellation. We make all reasonable efforts to schedule our personnel for travel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled professional services if we are unable to reassign our personnel. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.

5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.

6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us. You further agree to provide a reasonably suitable environment, location, and space for the installation of the Tyler Software and any Third Party Products, including, without limitation, sufficient electrical circuits, cables, and other reasonably necessary items required for the installation and operation of the Tyler Software and any Third Party Products.

7. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).

8. Background Checks. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.

SECTION D – MAINTENANCE AND SUPPORT

This Agreement includes the period of free maintenance and support services identified in the Invoicing and Payment Policy. If you have purchased ongoing maintenance and support services, and continue to make timely payments for them according to our Invoicing and Payment Policy, we will provide you with maintenance and support services for the Tyler Software under the terms of our standard Maintenance and Support Agreement.

If you have opted not to purchase ongoing maintenance and support services for the Tyler Software, the Maintenance and Support Agreement does not apply to you. Instead, you will only receive ongoing maintenance and support on the Tyler Software on a time and materials basis. In addition, you will:

(i) receive the lowest priority under our Support Call Process;
(ii) be required to purchase new releases of the Tyler Software, including fixes, enhancements and patches;
(iii) be charged our then-current rates for support services, or such other rates that we may consider necessary to account for your lack of ongoing training on the Tyler Software;
(iv) be charged for a minimum of two (2) hours of support services for every support call; and
(v) not be granted access to the support website for the Tyler Software or the Tyler Community Forum.

SECTION E – THIRD PARTY PRODUCTS

To the extent there are any Third Party Products set forth in the Investment Summary, the following terms and conditions will apply:

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.

2. Third Party Software. Upon payment in full of the Third Party Software license fees, you will receive a non-transferable license to use the Third Party Software and related documentation for your internal business purposes only. Your license rights to the Third Party Software will be governed by the Third Party Terms.

2.1 We will install onsite the Third Party Software. The installation cost is included in the installation fee in the Investment Summary.

2.2 If the Developer charges a fee for future updates, releases, or other enhancements to the Third Party Software, you will be required to pay such additional future fee.

2.3 The right to transfer the Third Party Software to a replacement hardware system is governed by the Developer. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance from us associated with such transfer.

3. Third Party Products Warranties.

3.1 We are authorized by each Developer to grant or transfer the licenses to the Third Party Software.

3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.

3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.

4. Third Party Services. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

5. Maintenance. If you have a Maintenance and Support Agreement in effect, you may report defects and other issues related to the Third Party Software directly to us, and we will (a) directly address the defect or issue, to the extent it relates to our interface with the Third Party Software; and/or (b) facilitate resolution with the Developer, unless that Developer requires that you have a separate, direct maintenance agreement in effect with that Developer. In all events, if you do not have a Maintenance and Support Agreement in effect with us, you will be responsible for resolving defects and other issues related to the Third Party Software directly with the Developer.

SECTION F – INVOICING AND PAYMENT; INVOICE DISPUTES

1. Invoicing and Payment. We will invoice you for all fees set forth in the Investment Summary per our Invoicing and Payment Policy, subject to Section F(2).

2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

SECTION G – TERMINATION

1. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section F(2).

   1.1 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section I(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section I(3).

   1.2 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of this Agreement for a period of forty-five (45) days or more.

   1.3 Lack of Appropriations. If you should not appropriate or otherwise receive funds sufficient to purchase, lease, operate, or maintain the software or services set forth in this Agreement, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid license and other fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

SECTION H – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

   1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

   1.2 Our obligations under this Section H(1) will not apply to the extent the claim or adverse final judgment is based on your: (a) use of a previous version of the Tyler Software and the claim would have been avoided had you installed and used the current version of the Tyler Software, and we provided notice of that requirement to you; (b) combining the Tyler Software with any product or device not provided, contemplated, or approved by us; (c) altering or modifying the Tyler Software, including any modification by third parties at your direction or otherwise permitted by you; (d) use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties; or (e) willful infringement, including use of the Tyler Software after we notify you to discontinue use due to such a claim.

   1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software

immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.

1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate your license and refund the license fees paid for the infringing Tyler Software, as depreciated on a straight-line basis measured over seven (7) years from the Effective Date. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of PCI DSS requirements or a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) PRIOR TO FORMAL TRANSITION TO MAINTENANCE AND SUPPORT, THE TOTAL ONE-TIME FEES SET FORTH IN THE INVESTMENT SUMMARY; OR (B) AFTER FORMAL TRANSITION TO MAINTENANCE AND SUPPORT, THE THEN-CURRENT ANNUAL MAINTENANCE AND SUPPORT FEE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION

OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS H(1) AND H(2).

5. **EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

6. Insurance. During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least $1,000,000; (b) Automobile Liability of at least $1,000,000; (c) Professional Liability of at least $1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least $5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION I – GENERAL TERMS AND CONDITIONS

1. Additional Products and Services. You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date, and thereafter at our then-current list price, by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.

2. Optional Items. Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.

3. Dispute Resolution. You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.

4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a

copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.

5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.

6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.

7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.

8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.

9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.

10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.

11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.

12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.

13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.

14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.

15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.

17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:

    (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
    (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
    (c) a party receives from a third party who has a right to disclose it to the receiving party; or
    (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

18. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.

19. Governing Law. This Agreement will be governed by and construed in accordance with the laws of

your state of domicile, without regard to its rules on conflicts of law.

20. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.

21. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.

22. Contract Documents. This Agreement includes the following exhibits:

Exhibit A	Investment Summary
Exhibit B	Invoicing and Payment Policy
	Schedule 1: Business Travel Policy
Exhibit C	Maintenance and Support Agreement
	Schedule 1: Support Call Process
Exhibit D	Third Party Terms: DocOrigin End User License Agreement
Exhibit E	Statement of Work

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

By: Robt Kennedy-Jensen

Name: Robert Kennedy-Jensen

Title: Director of Contracts

Date: 5/14/21

Address for Notices:
Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Chief Legal Officer

Benton County, WA

By: _____

Name: _____

Title: _____

Date: _____

Address for Notices:
Benton County
620 Market Street
Prosser, WA 99350
Attention: _____

Approved as to Form:

_____
Deputy Prosecuting Attorney

Exhibit A
Investment Summary

The following Investment Summary details the software, products, and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Quoted By:	Jason Cloutier
Date:	5/7/2021
Quote Expiration:	8/29/2021
Quote Name:	Benton County-ERP-EnerGov
Quote Number:	2021-124158
Quote Description:	EnerGov Community Development (4.28.2021)

Sales Quotation For
Benton County
620 Market St
Prosser , WA 99350-0630
Phone: +1 (509) 786-5611

Tyler Software and Related Services

Description	License	Data Conversion	Module Total	Maintenance
Civic Services				
EnerGov Citizen Self Service - Community Development	$20,394	$0	$20,394	$4,079
EnerGov Community Development Suite (23)	$69,000	$21,150	$90,150	$13,800
EnerGov Core Foundation Bundle	$5,000	$0	$5,000	$1,000
EnerGov e-Reviews	$34,256	$0	$34,256	$6,851
EnerGov iG Workforce Apps (10)	$10,000	$0	$10,000	$2,000
Tyler GIS (23)	$11,500	$0	$11,500	$2,300
Data and Reporting				
EnerGov Report Toolkit	$5,000	$0	$5,000	$1,000
Additional Software				
EnerGov e-Reviews External Reviewer	$14,999	$0	$14,999	$2,700
Tyler Cashiering for EnerGov	$0	$0	$0	$0
Tyler Annual Services				
Tyler System Management Services Contract	$0	$0	$0	$8,432
Sub-Total:	*$170,149*	*$21,150*	*$191,299*	*$42,162*
Less Discount:	*$34,030*		*$34,030*	
TOTAL:	**$136,119**	**$21,150**	**$157,269**	**$42,162**

Annual		**One Time Fees**
Description	Annual Fee	Data Conversion
Civic Services		
EnerGov Advanced Automation Bundle	$18,652	$0
EnerGov Decision Engine	$10,000	$0
Sub-Total:	*$28,652*	*$0*
Less Discount:	*$5,730*	*$0*
TOTAL:	**$22,922**	$0

Other Services

Description	Quantity	Unit Price	Extended Price	Maintenance
Civic Services - Onsite Hours	324	$210	$68,040	$0
Civic Services - Remote Hours	910	$185	$168,350	$0
EnerGov Community Development Forms Library (5 Forms)	1	$5,100	$5,100	$0
Project Management	152	$185	$28,120	$0
Total:			**$269,610**	**$0**

Summary	**One Time Fees**	**Recurring Fees**
Total Tyler Software	$136,119.00	$42,162.00
Total Tyler Annual		$22,922.00
Total Tyler Services	$290,760.00	$0.00
Total Third Party Hardware, Software and Services	$0.00	$0.00
Summary Total	**$426,879.00**	**$65,084.00**
Contract Total (Excluding Estimated Travel)	**$491,963.00**	

Detailed Breakdown of Conversions (Included in contract total)

Description	Unit Price	Unit Discount	Extended Price
Conversion Services			
EnerGov Community Development Conversion	$21,150	$0	$21,150
Total:			**$21,150**

Tyler Discount Detail

Description	License	License Discount	License Net	Maintenance	Maint Discount	Maint Net
Civic Services						
EnerGov Citizen Self Service - Community Development	$20,394	$4,079	$16,315	$4,079	$0	$4,079
EnerGov e-Reviews	$34,256	$6,851	$27,405	$6,851	$0	$6,851
Tyler GIS	$11,500	$2,300	$9,200	$2,300	$0	$2,300
EnerGov iG Workforce Apps	$10,000	$2,000	$8,000	$2,000	$0	$2,000
EnerGov Core Foundation Bundle	$5,000	$1,000	$4,000	$1,000	$0	$1,000
EnerGov Community Development Suite	$69,000	$13,800	$55,200	$13,800	$0	$13,800
Data and Reporting						
EnerGov Report Toolkit	$5,000	$1,000	$4,000	$1,000	$0	$1,000
Additional Software						
EnerGov e-Reviews External Reviewer	$14,999	$3,000	$11,999	$2,700	$0	$2,700
Tyler Cashiering for EnerGov	$0	$0	$0	$0	$0	$0
Tyler Annual Services						
Tyler System Management Services Contract	$0	$0	$8,432	$8,432	$0	$8,432
Total:	**$170,149**	**$34,030**	**$136,119**	**$33,730**	**$0**	**$33,730**

Tyler SaaS / Subscription Discount Detail

Description	Annual Fee	Annual Fee Discount	Annual Fee Net
Civic Services			
EnerGov Advanced Automation Bundle	$18,652	$3,730	$14,922
EnerGov Decision Engine	$10,000	$2,000	$8,000
Total:	**$28,652**	**$5,730**	**$22,922**

Optional Tyler Software and Related Services

Description	License	Data Conversion	Module Total	Maintenance
Optional Annual				**One Time Fees**

Description	Annual Fee	Data Conversion
Data and Reporting		
Socrata Citizen Connect	$5,120	$0
EnerGov Community Development Feeds	$6,000	$0
Sub-Total:	*$11,120*	*$0*
Total:	**$11,120**	**$0**

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held for six (6) months from the Quote date or the Effective Date of the contract, whichever is later.

Client Approval: _____ Date: _____

Print Name: _____ P.O.#: _____

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
  - Implementation and other professional services fees shall be invoiced as delivered.
  - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
  - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
  - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
  - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
  - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite.
- Expenses associated with onsite services are invoiced as incurred.

Tyler System Management Services is calculated at 25% of the Munis annual maintenance. There is a $2,500 minimum annual fee.

Conversion prices are based on a single occurrence of the database. If additional databases need to be converted, these will need to be quoted.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the size and scope of your project. The actual amount of services depends on such factors as your level of involvement in the project and the speed of

Comments

knowledge transfer.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely, but can be done onsite upon request at an additional cost.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Implementation hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

Tyler's pricing is based on the scope of proposed products and services being obtained from Tyler. Should portions of the scope of products or services be removed by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Project Management includes project planning, kickoff meeting, status calls, task monitoring, verification and transition to support.

EnerGov e-Reviews requires Bluebeam Studio Prime, at an estimated yearly subscription cost of $3,000/100 users. Further pricing detail is available by contacting Bluebeam at https://www.bluebeam.com/solutions/studio-prime

Community Development Forms Library Includes: 1 Permits - Building, 1 Permits - Trade, 1 Planning - Certificate, 1 Permits - Occupancy/Completion, 1 Code - Violation Notice.

Development modifications, interfaces and services, where applicable, shall be invoiced to the client in the following manner: 50% of total upon authorized signature to proceed on program specifications and the remaining 50% of total upon delivery of modifications, interface and services.

Tyler System Management Services is calculated at 25% of annual maintenance. The quoted value is in addition to your current Tyler

Comments

System Management Services and will be subject to an annual increase at our then current pricing.

EnerGov Community Development: Tyler leads and owns the "Assess and Define" and "Configuration" of 21 unique business transactions, 21 template business transactions, 13 geo-rules and 13 automation events. Configuration elements beyond this will be owned by the client.

Exhibit B
Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable license and services fees in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. Tyler Software.

   1.1 *License Fees*: License fees are invoiced 100% on the date when we make the applicable Tyler Software available to you for downloading (the "Available Download Date").

   1.2 *Maintenance and Support Fees*: Year 1 maintenance and support fees are waived for one (1) year from the Effective Date. Year 2 maintenance and support fees, at our then-current rates, are payable on the first anniversary of the Effective Date, and subsequent maintenance and support fees are invoiced annually in advance of each anniversary thereof. Your fees for each subsequent year will be set at our then-current rates.

   1.3 *SaaS & Subscription Fees*: SaaS (including hosting) fees and subscription fees are invoiced on an annual basis, beginning on the first day of the month immediately following the Effective Date. Your annual SaaS Fees and subscription fees for the initial year one term are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS fees and subscription fees will be at our then-current rates.

2. Professional Services.

   2.1 *Implementation and Other Professional Services (including training)*: Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.

   2.2 *Consulting Services*: If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.

   2.3 *Conversions*: Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as

estimated, we will bill you the actual services delivered on a time and materials basis.

2.4 *Requested Modifications to the Tyler Software*: Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in the Maintenance and Support Agreement.

