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

Board of County Commissioners

Jerrod MacPherson
County Administrator

Matt Rasmussen
Deputy County Administrator

To view items in detail, click on highlighted areas.

Notice: Meeting provided in-person, by live-broadcast and telephonically via WebEx as follows:

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

AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, July 20, 2021
Benton County Courthouse, Prosser, WA

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- ❖ **July 13, 2021**

Review Agenda

Consent Agenda

Auditor
a. Contract w/Phoenix Protective Corp. for Voting Center Security

Commissioners
b. Line Item Transfer, Fund No. 0142-101, Dept. 000
c. Line Item Transfer, Fund No. 0000-101, Dept. 115 to Dept. 116

Human Services
d. Memorandum of Understanding w/Housing Authority City of Kennewick for Emergency Housing Vouchers

Office of Public Defense
e. District & Superior Courts Public Defense Contracts w/Adam Sandoval
f. Public Defense Contract w/Clay Vannoy for Investigator Services

g. Amending Juvenile Court Public Defense Contract w/Angel Betancourt for Additional Compensation
h. Amending Juvenile Court Public Defense Contract w/Michelle Alexander for Additional Compensation
i. Amending Juvenile Court Public Defense Contract w/Michelle Trombley for Additional Compensation

Park

j. Agreement w/Benton Conservation for Water Stargrass Harvesting Activity @ Horn Rapids Park

Prosecuting Attorney

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

Purchasing

l. Agreement w/State of WA Dept of Children, Youth & Families for Jail Bed Space
m. Contract w/Fire Protection Specialists for Hood & Fire Extinguisher Inspection & Testing
n. Rejecting All Bids for the Replacement of a Security Gate @ the Justice Center Campus
o. Agreement w/GPS Insight for Global Positioning System Units and Monitoring Services for Public Works
p. Authorizing an Amazon Business Account for All Benton County Departments

Sheriff

q. Agreement w/City of Kennewick, City of Richland & Benton County for the 2021 Byrne Justice Assistance Grant

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

Scheduled Business

Office of Public Defense Uniform Guardianship Act Contracts ~ E Hsu & Tiffany Deaton

- Shelley Ajax
- Jennifer Azure
- Allyson Dahlhauser
- Michelle Alexander

Public Works Re-Organization ~ D D'Hondt & M Rasmussen

- Organizational Chart
- Establishing a Fleet Manager Classification Description
- Establishing the Salary Grade for the Fleet Manager
- Line Item Transfer, Fund No. 0501-101, Dept. 650
- Establishing an Engineering Associate III Classification Description
- Establishing an Assistant County Engineer Classification Description
- Establishing a Financial Analyst II Classification Description
- Establishing the Salary Grade for Financial Analyst II
- Line Item Transfer, Fund No. 0502-101, Dept 000

Finance Presentation ~ Linda Ivey

- Current Expense
- Public Safety Tax

Sheriff Replacement Fund ~ M Rasmussen & Undersheriff Clary

Other Business

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, July 13, 2021, 9:00 a.m.
Meeting provided in-person, by Video Live-Broadcast and Telephonically

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

Benton County Employees Present During All or a Portion of the Meeting: Robert Heard, IT Manager; Adam Fyall, Sustainable Development Manager; Clerk Josie Delvin; Adam Morasch, Risk Manager; Robert Blain, Operations & Capital Programs (via/WebEx); Treasurer Ken Spencer.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of June 29, 2021 were approved.