2.5 *Other Fixed Price Services*: Except as otherwise provided, other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document.

3. Other Services and Fees.

3.1 *Systems Management*: Systems Management Services are invoiced on the Available Download Date and are provided in accordance with the Agreement for Tyler Systems Management attached to this Agreement as Exhibit G. Systems Management Services will renew automatically for additional one (1) year terms at our then-current Systems Management Services fee, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term.

4. Third Party Products.

4.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

4.2 *Third Party Software Maintenance*: The first year maintenance fees for the Third Party Software, if any, is invoiced when we make that Third Party Software available to you for downloading.

4.3 *Third Party Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.

4.4 *Third Party Services:* Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary.

5. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting AR@tylertech.com.

Exhibit B
Schedule 1
Business Travel Policy

1. Air Travel

A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within $100 (each way) of the lowest logical fare. If a net savings of $200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

   Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to $10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

   All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

   When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

   The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

   Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.

Exhibit C
Maintenance and Support Agreement

We will provide you with the following maintenance and support services for the Tyler Software. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

1. Term. We provide maintenance and support services on an annual basis. The initial term commences on the Effective Date, and remains in effect for one (1) year. The term will renew automatically for additional one (1) year terms unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term. We will adjust the term to match your first use of the Tyler Software in live production if that event precedes the one (1) year anniversary of the Effective Date.

2. Maintenance and Support Fees. Your year 1 maintenance and support fees for the Tyler Software are listed in the Investment Summary, and your payment obligations are set forth in the Invoicing and Payment Policy. We reserve the right to suspend maintenance and support services if you fail to pay undisputed maintenance and support fees within thirty (30) days of our written notice. We will reinstate maintenance and support services only if you pay all past due maintenance and support fees, including all fees for the periods during which services were suspended.

3. Maintenance and Support Services. As long as you are not using the Help Desk as a substitute for our training services on the Tyler Software, and you timely pay your maintenance and support fees, we will, consistent with our then-current Support Call Process:

   3.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy); provided, however, that if you modify the Tyler Software without our consent, our obligation to provide maintenance and support services on and warrant the Tyler Software will be void;

   3.2 provide support during our established support hours;

   3.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;

   3.4 provide you with a copy of all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and

   3.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

4. Client Responsibilities. We will use all reasonable efforts to perform any maintenance and support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain a VPN for backup connectivity purposes.

5. Hardware and Other Systems. If you are a self-hosted customer and, in the process of diagnosing a software support issue, it is discovered that one of your peripheral systems or other software is the cause of the issue, we will notify you so that you may contact the support agency for that peripheral system. We cannot support or maintain Third Party Products except as expressly set forth in the Agreement.

   In order for us to provide the highest level of software support, you bear the following responsibility related to hardware and software:

   (a) All infrastructure executing Tyler Software shall be managed by you;
   (b) You will maintain support contracts for all non-Tyler software associated with Tyler Software (including operating systems and database management systems, but excluding Third-Party Software, if any); and
   (c) You will perform daily database backups and verify that those backups are successful.

6. Other Excluded Services. Maintenance and support fees do not include fees for the following services: (a) initial installation or implementation of the Tyler Software; (b) onsite maintenance and support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (c) application design; (d) other consulting services; (e) maintenance and support of an operating system or hardware, unless you are a hosted customer; (f) support outside our normal business hours as listed in our then-current Support Call Process; or (g) installation, training services, or third party product costs related to a new release. Requested maintenance and support services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

Current Support Call Process. Our current Support Call Process for the Tyler Software is attached to this Exhibit C as Schedule 1.

Exhibit C
Schedule 1
Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support:

(1) Tyler Community – an on-line resource, Tyler Community provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
(2) On-line submission (portal) – for less urgent and functionality-based questions, users may create unlimited support incidents through the customer relationship management portal available at the Tyler Technologies website.
(3) Email – for less urgent situations, users may submit unlimited emails directly to the software support group.
(4) Telephone – for urgent or complex questions, users receive toll-free, unlimited telephone software support.

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

(1) Tyler Website – www.tylertech.com – for accessing client tools and other information including support contact information.
(2) Tyler Community – available through login, Tyler Community provides a venue for clients to support one another and share best practices and resources.
(3) Knowledgebase – A fully searchable depository of thousands of documents related to procedures, best practices, release information, and job aides.
(4) Program Updates – where development activity is made available for client consumption

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Clients may receive coverage across these time zones. Tyler's holiday schedule is outlined below. There will be no support coverage on these days.

New Year's Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day
Labor Day	

Issue Handling

Incident Tracking

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique incident number. This system tracks the history of each incident. The incident tracking number is used to track and reference open issues when clients contact support. Clients may track incidents, using the incident number, through the portal at Tyler's website or by calling software support directly.

Incident Priority

Each incident is assigned a priority number, which corresponds to the client's needs and deadlines. The client is responsible for reasonably setting the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the client towards clearly understanding and communicating the importance of the issue and to describe generally expected responses and resolutions.

Priority Level	Characteristics of Support Incident	Resolution Targets
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days. Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

Incident Escalation

Tyler Technology's software support consists of four levels of personnel:

(1) Level 1: front-line representatives
(2) Level 2: more senior in their support role, they assist front-line representatives and take on escalated issues
(3) Level 3: assist in incident escalations and specialized client issues
(4) Level 4: responsible for the management of support teams for either a single product or a product group

If a client feels they are not receiving the service needed, they may contact the appropriate Software Support Manager. After receiving the incident tracking number, the manager will follow up on the open issue and determine the necessary action to meet the client's needs.
On occasion, the priority or immediacy of a software support incident may change after initiation. Tyler encourages clients to communicate the level of urgency or priority of software support issues so that we can respond appropriately. A software support incident can be escalated by any of the following methods:

(1) Telephone – for immediate response, call toll-free to either escalate an incident's priority or to escalate an issue through management channels as described above.
(2) Email – clients can send an email to software support in order to escalate the priority of an issue
(3) On-line Support Incident Portal – clients can also escalate the priority of an issue by logging into the client incident portal and referencing the appropriate incident tracking number.

Remote Support Tool

Some support calls require further analysis of the client's database, process or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Support is able to quickly connect to the client's desktop and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.

Exhibit D
Third Party Terms
DocOrigin End User License Agreement

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

ATTENTION: THE SOFTWARE PROVIDED UNDER THIS AGREEMENT IS BEING LICENSED TO YOU BY **ECLIPSE CORPORATION WSL, INC. (Eclipse Corporation)** AND IS NOT BEING SOLD. THIS SOFTWARE IS PROVIDED UNDER THE FOLLOWING AGREEMENT THAT SPECIFIES WHAT YOU MAY DO WITH THE SOFTWARE AND CONTAINS IMPORTANT LIMITATIONS ON REPRESENTATIONS, WARRANTIES, CONDITIONS, REMEDIES, AND LIABILITIES.

DocOrigin

SOFTWARE LICENSE

IMPORTANT-READ CAREFULLY: This End-User License Agreement ("**Agreement**" or "**EULA**") is a legal agreement between you (either an individual person or a single legal entity, who will be referred to in this EULA as "**You**") and Eclipse Corporation WSL, Inc. referred to in this EULA as Eclipse Corporation, for the DocOrigin software product that accompanies this EULA, including any associated media, printed materials and electronic documentation (the "**Software**"). The Software also encompasses any software updates, add-on components, web services and/or supplements that may be provided to you or made available to you after the date you obtain the initial copy of the Software to the extent that such items are not accompanied by a separate license agreement or terms of use. If you receive the Software under separate terms from your distributor, those terms will take precedence over any conflicting terms of this EULA.

By installing, copying, downloading, accessing or otherwise using the Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install, access or use the Software; instead, you should remove the Software from all systems and receive a full refund.

IF YOU ARE AN AGENT OR EMPLOYEE OF ANOTHER ENTITY YOU REPRESENT AND WARRANT THAT (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH ENTITY'S BEHALF AND TO BIND SUCH ENTITY, AND (II) SUCH ENTITY HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER.

1. LICENSE TERMS

1.1 In this Agreement a "**License Key**" means any license key, activation code, or similar installation, access or usage control codes, including serial numbers digitally created and or provided by Eclipse Corporation ,designed to provide unlocked access to the Software and its functionality.

1.2 **Evaluation License.** Subject to all of the terms and conditions of this Agreement, Eclipse Corporation grants You a limited, royalty-free, non-exclusive, non-transferable license to download and install a copy of the Software from www.docorigin.com on a single machine and use it on a royalty-free basis for no more than 120 days from the date of installation (the "**Evaluation Period**"). You may use the Software during the Evaluation Period solely for the purpose of testing and evaluating it to determine if You wish to obtain a commercial, production license for the Software. This evaluation license grant will automatically end on expiry of the Evaluation Period and you acknowledge and agree that Eclipse Corporation will be under no obligation to renew or extend the Evaluation Period. If you wish to continue using the Software You may, on payment of the applicable fees, upgrade to a full license (as further described in section 1.3 below) on the terms of this Agreement and will be issued with a License Key for the same. If you do not wish to continue to license the Software after expiry of the Evaluation Period, then You agree to comply with the termination obligations set out in section [7.3] of this Agreement. For greater certainty, any document generated by you under an evaluation license will have a 'spoiler' or watermark on the output document. Documents generated by DocOrigin software that has a valid license key file also installed will not have the 'spoiler' produced. You are not permitted to remove the watermark or 'spoiler' from documents generated using the software under an evaluation license.

1.3 **Development and Testing Licenses.** Development and testing licenses are available for purchase through authorized distributors and resellers of Eclipse Corporation only. Subject to all of the terms and conditions of this Agreement, Eclipse Corporation grants You, a perpetual (subject to termination by Eclipse Corporation due to your breach of the terms of this Agreement), non-exclusive, non-transferable, worldwide

non-sub license able license to download and install a copy of the Software from www.docorigin.com on a single machine and use for development and testing to create collateral deployable to Your production system(s). You are not entitled to use a development and testing license for live production purposes.

1.4 **Production Licenses.** Production licenses are available for purchase through authorized distributors and resellers of Eclipse Corporation only. Subject to all of the terms and conditions of this Agreement, Eclipse Corporation grants You, a perpetual (subject to termination by Eclipse Corporation due to your breach of the terms of this Agreement), non-exclusive, non-transferable, worldwide non-sub license able license to use the Software in accordance with the license type purchased by you as set out on your purchase order as further described below. For greater certainty, unless otherwise agreed in a purchase order concluded with an approved distributor of the Software, and approved by Eclipse Corporation, the default license to the Software is a per-CPU license as described in A. below:

A. **Per-CPU.** The total number of CPUs on a computer used to operate the Software may not exceed the licensed quantity of CPUs. For purposes of this license metric: (a) CPUs may contain more than one processing core, each group of two (2) processing cores is consider one (1) CPU., and any remaining unpaired processing core, will be deemed a CPU. (b) all CPUs on a computer on which the Software is installed shall be deemed to operate the Software unless You configure that computer (using a reliable and verifiable means of hardware or software partitioning) such that the total number of CPUs that actually operate the Software is less than the total number on that computer. Virtual Machines ("VM's") are considered as a server. Installing and configuring the software on multiple VM's requires one license per VM server. An enterprise license is available upon request. Pricing varies based on the size of the company.

B. **Per-Document.** This is defined as a fee per document based on the total number of documents generated annually by merging data with a template created by the Software. The combined data and template produce documents of one or more pages. A document may contain 1 or more pages. For instance, a batch of invoices for 250 customers may contain 1,000 pages, this will be counted as 250 documents which should correspond to 250 invoices.

C. **Per-Surface.** This is defined as a fee per surface based on the total number of surfaces generated annually by merging data with a template created by the Software. The combined data and template produce documents of one or more pages, the pages may be printed one side (one surface) or duplexed (2 surfaces). The documents may be rendered to a computer file (i.e. PDF), each page placed in the file is considered a surface. A document may contain 1 or more surfaces. For instance, a batch of invoices for 250 customers may contain 500 pages duplexed, this will be counted as 1000 surfaces.

1.5 **Disaster Recovery License.** You may request a Disaster Recovery license of the Software for each production license You have purchased as a failover in the event of loss of use of the production server(s). This license is for disaster recovery purposes only and under no circumstance may the disaster recovery license be used for production simultaneously with a production license with which it is paired.

1.6 **Backup Copies.** After installation of the Software pursuant to this EULA, you may store a copy of the installation files for the Software solely for backup or archival purposes. Except as expressly provided in this EULA, you may not otherwise make copies of the Software or the printed materials accompanying the Software.

1.7 **Third-Party Software License Rights.** If a separate license agreement pertaining to an item of third-party software is: delivered to You with the Software, included in the Software download package, or referenced in any material that is provided with the Software, then such separate license agreement shall govern Your use of that item or version of Third-Party Software. Your rights in respect to any third-party software, third-party data, third-party software or other third-party content provided with the Software shall be limited to those rights necessary to operate the Software as permitted by this Agreement. No other rights in the Software or third-party software are granted to You.

2. LICENSE RESTRICTIONS

Any copies of the Software shall include all trademarks, copyright notices, restricted rights legends, proprietary markings and the like exactly as they appear on the copy of the Software originally provided to You. You may not remove or alter any copyright, trademark and/or proprietary notices marked on any part of the Software or related documentation and must reproduce all such notices on all authorized copies of the Software and related documentation. You shall not sublicense, distribute or otherwise make the Software available to any third party (including, without limitation, any contractor, franchisee, agent or dealer) without first obtaining the written agreement of (a) Eclipse Corporation to that use, and (b) such third party to comply with this Agreement. You further agree not to (i) rent, lease, sell, sublicense, assign, or otherwise transfer the Software to anyone else; (ii) directly or indirectly use the Software or any information about the Software in the development of any software that is competitive with the Software, or (iii) use the Software to operate or as a part of a time-sharing service, outsourcing service, service bureau, application service provider or managed service provider offering. You further agree not to reverse engineer, decompile, or disassemble the Software.

3. UPDATES, MAINTENANCE AND SUPPORT

3.1 During the validity period of Your License Key, You will be entitled to download the latest version of the Software from the DocOrigin website www.docorigin.com. Use of any updates provided to You shall be governed by the terms and conditions of this Agreement. Eclipse Corporation reserves the right at any time to not release or to discontinue release of any Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

3.2 On expiry of your maintenance and support contract, you will have the right to continue using the current version(s) of the Software which you downloaded prior to the date of expiry of your License Key. However, you will need to renew maintenance and support in order to receive a new License Key that will unlock the more current version(s) of the Software. For greater certainty, if you attempt to use an expired License Key to download the latest version of the Software, the Software will revert to being a locked, evaluation copy of that version of the Software.

4. INTELLECTUAL PROPERTY RIGHTS.

This EULA does not grant you any rights in connection with any trademarks or service marks of Eclipse Corporation or DocOrigin. All title and intellectual property rights in and to the Software, the accompanying printed materials, and any copies of the Software are owned by Eclipse Corporation or its suppliers. All title and intellectual property rights in and to the content that is not contained in the Software, but may be accessed through use of the Software, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content. If this Software contains documentation that is provided only in electronic form, you may print one copy of such electronic documentation.

5. DISCLAIMER OF WARRANTIES.

TO THE GREATEST EXTENT PERMITTED BY LAW, THE LICENSED SOFTWARE AND TECHNICAL SUPPORT PROVIDED BY ECLIPSE CORPORATION HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT OR SERVICE PROVIDED UNDER THIS AGREEMENT OR IN CONNECTION WITH THIS AGREEMENT BY ECLIPSE CORPORATION ECLIPSE CORPORATION DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ECLIPSE CORPORATION DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL MEET ANY OR ALL OF YOUR PARTICULAR REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

In certain jurisdictions, some or all of the provisions in this Section may not be effective or the applicable law may mandate a more extensive warranty in which case the applicable law will prevail over this Agreement.

6. INDEMNIFICATION & LIMITATIONS OF LIABILITY.

6.1 Eclipse Corporation shall defend and/or settle at its expense, any claims, actions, allegations or proceedings against You to the extent arising out of or relating to misappropriation or infringement by the Software of any third party's proprietary or intellectual property right ("**Claims**"), and Eclipse Corporation shall pay all damages finally awarded by a court of competent jurisdiction to such third party against You, or any settlement amounts agreed by Eclipse Corporation; subject to the conditions that, You shall notify Eclipse Corporation promptly of any You Claims, permit Eclipse Corporation to control the defense and settlement of such Claims and assist Eclipse Corporation, at Eclipse Corporation's expense, in defending or settling such Claims. Eclipse Corporation shall not be liable for any settlement amounts entered into by You without Eclipse Corporation's prior written approval. If Eclipse Corporation has reason to believe that it would be subject to an injunction or continuing damages based on the Software, then Eclipse Corporation may (and if Eclipse Corporation or any of its customers or third party software suppliers is subject to an injunction or continuing damages based on the Software), then notwithstanding any other provision in this Agreement, Eclipse Corporation shall be entitled to either modify the Software to make it non-infringing and/or remove the misappropriated material, replace the Software or portion thereof with a service or materials that provide substantially the same functionality or information, or, if neither of the foregoing is commercially practicable, require You to cease using the Software and refund to You (a) a pro rata portion of any one (1) time fees (based on a three (3) year, straight-line depreciation schedule from the date of payment), and (b) any fees that have been pre-paid by You but are unused. The foregoing notwithstanding, Eclipse Corporation shall have no liability for a claim of infringement or misappropriation to the extent caused by (i) the combination of the Software with any other service, software, data or products not provided or approved by Eclipse Corporation; or (ii) the use of any material provided by You or any end users, (iii) any breach by You of this Agreement. THE FOREGOING IS ECLIPSE CORPORATION'S SOLE AND EXCLUSIVE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ECLIPSE CORPORATION BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, LEGAL EXPENSES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUE, LOST OR DAMAGED DATA, LOSS OF COMPUTER TIME, COST OF SUBSTITUTE GOODS OR SERVICES, OR FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ECLIPSE CORPORATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

6.2 THE ENTIRE LIABILITY OF ECLIPSE CORPORATION AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE SOFTWARE AND TECHNICAL SUPPORT AND ANY OTHER PRODUCTS OR SERVICES SUPPLIED BY ECLIPSE CORPORATION IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, WILL BE LIMITED IN THE AGGREGATE TO THE AMOUNTS PAID BY YOU FOR THE SOFTWARE, TECHNICAL SUPPORT OR SERVICES GIVING RISE TO THE CLAIM.

6.3 THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. YOU ACKNOWLEDGE THAT BUT FOR THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY, NEITHER ECLIPSE CORPORATION NOR ANY OF ITS LICENSORS OR SUPPLIERS WOULD GRANT THE RIGHTS GRANTED IN THIS AGREEMENT.

7. TERM AND TERMINATION

7.1 The term of this Agreement will begin on download of the Software and, in respect of an Evaluation License, shall continue for the Evaluation Period, and in respect of all other license types defined in Section 1, shall continue for as long as You use the Software, unless earlier terminated sooner under this section 7.

7.2 Eclipse Corporation may terminate this Agreement in the event of any breach by You if such breach has not been cured within thirty (30) days of notice to You. No termination of this Agreement will entitle You to a refund of any amounts paid by You to Eclipse Corporation or its applicable distributor or reseller or affect any obligations You may have to pay any outstanding amounts owing to Eclipse Corporation or its distributor.

7.3 Your rights to use the Software will immediately terminate upon termination or expiration of this Agreement. Within thirty (30) days of termination or expiration of this Agreement, You shall purge all Software and all copies thereof from all computer systems and storage devices on which it was stored, and certify such to Eclipse Corporation

8. GENERAL PROVISIONS

8.1 **No Waiver**. No delay or failure in exercising any right under this Agreement, or any partial or single exercise of any right, will constitute a waiver of that right or any other rights under this Agreement. No consent to a breach of any express or implied term set out in this Agreement constitutes consent to any subsequent breach, whether of the same or any other provision.

8.2 **Severability**. If any provision of this Agreement is, or becomes, unenforceable, it will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect.

8.3 **Assignment**. You may not transfer or assign this Agreement (whether voluntarily, by operation of law, or otherwise) without Eclipse Corporation 's prior written consent. Eclipse Corporation may assign this Agreement at any time without notice. This Agreement is binding upon and will inure to the benefit of both parties, and their respective successors and permitted assigns.

8.4 **Governing Law and Venue if You are located in the USA**. This Agreement shall be governed by the laws of the State of Texas if You are located in the USA. No choice of laws rules of any jurisdiction shall apply to this Agreement. You consent and agree that the courts of the State of Texas shall have jurisdiction over any legal action or proceeding brought by You arising out of or relating to this Agreement, and You consent to the jurisdiction of such courts for any such action or proceeding.

8.5 Governing Law and Venue if You are not located in the USA. This Agreement shall be governed by the laws of the Province of Ontario in Canada if You are not located in the USA . No choice of laws rules of any jurisdiction shall apply to this Agreement. You consent and agree that the courts of the Province of Ontario in Canada shall have jurisdiction over any legal action or proceeding brought by You arising out of or relating to this Agreement, and You consent to the jurisdiction of such courts for any such action or proceeding.

8.6 **Entire Agreement**. This Agreement is the entire understanding and agreement between You and Eclipse Corporation with respect to the subject matter hereof, and it supersedes all prior negotiations, commitments and understandings, verbal or written, and purchase order issued by You. This Agreement may be amended or otherwise modified by Eclipse Corporation from time to time and the most recent version of the Agreement will be available on the Eclipse Corporation website www.docorigin.com.

Last Updated: July 22, 2017

Exhibit E
Statement of Work

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Benton County, WA

SOW from Tyler Technologies, Inc.

5/7/2021

Presented to:
Benton County, WA
620 Market St.
Prosser, WA 99350

Contact:
Mike Dehghanian
Email: Mike.Dehghanian@TylerTech.com
One Tyler Drive, Yarmouth, ME 04096

Table of Contents

PART 1: EXECUTIVE SUMMARY 1

1. Project Overview 1
1.1 Introduction 1
1.2 Project Goals 1
1.3 Methodology 1

PART 2: PROJECT FOUNDATION 3

2. Project Governance 3

3. Project Scope Control 4
3.1 Managing Scope and Project Change 4
3.2 Change Control 4
3.3 Change Request Management 4

4. Acceptance Process 6

5. Roles and Responsibilities 6
5.1 Tyler Roles & Responsibilities 6
5.1.1 Tyler Executive Sponsor 7
5.1.2 Tyler Implementation Manager 7
5.1.3 Tyler Project Manager 7
5.1.4 Tyler Implementation Consultant 8
5.1.5 Tyler Sales 8
5.1.6 Tyler Technical Services 9
5.1.7 Tyler Systems Management Services 9
5.2 Benton County Roles & Responsibilities 9
5.2.1 Benton County Executive Sponsor 9
5.2.2 Benton County Steering Committee 10
5.2.3 Benton County Project Manager 10
5.2.4 Benton County Functional Leads 11
5.2.5 Benton County Power Users 12
5.2.6 Benton County End Users 12
5.2.7 Benton County Technical Lead 13
5.2.8 Benton County Change Management Lead 13

PART 3: PROJECT PLAN 14

6. Project Stages 14
6.1 Initiate and Plan 15
6.1.1 Initial Coordination 15
6.1.2 Project/Phase Planning 16

6.1.3 Infrastructure Planning 17
6.1.4 Stakeholder Meeting 18
6.1.5 GIS Preparation 19
6.1.6 Control Point 1: Initiate & Plan Stage Acceptance 20
6.2 Assess & Define 21
6.2.1 Solution Orientation 21
6.2.2 Current & Future State Analysis 22
6.2.3 Conversion Assessment 23
6.2.4 Intentionally left blank 24
6.2.5 Intentionally left blank 24
6.2.6 Control Point 2: Assess & Define Stage Acceptance 24
6.3 Prepare Solution 24
6.3.1 Initial System Deployment 25
6.3.2 Configuration 26
6.3.3 Process Refinement 27
6.3.4 Conversion Delivery 29
6.3.5 Intentionally left blank 30
6.3.6 Intentionally left blank 30
6.3.7 Control Point 3: Prepare Solution Stage Acceptance 30
6.4 Production Readiness 31
6.4.1 Solution Validation 31
6.4.2 Go-Live Readiness 32
6.4.3 End User Training 33
6.4.4 Control Point 4: Production Readiness Stage Acceptance 34
6.5 Production 34
6.5.1 Go-Live 35
6.5.2 Transition to Client Services 36
6.5.3 Post Go-Live Activities 37
6.5.4 Control Point 5: Production Stage Acceptance 38
6.6 Close 38
6.6.1 Phase Closeout 38
6.6.2 Project Closeout 39
6.6.3 Control Point 6: Close Stage Acceptance 40

7. General Assumptions 41
7.1 Project 41
7.2 Organizational Change Management 41
7.3 Resources and Scheduling 41
7.4 Data 42
7.5 Facilities 42

8. Glossary 43

PART 4: APPENDICES 46

9. Conversion 46

9.1 EnerGov Conversion Summary 46
9.1.1 Community Development 46

10. Additional Appendices 47
10.1 EnerGov Definitions 47
10.1.1 “Template Business Transactions” 47
10.1.2 “Unique Business Transactions” 47
10.1.3 “Geo-Rules” 47
10.1.4 “Automation Events” 48

11. Project Timeline 48
11.1 ERP Project Timeline 48

Part 1: Executive Summary

1. Project Overview

1.1 Introduction

Tyler Technologies ("Tyler") is the largest and most established provider of integrated software and technology services focused solely on the public sector. Tyler's end-to-end solutions empower public sector entities including local, state, provincial and federal government, to operate more efficiently and connect more transparently with their constituents and with each other. By connecting data and processes across disparate systems, Tyler's solutions transform how clients gain actionable insights that solve problems in their communities.

1.2 Project Goals

This Statement of Work ("SOW") documents the methodology, implementation stages, activities, and roles and responsibilities, and project scope listed in the Investment Summary of the Agreement between Tyler and Client (collectively the "Project").

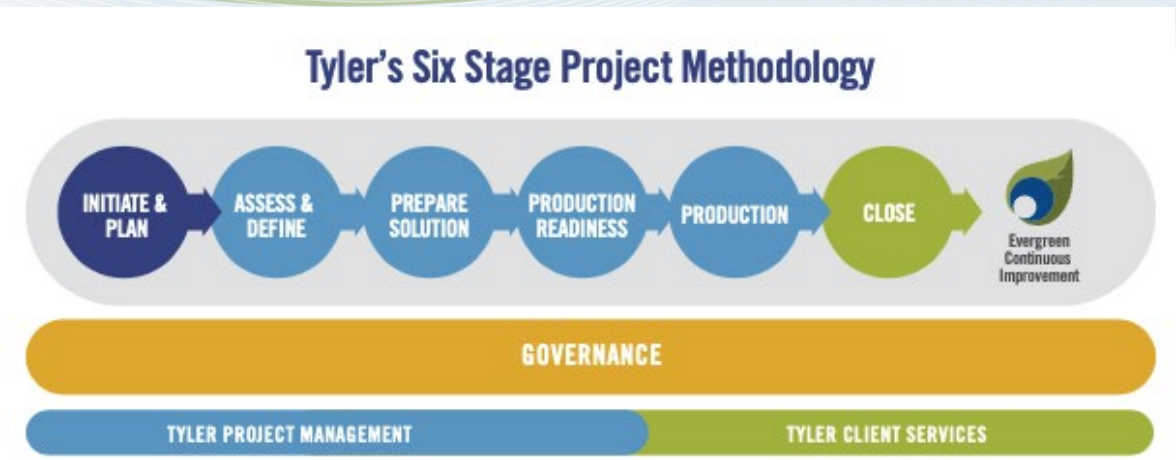
The overall goals of the project are to:

- Successfully implement the contracted scope on time and on budget
- Increase operational efficiencies and empower users to be more productive
- Improve accessibility and responsiveness to external and internal customer needs
- Overcome current challenges and meet future goals

1.3 Methodology

This is accomplished by Benton County and Tyler working as a partnership and Tyler utilizing its depth of implementation experience. While each Project is unique, all will follow Tyler's six-stage methodology. Each of the six stages is comprised of multiple work packages, and each work package includes a narrative description, objectives, tasks, inputs, outputs/deliverables, assumptions, and a responsibility matrix.