Agenda Review

The following items were added to "Other Business":

- Change Order No. 10 w/Banlin Construction
- Letter to EFSEC – Horse Heaven Wind Farm Project Proposal

Consent Agenda

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

Auditor

a. Surplus & Disposition of Personal Property ~ Facilities
b. Surplus & Disposition of Personal Property ~ Various Depts.
c. Memorializing the Current Fees Related to Recording of Large Format Maps

Commissioners

d. Line Item Transfer, Fund No. 0305-101, Dept. 000

Human Services

e. Agreement w/Division of Social & Health Services for Long Term Payable Procedure

Information Technology

f. Two Year Contract w/One World Telecommunications to Upgrade Fiber Circuit Services

Juvenile

g. Contract w/Career Path Services for Education Employment & Training Program
h. Agreement w/Dept of Social & Health Services, Juvenile Rehabilitation Administration for Contract Consolidation
i. Program Agreement w/Dept of Social & Health Services, Juvenile Rehabilitation Administration for Evidence Based Expansion Programs

Planning

j. Grant Contract w/WA State Conservation Commission for Voluntary Stewardship Program Work Plan Implementation
k. Agreement w/Benton Conservation District for Voluntary Stewardship Program Work Plan

Purchasing

l. Rejecting Bids for the Hood & Fire Extinguisher Inspection and Testing Services
m. Revising Inmate Benevolence Fund No. 0116-101; Rescinding Resolution 2021-009
n. Contract w/C&E Trenching LLC for the Obsolete Bridge Removal Project
o. Contract w/Granite Construction Co. for the Dallas Road Bike Path Project
p. Accepting Work Performed by Mid-Columbia Construction, Inc dba Jesse's Lawn Maintenance
q. Termination of Contract w/Kim, LLC dba/Tower Plaza Cleaners & Laundromat for Corrections Dept

Public Comment

None.

Update to Reopening Plan

Adam Morasch presented an updated Roadmap to Recovery Reopening Guide that included changes from the CDC, the Governor, and L & I and summarized the following sections that changed:

- Introduction changes – to include the new "Washington Ready" plan
- Limiting occupancy
- Separation agreement – physical distancing
- Public meetings

MOTION: Commissioner Small moved to approve the amended Benton County Roadmap to Recovery Reopening Guide for Benton County as presented. Commissioner McKay seconded and upon vote, the motion carried.

Lease Agreement with City of Prosser for Annex Building

Robert Blain (via/WebEx) presented a lease agreement with the City of Prosser to lease the Planning Annex Building, which the County is no longer using. He said the lease was a two-year lease at $1,500/month and the City would maintain and repair the building. It included a 180-day termination clause and surplus of property of office furnishings to the City of Prosser.

MOTION: Commissioner Small moved to approve the Lease Agreement between Benton County and the City of Prosser for the Annex Building in Prosser as presented. Commissioner McKay seconded and upon vote, the motion carried.

Other Business

Change Order No. 10 with Banlin Construction – New Admin Building

Robert Blain presented the Change Order No. 10, consisting of the following changes:

- Additional sidewalk and voter box revisions
- Door operation for door exhaust system
- Revisions to Hearing Room desk
- Total amount of change order - $27,073.80

He said he was working with architectural and engineering firm about covering the costs of these changes. He said they agreed to the concept and he was working out the final agreement with them to reduce their billing to the County.

MOTION: Commissioner Small moved to approve Change Order No. 10 with Banlin Construction as presented. Commissioner McKay seconded and upon vote, the motion carried.

Letter to EFSEC - Horse Heaven Wind Farm Project

Jerrod MacPherson presented a letter from the Board to the EFSEC Council regarding the Horse Heaven Wind Farm project and public meetings. He said there was an opportunity for upcoming meetings and the letter requested the Council hold one or more meetings in the Tri-Cities to allow for local public involvement.

MOTION: Commissioner Small moved to approve letter as presented. Commissioner McKay seconded and upon vote, the motion carried.

Fireworks Issue

Chairman Delvin said other counties had a process in place that if conditions met certain criteria, they could institute an emergency ban, if needed. He asked if the Board was willing to consider having the same sort of process in place and that he would work with Greg Wendt and Ryan Brown. The Board agreed to explore the option, with it being a coordinated decision with fire officials, etc.