Tailored specifically for Tyler's public sector clients, the project methodology contains Stage Acceptance Control Points throughout each Phase to ensure adherence to scope, budget, timeline controls, effective communications, and quality standards. Clearly defined, the project methodology repeats consistently across Phases, and is scaled to meet the Client's complexity and organizational needs.



The methodology adapts to both single-phase and multiple-phase projects.

To achieve Project success, it is imperative that both Benton County and Tyler commit to including the necessary leadership and governance. During each stage of the Project, it is expected that Benton County and Tyler Project teams work collaboratively to complete tasks. An underlying principle of Tyler's Implementation process is to employ an iterative model where Benton County's business processes are assessed, configured, validated, and refined cyclically in line with the project budget. This approach is used in multiple stages and work packages as illustrated in the graphic below.

The delivery approach is systematic, which reduces variability and mitigates risks to ensure Project success. As illustrated, some stages, along with work packages and tasks, are intended to be overlapping by nature to efficiently and effectively complete the Project.

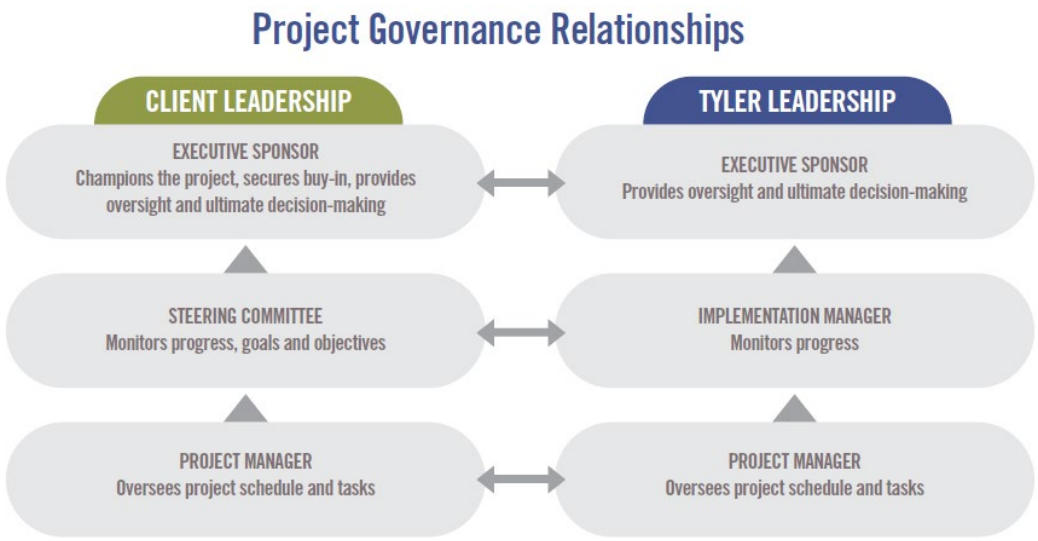
Part 2: Project Foundation

2. Project Governance

Project governance is the management framework within which Project decisions are made. The role of Project governance is to provide a decision-making approach that is logical, robust, and repeatable. This allows organizations to have a structured approach for conducting its daily business in addition to project related activities.

This section outlines the resources required to adequately meet the business needs, objectives, and priorities for the Project, communicate the goals to other Project participants, and provide support and guidance to accomplish these goals. Project governance defines the structure for escalation of issues and risks, Change Control review and authority, and Organizational Change Management activities. Throughout the Statement of Work Tyler has provided RACI Matrices for activities to be completed throughout the implementation which will further outline responsibilities of different roles in each stage. Further refinement of the governance structure, related processes, and specific roles and responsibilities occurs during the Initiate & Plan Stage.

The chart below illustrates an overall team perspective where Tyler and Benton County collaborate to resolve Project challenges according to defined escalation paths. In the event that project managers do not possess authority to determine a solution, resolve an issue, or mitigate a risk, Tyler implementation management and Benton County Steering Committee become the escalation points to triage responses prior to escalation to Benton County and Tyler executive sponsors. As part of the escalation process, each Project governance tier presents recommendations and supporting information to facilitate knowledge transfer and issue resolution. Benton County and Tyler executive sponsors serve as the final escalation point.



3. Project Scope Control

3.1 Managing Scope and Project Change

Project Management governance principles contend that there are three connected constraints on a Project: budget, timeline, and scope. These constraints, known as the 'triple constraints' or Project management triangle, define budget in terms of financial cost, labor costs, and other resource costs. Scope is defined as the work performed to deliver a product, service or result with the specified features and functions, while time is simply defined as the schedule. The Triple Constraint theory states that if you change one side of the triangle, the other two sides must be correspondingly adjusted. For example, if the scope of the Project is increased, cost and time to complete will also need to increase. The Project and executive teams will need to remain cognizant of these constraints when making impactful decisions to the Project. A simple illustration of this triangle is included here, showing the connection of each item and their relational impact to the overall Scope.

A pillar of any successful project is the ability to properly manage scope while allowing the appropriate level of flexibility to incorporate approved changes. Scope and changes within the project will be managed using the change control process outlined in the following section.

3.2 Change Control

It may become necessary to change the scope of this Project due to unforeseeable circumstances (e.g., new constraints or opportunities are discovered). This Project is being undertaken with the understanding that Project scope, schedule, and/or cost may need to change in order to produce optimal results for stakeholders. Changes to contractual requirements will follow the change control process specified in the final contract, and as described below.

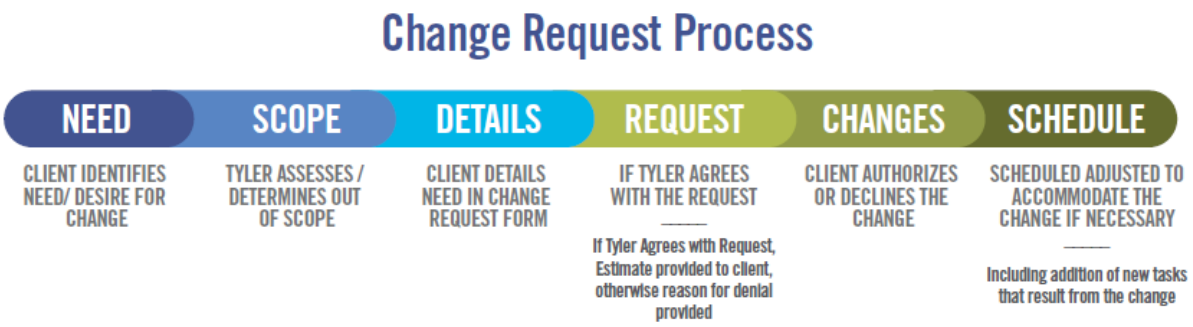
3.3 Change Request Management

Should the need for a change to Project scope, schedule, and/or cost be identified during the Project, the change will be brought to the attention of the Steering Committee and an assessment of the change will occur. While such changes may result in additional costs and possible delays relative to the schedule, some

changes may result in less cost to Benton County; for example, Benton County may decide it no longer needs a deliverable originally defined in the Project. The Change Request will include the following information:

- The nature of the change.
- A good faith estimate of the additional cost or associated savings to Benton County, if any.
- The timetable for implementing the change.
- The effect on and/or risk to the schedule, resource needs or resource responsibilities.

Benton County will use its good faith efforts to either approve or disapprove any Change Request within ten (10) Business Days (or other period as mutually agreeable between Tyler and Benton County). Any changes to the Project scope, budget, or timeline must be documented and approved in writing using a Change Request form. These changes constitute a formal amendment to the Statement of Work and will supersede any conflicting term in the Statement of Work.



4. Acceptance Process

The implementation of a Project involves many decisions to be made throughout its lifecycle. Decisions will vary from higher level strategy decisions to smaller, detailed Project level decisions. It is critical to the success of the Project that each Benton County office or department designates specific individuals for making decisions on behalf of their offices or departments.

Both Tyler and the Benton County will identify representative project managers. These individuals will represent the interests of all stakeholders and serve as the primary contacts between the two organizations.

The coordination of gaining client feedback and approval on Project deliverables will be critical to the success of the Project. The Benton County project manager will strive to gain deliverable and decision approvals from all authorized Benton County representatives. Given that the designated decision-maker for each department may not always be available, there must be a designated proxy for each decision point in the Project. Assignment of each proxy will be the responsibility of the leadership from each Benton County department. The proxies will be named individuals that have the authorization to make decisions on behalf of their department.

The following process will be used for accepting Deliverables and Control Points:

- The Benton County shall have five (5) business days from the date of delivery, or as otherwise mutually agreed upon by the parties in writing, to accept each Deliverable or Control Point. If the Benton County does not provide acceptance or acknowledgement within five (5) business days, or the otherwise agreed upon timeframe, not to be unreasonably withheld, Tyler deems the Deliverable or Control Point as accepted.
- If the Benton County does not agree the particular Deliverable or Control Point meets requirements, the Benton County shall notify Tyler project manager(s), in writing, with reasoning within five (5) business days, or the otherwise agreed-upon timeframe, not to be unreasonably withheld, of receipt of the Deliverable.
- Tyler shall address any deficiencies and redeliver the Deliverable or Control Point. The Benton County shall then have two (2) business days from receipt of the redelivered Deliverable or Control Point to accept or again submit written notification of reasons for rejecting the milestone. If the Benton County does not provide acceptance within two (2) business days, or the otherwise agreed upon timeframe, not to be unreasonably withheld, Tyler deems the Deliverable or Control Point as accepted.

5. Roles and Responsibilities

The following defines the roles and responsibilities of each Project resource for Benton County and Tyler. Roles and responsibilities may not follow the organizational chart or position descriptions at Benton County, but are roles defined within the Project. It is common for individual resources on both the Tyler and client project teams to fill multiple roles. Similarly, it is common for some roles to be filled by multiple people.

5.1 Tyler Roles & Responsibilities

Tyler assigns a project manager prior to the start of each Phase of the Project (some Projects may only be one Phase in duration). Additional Tyler resources are assigned as the schedule develops and as needs arise.

5.1.1 Tyler Executive Sponsor

Tyler executive management has indirect involvement with the Project and is part of the Tyler escalation process. This team member offers additional support to the Project team and collaborates with other Tyler department managers as needed in order to escalate and facilitate implementation Project tasks and decisions.

- Provides clear direction for Tyler staff on executing on the Project Deliverables to align with satisfying Benton County ’s overall organizational strategy.
- Authorizes required Project resources.
- Resolves all decisions and/or issues not resolved at the implementation management level as part of the escalation process.
- Acts as the counterpart to Benton County ’s executive sponsor.

5.1.2 Tyler Implementation Manager

- Tyler implementation management has indirect involvement with the Project and is part of the Tyler escalation process. The Tyler project managers consult implementation management on issues and outstanding decisions critical to the Project. Implementation management works toward a solution with the Tyler Project Manager or with Benton County management as appropriate. Tyler executive management is the escalation point for any issues not resolved at this level.
- Assigns Tyler Project personnel.
- Provides support for the Project team.
- Provides management support for the Project to ensure it is staffed appropriately and staff have necessary resources.
- Monitors Project progress including progress towards agreed upon goals and objectives.

5.1.3 Tyler Project Manager

- The Tyler project manager(s) provides oversight of the Project, coordination of Tyler resources between departments, management of the Project budget and schedule, effective risk and issue management, and is the primary point of contact for all Project related items. As requested by the client, the Tyler Project Manager provides regular updates to the client Steering Committee and other Tyler governance members. Tyler Project Manager’s role includes responsibilities in the following areas:

5.1.3.1 Contract Management

- Validates contract compliance throughout the Project.
- Ensures Deliverables meet contract requirements.
- Acts as primary point of contact for all contract and invoicing questions.
- Prepares and presents contract milestone sign-offs for acceptance by Benton County project manager(s).
- Coordinates Change Requests, if needed, to ensure proper Scope and budgetary compliance.

5.1.3.2 Planning

- Delivers project planning documents.
- Defines Project tasks and resource requirements.

- Develops initial Project schedule and Project Management Plan.
- Collaborates with Benton County project manager(s) to plan and schedule Project timelines to achieve on-time implementation.

5.1.3.3 Implementation Management

- Tightly manages Scope and budget of Project to ensure Scope changes and budget planned versus actual are transparent and handled effectively and efficiently.
- Establishes and manages a schedule and Tyler resources that properly support the Project Schedule and are also in balance with Scope/budget.
- Establishes risk/issue tracking/reporting process between Benton County and Tyler and takes all necessary steps to proactively mitigate these items or communicate with transparency to Benton County any items that may impact the outcomes of the Project.
- Collaborates with Benton County 's project manager(s) to establish key business drivers and success indicators that will help to govern Project activities and key decisions to ensure a quality outcome of the project.
- Collaborates with Benton County 's project manager(s) to set a routine communication plan that will aide all Project team members, of both Benton County and Tyler, in understanding the goals, objectives, current status, and health of the Project.

5.1.3.4 Resource Management

- Acts as liaison between Project team and Tyler manager(s).
- Identifies and coordinates all Tyler resources across all applications, Phases, and activities including development, forms, installation, reports, implementation, and billing.
- Provides direction and support to Project team.
- Manages the appropriate assignment and timely completion of tasks as defined in the Project Schedule, task list, and Go-Live Checklist.
- Assesses team performance and adjusts as necessary.
- Consulted on in Scope 3rd party providers to align activities with ongoing Project tasks.

5.1.4 Tyler Implementation Consultant

- Completes tasks as assigned by the Tyler project manager(s).
- Documents activities for services performed by Tyler.
- Guides Benton County through software validation process following configuration.
- Assists during Go-Live process and provides support until Benton County transitions to Client Services.
- Facilitates training sessions and discussions with Benton County and Tyler staff to ensure adequate discussion of the appropriate agenda topics during the allotted time.
- May provide conversion review and error resolution assistance.

5.1.5 Tyler Sales

- Supports Sales to Implementation knowledge transfer during Initiate & Plan.
- Provides historical information, as needed, throughout implementation.
- Participates in pricing activities if additional licensing and/or services are needed.

5.1.6 Tyler Technical Services

- Maintains Tyler infrastructure requirements and design document(s).
- Involved in system infrastructure planning/review(s).
- Provides first installation of licensed software with initial database on servers.
- Supports and assists the project team with technical/environmental issues/needs.
- Deploys Tyler products.
- Conducts GIS Planning.
- Reviews GIS data and provides feedback to the client.
- Loads client provided GIS data into the system.

5.1.7 Tyler Systems Management Services

- Manages incoming Benton County issues via phone, email, online customer incident portal, and from Client Services.
- Provides system support including remote support for Benton County systems, operating systems, peripheral hardware, and SQL assistance for the systems and platform directly attributable to the Tyler applications.
- Tracks issues for timely and effective resolution.
- Determines root cause and provides solutions or direction/escalation to Tyler Development.
- Consults on pre-sales regarding system requirements.
- Troubleshoots server and workstation issues.
- Migrates Tyler applications and databases to new hardware.
- Maintains systems and provide database and server administration.
- Provides proactive monitoring of Tyler application and/or database server(s).
- Performs server transfers, database analysis, file system cleanup, and backup verification.
- Assists with database refreshes, LDAP synchronization, and loading releases.

5.2 Benton County Roles & Responsibilities

Benton County resources will be assigned prior to the start of each Phase of the Project. One person may be assigned to multiple Project roles.

5.2.1 Benton County Executive Sponsor

The Benton County executive sponsor provides support to the Project by providing strategic direction and communicating key issues about the Project and its overall importance to the organization. When called upon, the executive sponsor also acts as the final authority on all escalated Project issues. The executive sponsor engages in the Project, as needed, in order to provide necessary support, oversight, guidance, and escalation, but does not participate in day-to-day Project activities. The executive sponsor empowers the Benton County steering committee, project manager(s), and functional leads to make critical business decisions for Benton County.

- Champions the project at the executive level to secure buy-in.
- Authorizes required project resources.
- Actively participates in organizational change communications.

5.2.2 Benton County Steering Committee

The Benton County steering committee understands and supports the cultural change necessary for the Project and fosters an appreciation for the Project's value throughout the organization. The steering committee oversees the Benton County project manager and Project as a whole through participation in regular internal meetings. The Benton County steering committee remains updated on all Project progress, Project decisions, and achievement of Project milestones. The Benton County steering committee also serves as primary level of issue resolution for the Project.

- Works to resolve all decisions and/or issues not resolved at the project manager level as part of the escalation process.
- Attends all scheduled steering committee meetings.
- Provides support for the project team.
- Assists with communicating key project messages throughout the organization.
- Prioritizes the project within the organization.
- Ensures the project staffed appropriately and that staff have necessary resources.
- Monitors project progress including progress towards agreed upon goals and objectives.
- Has the authority to approve or deny changes impacting the following areas:
    - Cost
    - Scope
    - Schedule
    - Project Goals
    - Benton County Policies
    - Needs of other client projects

5.2.3 Benton County Project Manager

Benton County shall assign project manager(s) prior to the start of this project with overall responsibility and authority to make decisions related to Project Scope, scheduling, and task assignment. Benton County Project Manager should communicate decisions and commitments to the Tyler project manager(s) in a timely and efficient manner. When Benton County project manager(s) do not have the knowledge or authority to make decisions, he or she engages the necessary resources to participate in discussions and make decisions in a timely fashion to avoid Project delays. The client project manager(s) are responsible for reporting to client steering committee and determining appropriate escalation points.

5.2.3.1 Contract Management

- Validates contract compliance throughout the project.
- Ensures that invoicing and Deliverables meet contract requirements.
- Acts as primary point of contact for all contract and invoicing questions. Collaborates on and approves Change Requests, if needed, to ensure proper scope and budgetary compliance.

5.2.3.2 Planning

- Reviews and accepts project planning documents.
- Defines project tasks and resource requirements for Benton County project team.
- Collaborates in the development and approval of the project schedule.
- Collaborates with Tyler project manager(s) to plan and schedule project timelines to achieve on-time implementation.

5.2.3.3 Implementation Management

- Tightly manages project budget and scope.
- Collaborates with Tyler project manager(s) to establish a process and approval matrix to ensure that scope changes and budget (planned versus actual) are transparent and handled effectively and efficiently.
- Collaborates with Tyler project manager to establish and manage a schedule and resource plan that properly supports the project schedule as a whole and is also in balance with scope and budget.
- Collaborates with Tyler project manager(s) to establish risk and issue tracking and reporting process between Benton County and Tyler and takes all necessary steps to proactively mitigate these items or communicate with transparency to Tyler any items that may impact the outcomes of the project.
- Collaborates with Tyler project manager(s) to establish key business drivers and success indicators that will help to govern project activities and key decisions to ensure a quality outcome of the project.
- Routinely communicates with both Benton County staff and Tyler, aiding in the understanding of goals, objectives, current status, and health of the project by all team members.
- Manages the requirements gathering process and ensure timely and quality business requirements are being provided to Tyler.

5.2.3.4 Resource Management

- Acts as liaison between project team and stakeholders.
- Identifies and coordinates all Benton County resources across all modules, phases, and activities including data conversions, forms design, hardware and software installation, reports building, and satisfying invoices.
- Provides direction and support to project team.
- Builds partnerships among the various stakeholders, negotiating authority to move the project forward.
- Manages the appropriate assignment and timely completion of tasks as defined.
- Assesses team performance and takes corrective action, if needed.
- Provides guidance to Benton County technical teams to ensure appropriate response and collaboration with Tyler Technical Support Teams in order to ensure timely response and appropriate resolution.
- Owns the relationship with in-Scope 3rd party providers and aligns activities with ongoing project tasks.
- Ensures that users have appropriate access to Tyler project toolsets as required.
- Conducts training on proper use of toolsets.
- Validates completion of required assignments using toolsets.

5.2.4 Benton County Functional Leads

- Makes business process change decisions under time sensitive conditions.
- Communicates existing business processes and procedures to Tyler consultants.
- Assists in identifying business process changes that may require escalation.
- Contributes business process expertise for Current & Future State Analysis.
- Identifies and includes additional subject matter experts to participate in Current & Future State Analysis.
- Validates that necessary skills have been retained by end users.
- Provides End Users with dedicated time to complete required homework tasks.

- Acts as an ambassador/champion of change for the new process and provide business process change support.
- Identifies and communicates any additional training needs or scheduling conflicts to Benton County project manager.
- Actively participates in all aspects of the implementation, including, but not limited to, the following key activities:
    - Task completion
    - Stakeholder Meeting
    - Project Management Plan development
    - Schedule development
    - Maintenance and monitoring of risk register
    - Escalation of issues
    - Communication with Tyler project team
    - Coordination of Benton County resources
    - Attendance at scheduled sessions
    - Change management activities
    - Modification specification, demonstrations, testing and approval assistance
    - Data analysis assistance
    - Decentralized end user training
    - Process testing
    - Solution Validation

5.2.5 Benton County Power Users

- Participate in project activities as required by the project team and project manager(s).
- Provide subject matter expertise on Benton County business processes and requirements.
- Act as subject matter experts and attend Current & Future State Analysis sessions as needed.
- Attend all scheduled training sessions.
- Participate in all required post-training processes as needed throughout project.
- Test all application configuration to ensure it satisfies business process requirements.
- Become application experts.
- Participate in Solution Validation.
- Adopt and support changed procedures.
- Complete all deliverables by the due dates defined in the project schedule.
- Demonstrate competency with Tyler products processing prior to Go-live.
- Provide knowledge transfer to Benton County staff during and after implementation.
- Participate in conversion review and validation.

5.2.6 Benton County End Users

- Attend all scheduled training sessions.
- Become proficient in application functions related to job duties.
- Adopt and utilize changed procedures.
- Complete all deliverables by the due dates defined in the project schedule.
- Utilize software to perform job functions at and beyond Go-live.

5.2.7 Benton County Technical Lead

- Coordinates updates and releases with Tyler as needed.
- Coordinates the copying of source databases to training/testing databases as needed for training days.
- Coordinates and adds new users, printers and other peripherals as needed.
- Validates that all users understand log-on process and have necessary permission for all training sessions.
- Coordinates interface development for Benton County third party interfaces.
- Develops or assists in creating reports as needed.
- Ensures on-site system meets specifications provided by Tyler.
- Assists with software installation as needed.
- Extracts and transmits conversion data and control reports from Benton County's legacy system per the conversion schedule set forth in the project schedule.
- Client-hosted:
    - Involved in infrastructure planning/review
    - Purchases and sets up client-hosted servers

5.2.7.1 Benton County GIS

- Participates in GIS planning activities.
- Responsible for management and maintenance of Benton County GIS infrastructure and data.
- Ensures GIS data/service endpoints are in alignment with Tyler software requirements.
- Provides Tyler implementation team with GIS data/service access information.

5.2.7.2 Benton County Upgrade Coordination

- Becomes familiar with the software upgrade process and required steps.
- Becomes familiar with Tyler's releases and updates.
- Utilizes Tyler resources to stay abreast of the latest Tyler releases and updates, as well as the latest helpful tools to manage Benton County's software upgrade process.
- Assists with the software upgrade process during implementation.
- Manages software upgrade activities post-implementation.
- Manages software upgrade plan activities.
- Coordinates software upgrade plan activities with Benton County and Tyler resources.
- Communicates changes affecting users and department stakeholders.
- Obtains department stakeholder acceptance to upgrade production environment.

5.2.8 Benton County Change Management Lead

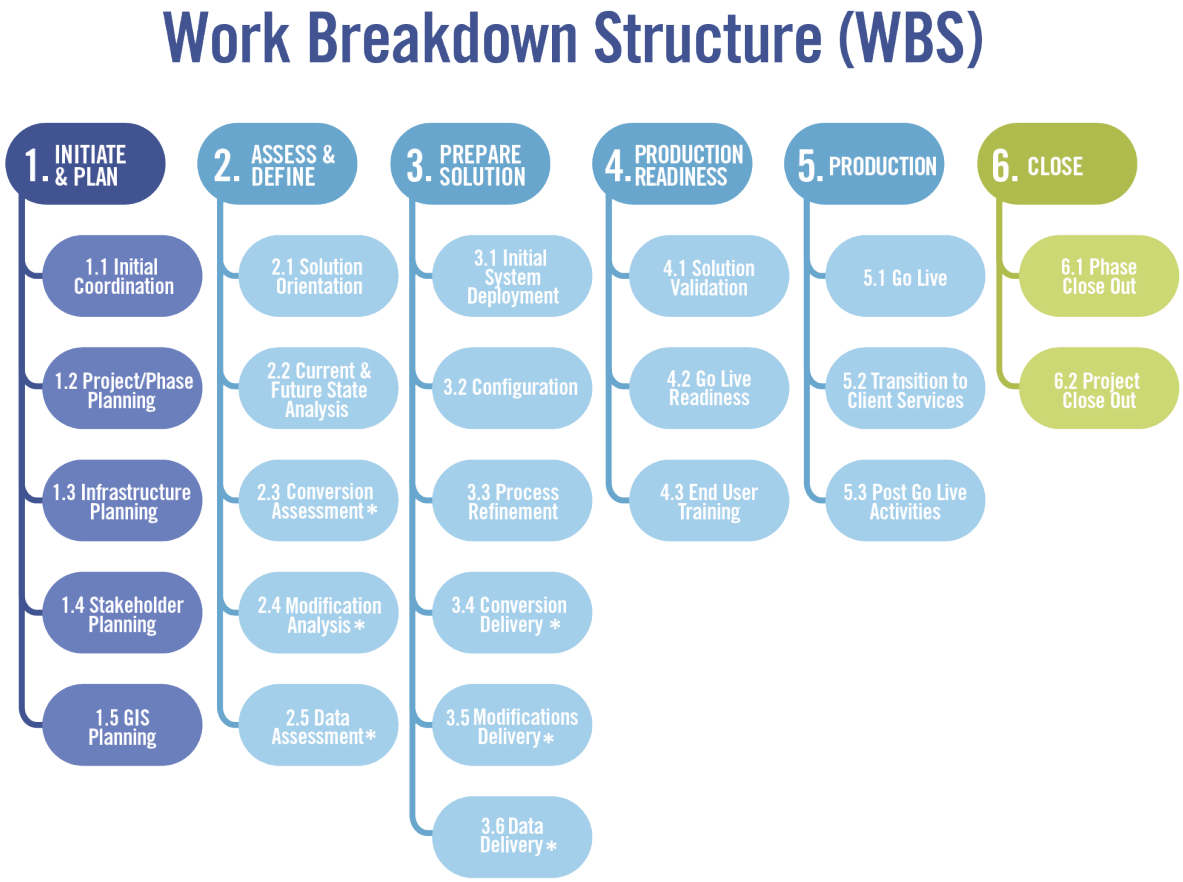
- Validates that users receive timely and thorough communication regarding process changes.
- Provides coaching to supervisors to prepare them to support users through the project changes.
- Identifies the impact areas resulting from project activities and develops a plan to address them proactively.
- Identifies areas of resistance and develops a plan to reinforce the change.
- Monitors post-production performance and new process adherence.

Part 3: Project Plan

6. Project Stages

Work Breakdown Structure

The Work Breakdown Structure (WBS) is a hierarchical representation of a Project or Phase broken down into smaller, more manageable components. The top-level components are called "Stages" and the second level components are called "Work Packages". The work packages, shown below each stage, contain the high-level work to be done. The detailed Project Schedule, developed during Project/Phase Planning and finalized during subsequent stages, lists the tasks to be completed within each work package. Each stage ends with a "Control Point", confirming the work performed during that stage of the Project has been accepted by Benton County.



**Items noted with an asterisk in the graphic above relate to specific products and services. If those products and services are not included in the scope of the contract, these specific work packages will be noted as "Intentionally Left Blank" in Section 6 of the Statement of Work.*

6.1 Initiate and Plan

The Initiate and Plan stage involves Project initiation, infrastructure, and planning. This stage creates a foundation for the Project by identifying and establishing sequence and timing for each Phase as well as verifying scope for the Project. This stage will be conducted at the onset of the Project, with a few unique items being repeated for the additional Phases as needed.

6.1.1 Initial Coordination

Prior to Project commencement, Tyler management assigns project manager(s). Additional Project resources will be assigned later in the Project as a Project schedule is developed. Tyler provides Benton County with initial Project documents used to gather names of key personnel, their functional role as it pertains to the Project, as well as any blackout dates to consider for future planning. Benton County gathers the information requested by the provided deadline ensuring preliminary planning and scheduling can be conducted moving the Project forward in a timely fashion. Internally, the Tyler Project Manager(s) coordinate with sales to ensure transfer of vital information from the sales process prior to scheduling a Project Planning Meeting with Benton County's team. During this step, Tyler will work with Benton County to establish the date(s) for the Project and Phase Planning session.

Objectives:

- Formally launch the project.
- Establish project governance.
- Define and communicate governance for Tyler.
- Identify client project team.

STAGE 1	Initial Coordination																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Tyler project team is assigned	A	R	C	I	I	I	I		I		I						
Client project team is assigned									A	I	R	I	I	I			
Provide initial project documents to Benton County		A	R	C			C		I		I						
Gather preliminary information requested			I						A		R	C		C		C	C
Sales to implementation knowledge transfer		A	R	I	I	I	I				I						

Create Project Portal to store project artifacts and facilitate communication		A	R								I						

Inputs	Contract documents
	Statement of Work

Outputs/Deliverables	Completed initial project documents
	Project portal

Work package assumptions:

- Project activities begin after the agreement has been fully executed.

6.1.2 Project/Phase Planning

Project and Phase planning provides an opportunity to review the contract, software, data conversions and services purchased, identify applications to implement in each Phase (if applicable), and discuss implementation timeframes.

During this work package Tyler will work with Benton County to coordinate and plan a formal Project planning meeting(s). This meeting signifies the start of the Project and should be attended by all Benton County Project team members and the Tyler Project Manager. The meeting provides an opportunity for Tyler to introduce its implementation methodology, terminology, and Project management best practices to Benton County's Project Team. This will also present an opportunity for project managers and Project sponsors to begin to discuss Project communication, metrics, status reporting and tools to be used to measure Project progress and manage change.

Tyler will work with the Benton County Project Team to prepare and deliver the Project Management Plan as an output of the planning meeting. This plan will continue to evolve and grow as the Project progresses and will describe how the project will be executed, monitored, and controlled.

During project planning, Tyler will introduce the tools that will be used throughout the implementation. Tyler will familiarize the client with these tools during project planning and make them available for review and maintenance as applicable throughout the project. Some examples are Solution validation plan, issue log, and go-live checklist.

STAGE 1	Project/Phase Planning	
	Tyler	Client

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Schedule and conduct planning session(s)		A	R						I		C	C	I				
Develop Project Management Plan		A	R						I		C	C	I				
Develop initial project schedule		A	R	I	I	I	I		I	I	C	C	I	I	C		I

Inputs	Contract documents
	Statement of Work
	Guide to Starting Your Project

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Project Management Plan	Delivery of document
	Project Operational Plan	Delivery of document
	Initial Project Schedule	Benton County provides acceptance of schedule based on resource availability, project budget, and goals.

Work package assumptions:

- Benton County has reviewed and completed the Guide to Starting Your Project document.

6.1.3 Infrastructure Planning

Procuring required hardware and setting it up properly is a critical part of a successful implementation. This task is especially important on-premise deployment models. In an On-premise deployment, the Benton County will be responsible for the setup of the infrastructure. Tyler will install Licensed Software on application server(s) or train Benton County to install License Software. The Benton County is responsible for the installation and setup of all peripheral devices.

Objectives:

- Ensure Benton County's infrastructure meets Tyler's application requirements.
- Ensure Benton County's infrastructure is scheduled to be in place and available for use on time.

STAGE 1	Infrastructure Planning

	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts	Department Heads	End Users	Technical Leads
Provide Infrastructure Requirements and Design Document		A	R		C		C				I						I
Initial Infrastructure Meeting		A	R		C		C				C						C
Schedule Installation of All Licensed Software		A	R				C				I						I
Infrastructure Audit		A	R				C				I						C

Inputs	1. Initial Infrastructure Requirements and Design Document

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	1. Completed Infrastructure Requirements and Design Document	Delivery of Document
	2. Infrastructure Audit	System Passes Audit Criteria

Work package assumptions:

- Benton County will maintain environment (or virtual environment) for On-Premise deployments.

6.1.4 Stakeholder Meeting

Communication of the Project planning outcomes to the Benton County Project team, executives and other key stakeholders is vital to Project success. The Stakeholder meeting is a strategic activity to inform, engage, gain commitment, and instill confidence in the Benton County team. During the meeting, the goals and objectives of the Project will be reviewed along with detail on Project scope, implementation methodology, roles and responsibilities, Project timeline and schedule, and keys to Project success.

Objectives:

- Formally present and communicate the project activities and timeline.
- Communicate project expectations.

STAGE 1	Stakeholder Meeting	
	Tyler	Client

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Create Stakeholder Meeting Presentation	I	A	R	I	I				I	I	C		I				
Review Stakeholder Meeting Presentation		I	C						A		R		C				
Perform Stakeholder Meeting Presentation	I	A	R	I	I				I	I	C	I	I	I	I	I	I

Inputs	Agreement
	SOW
	Project Management Plan

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Stakeholder Meeting Presentation	

Work package assumptions:

- None

6.1.5 GIS Preparation

GIS data is a core part of many Tyler applications. Other Benton County offices/products may also use this data and have different GIS requirements. A key focus of this preparation will be the process for developing the GIS data for use with Tyler applications. This can be an iterative process, so it is important to begin preparation early.

Objectives:

- Identify all Benton County GIS data sources and formats.
- Tyler to understand Benton County's GIS needs and practices.
- Ensure Benton County's GIS data meets Tyler product requirements.

STAGE 1	GIS Preparation	
	Tyler	Client

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Initial GIS Planning Meeting		A	R				C				C						C
Determine all GIS Data Sources			I				I		A		R						C
Provide Source GIS Data			I				I		A		R						C
Review GIS Data and Provide Feedback		A	R				C				I						C

Inputs	GIS Requirements Document

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Production Ready Map Data	Meets Tyler GIS Requirements.

Work package assumptions:

- GIS data provided to Tyler is accurate and complete.
- GIS data provided to Tyler is current.
- Benton County is responsible for maintaining the GIS data.

6.1.6 Control Point 1: Initiate & Plan Stage Acceptance

Acceptance criteria for this stage includes completion of all criteria listed below.

Note: Advancement to the Assess & Define stage is not dependent upon Tyler's receipt of this stage acceptance.

Initiate & Plan Stage Deliverables:

- Project Management Plan
- Initial Project Schedule

Initiate & Plan stage acceptance criteria:

- All stage deliverables accepted based on acceptance criteria previously defined
- Project governance defined
- Project portal made available to Benton County
- Stakeholder meeting complete
- GIS Data Production Ready

- Completed Infrastructure Requirements and Design Document
- System Passes Infrastructure Audit (as applicable)

6.2 Assess & Define

The Assess & Define stage will provide an opportunity to gather information related to current Benton County business processes. This information will be used to identify and define business processes utilized with Tyler software. Benton County collaborates with Tyler providing complete and accurate information to Tyler staff and assisting in analysis, understanding current workflows and business processes.

6.2.1 Solution Orientation

The Solution Orientation provides the Project stakeholders a high-level understanding of the solution functionality prior to beginning the current and future state analysis. The primary goal is to establish a foundation for upcoming conversations regarding the design and configuration of the solution.

Tyler utilizes a variety of tools for the Solution Orientation, focusing on Benton County team knowledge transfer such as: eLearning, documentation, or walkthroughs. The Benton County team will gain a better understanding of the major processes and focus on data flow, the connection between configuration options and outcome, integration, and terminology that may be unique to Tyler's solution.

Objectives:

- Provide a basic understanding of system functionality.
- Prepare Benton County for current and future state analysis.

STAGE 2	Solution Orientation																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Provide pre-requisites			A	R							I	I		I	I		I
Complete pre-requisites											A	R		C			C
Conduct orientation			A	R							I	I		I	I		I

Inputs	Solution orientation materials
	Training Plan

6.2.2 Current & Future State Analysis

The Current & Future State Analysis provides the Project stakeholders and Tyler an understanding of process changes that will be achieved with the new system.

Benton County and Tyler will evaluate current state processes, options within the new software, pros and cons of each based on current or desired state and make decisions about the future state configuration and processing. This may occur before or within the same timeframe as the configuration work package. The options within the new software will be limited to the scope of this implementation and will make use of standard Tyler functionality.

The Benton County will adopt the existing Tyler solution wherever possible to avoid project schedule and quality risk from over customization of Tyler products. It is the client's responsibility to verify that in-scope requirements are being met throughout the implementation if functional requirements are defined as part of the contract. The following guidelines will be followed when evaluating if a modification to the product is required:

- A reasonable business process change is available.
- Functionality exists which satisfies the requirement.
- Configuration of the application satisfies the requirement.
- An in-scope modification satisfies the requirement.

Requirements that are not met will follow the agreed upon change control process and can have impacts on the project schedule, scope, budget and resource availability.

STAGE 2	Current & Future State Analysis																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Current State process review			A	R	I	I	I				C	C	C	C			C
Discuss future-state options			A	R	C	C	C				C	C	C	C			C
Make future-state decisions (non-COTS)			C	C	C	C	C				A	R	I	C			C
Document anticipated configuration options required to support future state			A	R	C	C	C				I	I	I	I			I

Inputs	Client current state documentation

	Solution Orientation completion

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Documentation that describes future-state decisions and configuration options to support future-state decisions.	Delivery of document

Work package assumptions:

- Benton County attendees possess sufficient knowledge and authority to make future state decisions.
- Benton County is responsible for any documentation of current state business processes.
- Client is able to effectively communicate current state processes.

6.2.3 Conversion Assessment

Data Conversions are a major effort in any software implementation. Tyler's conversion tools facilitate the predictable, repeatable conversion process that is necessary to support a successful transition to the Tyler system. The first step in this process is to perform an assessment of the existing ("legacy") system(s), to better understand the source data, risks, and options available. Once the data has been analyzed, the plan for data conversion is completed and communicated to the appropriate stakeholders.

Objectives:

- Communicate a common understanding of the project goals with respect to data.
- Ensure complete and accurate source data is available for review/transfer.
- Map the data from the source to the Tyler system.
- Document the data conversion/loading approach.

STAGE 2	Data Conversion Assessment															
	Tyler								Client							
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Extract Data from Source Systems			I		C						A						R
Complete Data Analysis/Mapping		A	R	C	C						I	C		C			I
Review and Scrub Source Data			I	I	I						A	R		C			I

Build/Update Data Conversion Plan			R	C	C						C	I	I	I			I

Inputs	Client Source data
	Client Source data Documentation (if available)

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Data Conversion Plan built/updated	Client Acceptance of Data Conversion Plan, if Applicable

Work package assumptions:

- Tyler will be provided with data from the Legacy system(s) in a mutually agreed upon format.
- Tyler will work with Benton County representatives to identify business rules before writing the conversion.
- Benton County subject matter experts and resources most familiar with the current data will be involved in the data conversion planning effort.

6.2.4 Intentionally left blank.

6.2.5 Intentionally left blank.

6.2.6 Control Point 2: Assess & Define Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below.

Note: Advancement to the Prepare Solution Stage is dependent upon Tyler's receipt of the Stage Acceptance.

Assess & Define Stage Deliverables:

- Documentation of future state decisions and configuration options to support future state decisions.
- Modification specification document.
- Assess & Define Stage Acceptance Criteria:
- All stage deliverables accepted based on criteria previously defined.
- Solution Orientation is delivered.
- Conversion data extracts are received by Tyler.
- Data conversion plan built.

6.3 Prepare Solution

During the Prepare Solution stage, information gathered during the Initiate & Plan and Assess & Define stages will be used to install and configure the Tyler software solution. Software configuration will be validated by the client against future state decisions defined in previous stages and processes refined as needed to ensure business requirements are met.

6.3.1 Initial System Deployment

The timely availability of the Tyler Solution is important to a successful Project implementation. The success and timeliness of subsequent work packages are contingent upon the initial system deployment of Tyler Licensed Software on an approved network and infrastructure. Delays in executing this work package can affect the project schedule.

Objectives:

- Benton County's hardware is available and set up appropriately to meet Tyler's requirements.
- All licensed software is installed and operational.
- Benton County is able to access the software.

STAGE 3	Initial System Deployment (On-Premise)															
	Tyler								Client							
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Review Purchased Hardware			A				R				I						C
Setup/Prepare Hardware for Deployment for Included Environments			I				C				A						R
Install Licensed Software with Initial Database on Server(s) for Included Environments			A				R				I						C
Install Licensed Software on Client Devices (if applicable)			I				C				A						R
Tyler System Administration Training (if applicable)			A				R				I						C

Inputs	Hardware is Procured and Made Available to Tyler

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Licensed Software is Installed on the Server(s)	Software is accessible

	Licensed Software is Installed on Benton County devices (if applicable)	Software is accessible
	Installation Checklist/System Document	System Passes
	Infrastructure Design Document (If Applicable)	

Work package assumptions:

- The most current generally available version of the Tyler Licensed Software will be installed.
- The Benton County will provide network access for Tyler modules, printers, and Internet access to all applicable Benton County and Tyler Project staff.

On-Premise:

- The Benton County has procured sufficient hardware by the agreed upon timeline.
- The procured hardware and software meets Tyler requirements to ensure sufficient speed and operability of Tyler Licensed Software. Tyler will not support the use of Licensed Software if the Benton County does not meet minimum standards of Tyler's published specifications.
- The Benton County has in place and keeps up to date all hardware, software, and technical infrastructure necessary to support the solution.

6.3.2 Configuration

The purpose of Configuration is to prepare the software product for validation.

Tyler staff collaborates with Benton County to complete software configuration based on the outputs of the future state analysis performed during the Assess and Define Stage. Benton County collaborates with Tyler staff iteratively to validate software configuration.

Objectives:

- Software is ready for validation.
- Educate Benton County Power User how to configure and maintain software.
- Prepare standard interfaces for process validation (if applicable).

STAGE 3	Configuration																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct configuration training			A	R							I	C		C			

Complete Tyler configuration tasks (where applicable)			A	R							I	I		I			
Complete Client configuration tasks (where applicable)			I	C							A	R		C			
Standard interfaces configuration and training (if applicable)			A	R			C				I	C		C			C
Updates to Solution Validation testing plan			C	C							A	R		C			C

Inputs	Documentation that describes future state decisions and configuration options to support future state decisions.

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Configured System	N/A

Work package assumptions:

- Tyler provides guidance for configuration options available within the Tyler software. Benton County is responsible for making decisions when multiple options are available.

6.3.3 Process Refinement

Tyler will educate the Benton County users on how to execute processes in the system to prepare them for the validation of the software. Benton County collaborates with Tyler staff iteratively to validate software configuration options to support future state.

Objectives:

- Ensure that Benton County understands future state processes and how to execute the processes in the software.
- Refine each process to meet the business requirements.
- Validate standard interfaces, where applicable.
- Validate forms and reports, where applicable.

STAGE 3	Process Refinement	
	Tyler	Client

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct process training			A	R							I	C	I	C			
Confirm process decisions			I	C						A	R	C	I	C			
Test configuration			I	C							A	R		C			
Refine configuration (Client Responsible)			I	C							A	R		C			
Refine configuration (Tyler Responsible)			A	R							I	I		I			
Validate interface process and results			I	C			C				A	R		C			C
Update client-specific process documentation (if applicable)			I	C							A	R		C			
Updates to Solution Validation testing plan			C	C							A	R		C			C

Inputs	Initial Configuration
	Documentation that describes future state decisions and configuration options to support future state decisions.
	Solution validation test plan

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated solution validation test plan	
	Completed client-specific process documentation (completed by Benton County)	

Work package assumptions:

- None

6.3.4 Conversion Delivery

The purpose of this task is to transition the Benton County's data from their source ("legacy") system(s) to the Tyler system(s). The data will need to be mapped from the legacy system into the new Tyler system format. A well-executed data conversion is key to a successful cutover to the new system(s).

With guidance from Tyler, the Benton County will review specific data elements within the system and identify / report discrepancies. Iteratively, Tyler will collaborate with the Benton County to address conversion discrepancies. This process will allow for clean, reconciled data to transfer from the source system(s) to the Tyler system(s). Reference Conversion Appendix for additional detail.

Objectives:

- Data is ready for production (Conversion).

STAGE 3	Data Delivery & Conversion																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power Users)	Department Heads	End Users	Technical Leads
Provide data crosswalks/code mapping tool			A	C	R						I	I		I			

Populate data crosswalks/code mapping tool			I	C	C						A	R		C			
Iterations: Conversion Development			A	C	R						I						I
Iterations: Deliver converted data			A		R		I				I						I
Iterations: Proof/Review data and reconcile to source system			C	C	C						A	R		C			C

Inputs	
	Data Conversion Plan
	Configuration

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Code Mapping Complete / Validated	N/A
	Conversion Iterations / Reviews Complete	Conversion complete, verified and ready for final pass

Work package assumptions:

- The Benton County will provide a single file layout per source system as identified in the investment summary.
- The Benton County subject matter experts and resources most familiar with the current data will be involved in the data conversion effort.
- The Benton County project team will be responsible for completing the code mapping activity, with assistance from Tyler.

6.3.5 Intentionally left blank.

6.3.6 Intentionally left blank.

6.3.7 Control Point 3: Prepare Solution Stage Acceptance

Acceptance criteria for this Stage includes all criteria listed below in each Work Package.

Note: Advancement to the Production Readiness Stage is dependent upon Tyler's receipt of the Stage Acceptance.

Prepare Solution Stage Deliverables:

- Licensed software is installed.
- Installation checklist/system document.

- Conversion iterations and reviews complete.

Prepare Solution Stage Acceptance Criteria:

- All stage deliverables accepted based on criteria previously defined.
- Software is configured.
- Solution validation test plan has been reviewed and updated if needed.

6.4 Production Readiness

Activities in the Production Readiness stage will prepare the client team for go-live through solution validation, the development of a detailed go-live plan and end user training. A readiness assessment will be conducted with the client to review the status of the project and the organizations readiness for go-live.

6.4.1 Solution Validation

Solution Validation is the end-to-end software testing activity to ensure that Benton County verifies all aspects of the Project (hardware, configuration, business processes, etc.) are functioning properly, and validates that all features and functions per the contract have been deployed for system use.

Objectives:

- Validate that the solution performs as indicated in the solution validation plan.
- Ensure Benton County organization is ready to move forward with go-live and training (if applicable).

STAGE 4	Solution Validation																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Update Solution Validation plan			A	R	C						C	C		C			
Update test scripts (as applicable)			C	C	C						A	R		C			
Perform testing			C	C	C						A	R		C			
Document issues from testing			C	C	C						A	R		C			
Perform required follow-up on issues			A	R	C						C	C		C			

Inputs	Solution Validation plan
	Completed work product from prior stages (configuration, business process, etc.)

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Solution Validation Report	Benton County updates report with testing results

Work package assumptions:

- Designated testing environment has been established.
- Testing includes current phase activities or deliverables only.

6.4.2 Go-Live Readiness

Tyler and Benton County will ensure that all requirements defined in Project planning have been completed and the Go-Live event can occur, as planned. A go-live readiness assessment will be completed identifying risks or actions items to be addressed to ensure the client has considered its ability to successfully Go-Live. Issues and concerns will be discussed and mitigation options documented. Tyler and Benton County will jointly agree to move forward with transition to production. Expectations for final preparation and critical dates for the weeks leading into and during the Go-Live week will be planned in detail and communicated to Project teams.

Objectives:

- Action plan for go-live established.
- Assess go-live readiness.
- Stakeholders informed of go-live activities.

STAGE 4	Go-Live Readiness																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Perform Readiness Assessment	I	A	R	C	C	I	C	I	I	I	I		I				I
Conduct Go-Live planning session		A	R	C							C	C	C	C	C		C
Order peripheral hardware (if applicable)			I							A	R						C
Confirm procedures for Go-Live issue reporting & resolution		A	R	I	I	I	I				C	C	I	I	I	I	I

Develop Go-Live checklist		A	R	C	C						C	C	I	C			C
Final system infrastructure review (where applicable)			A				R				C						C

Inputs	Future state decisions
	Go-live checklist

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated go-live checklist	Updated Action plan and Checklist for go-live delivered to Benton County

Work package assumptions:

- None

6.4.3 End User Training

End User Training is a critical part of any successful software implementation. Using a training plan previously reviewed and approved, the Project team will organize and initiate the training activities.

Train the Trainer: Tyler provides one occurrence of each scheduled training or implementation topic. Benton County users who attended the Tyler sessions may train additional users. Additional Tyler led sessions may be contracted at the applicable rates for training.

Tyler will provide standard application documentation for the general use of the software. It is not Tyler's responsibility to develop client specific business process documentation. Client-led training labs using client specific business process documentation if created by the client can be added to the regular training curriculum, enhancing the training experiences of the end users.

Objectives:

- End users are trained on how to use the software prior to go-live.
- Benton County is prepared for on-going training and support of the application.

STAGE 4	End User Training																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Update training plan		A	R	C							C		I		C		

End User training (Tyler-led)		A	R	C							C	C	I	C	C	C	
Train-the-trainer		A	R	C							C	C	I	C			
End User training (Client-led)			C	C							A	R	I	C	C	C	

Inputs	Training Plan
	List of End Users and their Roles / Job Duties
	Configured Tyler System

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	End User Training	Benton County signoff that training was delivered

Work package assumptions:

- The Benton County project team will work with Tyler to jointly develop a training curriculum that identifies the size, makeup, and subject-area of each of the training classes.
- Tyler will work with Benton County as much as possible to provide end-user training in a manner that minimizes the impact to the daily operations of Benton County departments.
- Benton County will be responsible for training new users after go-live (exception—previously planned or regular training offerings by Tyler).

6.4.4 Control Point 4: Production Readiness Stage Acceptance

Acceptance criteria for this stage includes all criteria listed below. Advancement to the Production stage is dependent upon Tyler's receipt of the stage acceptance.

Production Readiness stage deliverables:

- Solution Validation Report.
- Update go-live action plan and checklist.
- End user training.

Production Readiness stage acceptance criteria:

- All stage deliverables accepted based on criteria previously defined.
- Go-Live planning session conducted.

6.5 Production

Following end user training the production system will be fully enabled and made ready for daily operational use as of the scheduled date. Tyler and Benton County will follow the comprehensive action plan laid out during Go-Live Readiness to support go-live activities and minimize risk to the Project during go-live. Following go-live, Tyler will work with Benton County to verify that implementation work is concluded, post go-live activities are scheduled, and the transition to Client Services is complete for long-term operations and maintenance of the Tyler software.

6.5.1 Go-Live

Following the action plan for Go-Live, defined in the Production Readiness stage, Benton County and Tyler will complete work assigned to prepare for Go-Live.

Benton County provides final data extract and Reports from the Legacy System for data conversion and Tyler executes final conversion iteration, if applicable. If defined in the action plan, Benton County manually enters any data added to the Legacy System after final data extract into the Tyler system.

Tyler staff collaborates with Benton County during Go-Live activities. Benton County transitions to Tyler software for day-to day business processing.

Some training topics are better addressed following Go-Live when additional data is available in the system or based on timing of applicable business processes and will be scheduled following Go-Live per the Project Schedule.

Objectives:

- Execute day to day processing in Tyler software.
- Client data available in Production environment.

STAGE 5	Go-Live																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Provide final source data extract, if applicable			C		C						A						R
Final source data pushed into production environment, if applicable			A	C	R						I	C		C			C
Proof final converted data, if applicable			C	C	C						A	R		C			
Complete Go-Live activities as defined in the Go-Live action plan			C	C	C					A	R	C	I	C			
Provide Go-Live assistance			A	R	C	C		I			C	C	I	C		I	C

Inputs	Comprehensive Action Plan for Go-Live
	Final source data (if applicable)

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Data is available in production environment	Client confirms data is available in production environment

Work package assumptions:

- Benton County will complete activities documented in the action plan for Go-Live as scheduled.
- External stakeholders will be available to assist in supporting the interfaces associated with the Go-Live live process.
- The Client business processes required for Go-Live are fully documented and tested.
- The Benton County Project team and subject matter experts are the primary point of contact for the end users when reporting issues during Go-Live.
- The Benton County Project Team and Power User's provide business process context to the end users during Go-Live.
- The Tyler Go-Live support team is available to consult with the Benton County teams as necessary.
- The Tyler Go-Live support team provides standard functionality responses, which may not be tailored to the local business processes.

6.5.2 Transition to Client Services

This work package signals the conclusion of implementation activities for the Phase or Project with the exception of agreed-upon post Go-Live activities. The Tyler project manager(s) schedules a formal transition of Benton County onto the Tyler Client Services team, who provides Benton County with assistance following Go-Live, officially transitioning Benton County to operations and maintenance.

Objectives:

- Ensure no critical issues remain for the project teams to resolve.
- Confirm proper knowledge transfer to Benton County teams for key processes and subject areas.

STAGE 5	Transition to Client Services																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Transfer client to Client Services and review issue reporting and resolution processes	I	I	A	I	I			R	I	I	C	C		C			

Review long term maintenance and continuous improvement			A					R			C	C		C			

Inputs	Open item/issues List

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Client Services Support Document	

Work package assumptions:

- No material project issues remain without assignment and plan.

6.5.3 Post Go-Live Activities

Some implementation activities are provided post-production due to the timing of business processes, the requirement of actual production data to complete the activities, or the requirement of the system being used in a live production state.

Objectives:

- Schedule activities that are planned for after Go-Live.
- Ensure issues have been resolved or are planned for resolution before phase or project close.

STAGE 5	Post Go-Live Activities																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Schedule contracted activities that are planned for delivery after go-live		A	R	C	C	C	C	I			C	C	I	C			C
Determine resolution plan in preparation for phase or project close out		A	R	C	C	C		I			C	C	I	C			

Inputs	List of post Go-Live activities

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated issues log	

Work package assumptions:

- System is being used in a live production state.

6.5.4 Control Point 5: Production Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below:

- Advancement to the Close stage is not dependent upon Tyler's receipt of this Stage Acceptance.
- Converted data is available in production environment.

Production Stage Acceptance Criteria:

- All stage deliverables accepted based on criteria previously defined.
- Go-Live activities defined in the Go-Live action plan completed.
- Client services support document is provided.

6.6 Close

The Close stage signifies full implementation of all products purchased and encompassed in the Phase or Project. Benton County transitions to the next cycle of their relationship with Tyler (next Phase of implementation or long-term relationship with Tyler Client Services).

6.6.1 Phase Closeout

This work package represents Phase completion and signals the conclusion of implementation activities for the Phase. The Tyler Client Services team will assume ongoing support of Benton County for systems implemented in the Phase.

Objectives:

- Agreement from Tyler and Benton County teams that activities within this phase are complete.

STAGE 6	Phase Close Out	
	Tyler	Client

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Reconcile project budget and status of contract Deliverables	I	A	R						I	I	C						
Hold post phase review meeting		A	R	C	C	C	C				C	C	C	C			C
Release phase-dependent Tyler project resources	A	R	I								I						

Participants	Tyler	Client
	Project Leadership	Project Manager
	Project Manager	Project Sponsor(s)
	Implementation Consultants	Functional Leads, Power Users, Technical Leads
	Technical Consultants (Conversion, Deployment, Development)	
	Client Services	

Inputs	Contract
	Statement of Work
	Project artifacts

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Final action plan (for outstanding items)	
	Reconciliation Report	
	Post Phase Review	

Work package assumptions:

- Tyler deliverables for the phase have been completed.

6.6.2 Project Closeout

Completion of this work package signifies final acceptance and formal closing of the Project.

At this time Benton County may choose to begin working with Client Services to look at continuous improvement Projects, building on the completed solution.

Objectives:

- Confirm no critical issues remain for the project teams to resolve.
- Determine proper knowledge transfer to Benton County teams for key processes and subject areas has occurred.
- Verify all deliverables included in the Agreement are delivered.

STAGE 6	Project Close Out																
	Tyler								Client								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct post project review		A	R	C	C	C	C				C	C	C	C			C
Deliver post project report to Benton County and Tyler leadership	I	A	R						I	I	C						
Release Tyler project resources	A	R	I								I						

Inputs	Contract
	Statement of Work

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Post Project Report	Client acceptance; Completed report indicating all project Deliverables and milestones have been completed

Work package assumptions:

- All project implementation activities have been completed and approved.
- No critical project issues remain that have not been documented and assigned.
- Final project budget has been reconciled and invoiced.
- All Tyler deliverables have been completed.

6.6.3 Control Point 6: Close Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below.

Close Stage Deliverables:

- Post Project Report.

Close Stage Acceptance Criteria:

- Completed report indicating all Project deliverables and milestones have been completed.

7. General Assumptions

Tyler and Benton County will use this SOW as a guide for managing the implementation of the Tyler Project as provided and described in the Agreement. There are a number of assumptions which, when acknowledged and adhered to, will support a successful implementation. Assumptions related to specific work packages are documented throughout the SOW. Included here are general assumptions which should be considered throughout the overall implementation process.

7.1 Project

- Project activities will begin after the Agreement has been fully executed.
- The Benton County Project Team will complete their necessary assignments in a mutually agreed upon timeframe in order to meet the scheduled go-live date, as outlined in the Project Schedule.
- Sessions will be scheduled and conducted at a mutually agreeable time.
- Additional services, software modules and modifications not described in the SOW or Agreement will be considered a change to this Project and will require a Change Request Form as previously referenced in the definition of the Change Control Process.
- Tyler will provide a written agenda and notice of any prerequisites to the Benton County project manager(s) ten (10) business days or as otherwise mutually agreed upon time frame prior to any scheduled on-site or remote sessions, as applicable.
- Tyler will provide guidance for configuration and processing options available within the Tyler software. If multiple options are presented by Tyler, Benton County is responsible for making decisions based on the options available.
- Implementation of new software may require changes to existing processes, both business and technical, requiring Benton County to make process changes.
- Benton County is responsible for defining, documenting and implementing their policies that result from any business process changes.

7.2 Organizational Change Management

Unless otherwise contracted by Tyler, Benton County is responsible for managing Organizational Change. Impacted Client resources will need consistent coaching and reassurance from their leadership team to embrace and accept the changes being imposed by the move to new software. An important part of change is ensuring that impacted client resources understand the value of the change, and why they are being asked to change.

7.3 Resources and Scheduling

- Benton County resources will participate in scheduled activities as assigned in the Project Schedule.
- The Benton County team will complete prerequisites prior to applicable scheduled activities. Failure to do so may affect the schedule.
- Tyler and Benton County will provide resources to support the efforts to complete the Project as scheduled and within the constraints of the Project budget.

- Abbreviated timelines and overlapped Phases require sufficient resources to complete all required work as scheduled.
- Changes to the Project Schedule, availability of resources or changes in Scope will be requested through a Change Request. Impacts to the triple constraints (scope, budget and schedule) will be assessed and documented as part of the change control process.
- Benton County will ensure assigned resources will follow the change control process and possess the required business knowledge to complete their assigned tasks successfully. Should there be a change in resources, the replacement resource should have a comparable level of availability, change control process buy-in, and knowledge.
- Benton County makes timely Project related decisions in order to achieve scheduled due dates on tasks and prepare for subsequent training sessions. Failure to do so may affect the schedule, as each analysis and implementation session is dependent on the decisions made in prior sessions.
- Benton County will respond to information requests in a comprehensive and timely manner, in accordance with the Project Schedule.
- Benton County will provide adequate meeting space or facilities, including appropriate system connectivity, to the project teams including Tyler team members.
- For on-site visits, Tyler will identify a travel schedule that balances the needs of the project and the employee.

7.4 Data

- Data will be converted as provided and Tyler will not create data that does not exist.
- Benton County is responsible for the quality of legacy data and for cleaning or scrubbing erroneous legacy data.
- Tyler will work closely with Benton County representatives to identify business rules before writing the conversion. Benton County must confirm that all known data mapping from source to target have been identified and documented before Tyler writes the conversion.
- All in-scope source data is in data extract(s).
- Each legacy system data file submitted for conversion includes all associated records in a single approved file layout.
- The client will provide the legacy system data extract in the same format for each iteration unless changes are mutually agreed upon in advance. If not, negative impacts to the schedule, budget and resource availability may occur and/or data in the new system may be incorrect.
- The Benton County Project Team is responsible for reviewing the converted data and reporting issues during each iteration, with assistance from Tyler.
- Client is responsible for providing or entering test data (e.g., data for training, testing interfaces, etc.)

7.5 Facilities

- Benton County will provide dedicated space for Tyler staff to work with Benton County resources for both on-site and remote sessions. If Phases overlap, Benton County will provide multiple training facilities to allow for independent sessions scheduling without conflict.
- Benton County will provide staff with a location to practice what they have learned without distraction.

8. Glossary

Word or Term	Definition
Acceptance	Confirming that the output or deliverable is suitable and conforms to the agreed upon criteria.
Accountable	The one who ultimately ensures a task or deliverable is completed; the one who ensures the prerequisites of the task are met and who delegates the work to those responsible. [Also see RACI]
Application	A computer program designed to perform a group of coordinated functions, tasks or activities for the benefit of the user.
Application Programming Interface (API)	A defined set of tools/methods to pass data to and received data from Tyler software products
Agreement	This executed legal contract that defines the products and services to be implemented or performed.
Business Process	The practices, policy, procedure, guidelines, or functionality that the client uses to complete a specific job function.
Business Requirements Document	A specification document used to describe Client requirements for contracted software modifications.
Change Request	A form used as part of the Change Control process whereby changes in the scope of work, timeline, resources, and/or budget are documented and agreed upon by participating parties.
Change Management	Guides how we prepare, equip and support individuals to successfully adopt change in order to drive organizational success & outcomes
Code Mapping [where applicable]	An activity that occurs during the data conversion process whereby users equate data (field level) values from the old system to the values available in the new system. These may be one to one or many to one. Example: Old System [Field = eye color] [values = BL, Blu, Blue] maps to New Tyler System [Field = Eye Color] [value = Blue].
Consulted	Those whose opinions are sought, typically subject matter experts, and with whom there is two-way communication. [Also see RACI]
Control Point	This activity occurs at the end of each stage and serves as a formal and intentional opportunity to review stage deliverables and required acceptance criteria for the stage have been met.
Data Mapping [where applicable]	The activity determining and documenting where data from the legacy system will be placed in the new system; this typically involves prior data analysis to understand how the data is currently used in the legacy system and how it will be used in the new system.
Deliverable	A verifiable document or service produced as part of the Project, as defined in the work packages.
Go-Live	The point in time when the Client is using the Tyler software to conduct daily operations in Production.
Informed	Those who are kept up-to-date on progress, often only on completion of the task or deliverable, and with whom there is just one-way communication. [Also see RACI]

Infrastructure	The composite hardware, network resources and services required for the existence, operation and management of the Tyler software.
Interface	A connection to and potential exchange of data with an external system or application. Interfaces may be one way, with data leaving the Tyler system to another system or data entering Tyler from another system, or they may be bi-directional with data both leaving and entering Tyler and another system.
Integration	A standard exchange or sharing of common data within the Tyler system or between Tyler applications
Legacy System	The software from which a client is converting.
Modification	Custom enhancement of Tyler's existing software to provide features or functions to meet individual client requirements documented within the scope of the Agreement.
On-site	Indicates the work location is at one or more of the client's physical office or work environments.
Organizational Change	The process of changing an organization's strategies, processes, procedures, technologies, and culture, as well as the effect of such changes on the organization.
Output	A product, result or service generated by a process.
Peripheral devices	An auxiliary device that connects to and works with the computer in some way. Some examples: scanner, digital camera, printer.
Phase	A portion of the Project in which specific set of related applications are typically implemented. Phases each have an independent start, Go-Live and closure dates but use the same Implementation Plans as other Phases of the Project. Phases may overlap or be sequential and may have different Tyler resources assigned.
Project	The delivery of the software and services per the agreement and the Statement of Work. A Project may be broken down into multiple Phases.
RACI	A matrix describing the level of participation by various roles in completing tasks or Deliverables for a Project or process. Individuals or groups are assigned one and only one of the following roles for a given task: Responsible (R), Accountable (A), Consulted (C), or Informed (I).
Remote	Indicates the work location is at one or more of Tyler's physical offices or work environments.
Responsible	Those who ensure a task is completed, either by themselves or delegating to another resource. [Also see RACI]
Scope	Products and services that are included in the Agreement.

Solution	The implementation of the contracted software product(s) resulting in the connected system allowing users to meet Project goals and gain anticipated efficiencies.
Stage	The top-level components of the WBS. Each Stage is repeated for individual Phases of the Project.
Standard	Software functionality that is included in the base software (off-the-shelf) package; is not customized or modified.
Statement of Work (SOW)	Document which will provide supporting detail to the Agreement defining Project-specific activities, services and Deliverables.
System	The collective group of software and hardware that is used by the organization to conduct business.
Test Scripts	The steps or sequence of steps that will be used to validate or confirm a piece of functionality, configuration, enhancement, or Use Case Scenario.
Training Plan	Document(s) that indicate how and when users of the system will be trained relevant to their role in the implementation or use of the system.
Validation (or to validate)	The process of testing and approving that a specific Deliverable, process, program or product is working as expected.
Work Breakdown Structure (WBS)	A hierarchical representation of a Project or Phase broken down into smaller, more manageable components.
Work Package	A group of related tasks within a project.

Part 4: Appendices

9. Conversion

9.1 EnerGov Conversion Summary

9.1.1 Community Development

- Permit Master basic information
- Plan Master basic information
- Plan & Permit Contacts
- Unique (keyed) contacts converted to global contacts
- Non-keyed contacts converted to a Memo Custom Field or standard note
- Sub-permit Associations – Visible in Workflow and Attached Records
- Reviews and Approvals
- Projects
- Permit Renewals
- Bonds and Escrow
- Contractors
- Initialized Workflows
- Inspections and Inspection Cases
- Meetings and Hearings
- Activities and Actions
- Conditions
- Fees
- Holds
- Notes
- Parcels and Addresses
- Payments and Fee History
- Zones
- Code Case Master basic information
- Code Requests
- Code Case Contacts and Properties
- Unique (keyed) contacts converted to global contacts
- Non-keyed contacts converted to a Memo Custom Field or standard note
- Violations
- Fees
- Payments
- Notes

10. Additional Appendices

10.1 EnerGov Definitions

10.1.1 "Template Business Transactions"

- A pre-defined and pre-configured EnerGov business process from EnerGov's "Best Management Template".
- The following modifications to Template Business Transactions are considered within scope:
  - Any changes to required inspections within the workflow
  - Any changes to the required plan reviews within the workflow
  - Adding up to 2 additional actions to the workflow
  - Configuration of fees, allowing creation of up to 3 new fees to accommodate
  - Any changes to custom field layouts that are directly related to fees or included reports
- Customization/Configuration of any of these parameters beyond the scope listed above will require the respective business process to be considered a "Unique Business Transaction", as described below.

Note: All transaction counts are quantified in the comments of the Investment Summary.

10.1.2 "Unique Business Transactions"

- Unique configuration of workflow or business process steps & actions, including output actions
- Unique Fee configuration
- Unique Custom field configuration

10.1.3 "Geo-Rules"

- An automation event that references GIS data. Current geo-rule action types are:

Alert	Displays a pop-up with a custom message to the user, notifying them of certain spatial data (i.e. noise abatement zones; flood zones; etc.).
Block	Places a block on the case and prevents any progress or updates from occurring on the record (i.e. no status changes can be completed, no fees can be paid, the workflow cannot be managed, etc.)
Block with Override	Places a block on the case and prevents any progress or updates from occurring on the record (i.e. no status changes can be completed, no fees can be paid, the workflow cannot be managed, etc.) However, the block can be overridden by end-users who have been given the proper securities.
Fee Date	Populates the CPI vesting date on the record if vesting maps are used by the jurisdiction.
Field Mapping	A custom field or any field inherent in the EnerGov application can automatically populate with information based on spatial data.
Required Action	A workflow action can automatically populate in the workflow details for the particular record (i.e. plan, permit, code case, etc.) that requires the action based on certain spatial data related to the case.
Required Step	A workflow step can automatically populate in the workflow details for the particular record (i.e. plan, permit, code case, etc.) that requires the step based on certain spatial data related to the case.
Zone Mapping	The zone(s) automatically populate on the "Zones" tab of the record (i.e. plan, permit, code case, etc.).

10.1.4 "Automation Events"

10.1.4.1 "Intelligent Objects (IO)"

- Key components for automatically and reactively triggering geo-rules, computing fees, and generating emails, alerts, and other notifications.

10.1.4.2 "Intelligent Automation Agents (IAA)"

- A tool designed to automate task in a proactive manner by setting values and generating emails and other tasks. On a nightly basis, a Windows service sweeps the EnerGov system looking for IAA tasks that need to be run, then the associated actions are performed. The IAA does not generate alerts or errors. Custom SQL queries are not Tyler deliverables.

10.1.5 "EnerGov SDK/API (Toolkits)"

- API's developed by Tyler Technologies for extending the EnerGov Framework and functionality to external agencies and systems. Full documentation is available for each toolkit upon request.

Note: The EnerGov toolkits and related documentation are simply tools that allow clients to create applications and integrations. The purchase of a toolkit/API does not imply any development related services from Tyler Technologies. The client is responsible for working with their IT staff and VAR's to develop any necessary applications and integrations except as otherwise noted in the Investment Summary or for any "in-scope" integrations.

11. Project Timeline

11.1 ERP Project Timeline

The Project Timeline establishes a target start and end date for each Phase of the Project. The timeline needs to account for resource availability, business goals, size and complexity of the Project, and task duration requirements. These will be reviewed and adjusted, if needed, during the Initiate and Plan Stage. Refer to the Project Stages section of this SOW for information on work packages associated with each stage of the implementation.

The following dates may be revised based on the date the Agreement is signed and further refined during the course of the project. Tyler requires up to forty-five (45) days to move from Agreement signing to the Initiate & Plan Stage.

The EnerGov implementation phase described within the agreement's scope of services is scheduled to take 12 months from kick off to go-live.