Payroll

Check Date: 07/02/2021

Payroll Checks
Total all funds: $2,413,456.93
Warrant #: 243219-243259
Direct Deposit #: 163255-163854

Payroll Draw Deductions/Transfers
Total all funds: $2,332,004.56
Taxes #: 101210701-101210711
ACH #: 1846-1852

Payroll Deduction Warrants
Total all funds: $124,711.95
Warrant #: 219232-219239

Accounts Payable

Check Date: 07/02/2021

Warrants #: 219147-219231
Total all funds: $361,141.76

EFT's #: 1842-1845
Transfers #: 07022101-07022104
Total all funds: $700,342.60

Check Date: 07/12/2021

P-Cards: # 0721
Total all funds: $312,236.56

Resolutions

2021-507: Surplus & Disposition of Personal Property ~ Facilities
2021-508: Surplus & Disposition of Personal Property ~ Various Depts.
2021-509: Memorializing the Current Fees Related to Recording of Large Format Maps
2021-510: Line Item Transfer, Fund No. 0305-101, Dept. 000
2021-511: Agreement w/Division of Social & Health Services for Long Term Payable Procedure
2021-512: Two Year Contract w/One World Telecommunications to Upgrade Fiber Circuit Services
2021-513: Contract w/Career Path Services for Education Employment & Training Program

2021-514: Agreement w/Dept of Social & Health Services, Juvenile Rehabilitation Administration for Contract Consolidation
2021-515: Program Agreement w/Dept of Social & Health Services, Juvenile Rehabilitation Administration for Evidence Based Expansion Programs
2021-516: Grant Contract w/WA State Conservation Commission for Voluntary Stewardship Program Work Plan Implementation
2021-517: Agreement w/Benton Conservation District for Voluntary Stewardship Program Work Plan
2021-518: Rejecting Bids for the Hood & Fire Extinguisher Inspection and Testing Services
2021-519: Revising Inmate Benevolence Fund No. 0116-101; Rescinding Resolution 2021-009
2021-520: Contract w/C&E Trenching LLC for the Obsolete Bridge Removal Project
2021-521: Contract w/Granite Construction Co. for the Dallas Road Bike Path Project
2021-522: Accepting Work Performed by Mid-Columbia Construction, Inc dba Jesse's Lawn Maintenance
2021-523: Amending the Benton County Roadmap to Recovery Reopening Guide for Benton County Facilities
2021-524: Lease Agreement with City of Prosser to Lease the Annex Building in Prosser
2021-525: Contract Change Order No. 10 with Banlin Construction – New Admin Building

There being no further business before the Board, the meeting adjourned at approximately 9:21 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Contract with Phoenix Protective Corp. for Voting Center Security During Primary Election
Presenter:	
Prepared By:	Lorene Roe
Reviewed By:	Brenda Chilton

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

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

Summary / Background Information

The Benton County Auditor's office wishes to accept the attached contract with Phoenix Protective Corp. to provide armed uniform security services at the Voting Center August 2-3, 2021. The officers will provide a proactive approach to deter and detect possible activity that could disrupt the employees of the Election Division from completing their duties to carry out the Washington State Primary Election.

Fiscal Impact

$1,950

Recommendation

The Board of Benton County Commissioners hereby authorizes to contract with Phoenix Protective Corporation to provide armed security services at the Voting Center during the Washington State Primary Election.

Suggested Motion

Approve as part of consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING CONTRACT BETWEEN PHOENIX PROTECTIVE CORP. AND BENTON COUNTY ELECTIONS

WHEREAS, the Elections Division of the Auditor's Office will be conducting the Washington State Primary Election. It is deemed to be a proactive approach to contract for armed security at the Voting Center during the Primary Election; and

WHEREAS, a service agreement has been prepared for armed uniformed security in an amount not top exceed $1,950; **NOW THEREFORE**

BE IT RESOLVED, the Chairman of the Board is authorized to sign the contract between Phoenix Protective Corp. and Benton County Elections, for the period of August 2-3, 2021.

Dated this _____day of _____, 2021.

_____
Chairman of the Board

_____
Member

_____
Member

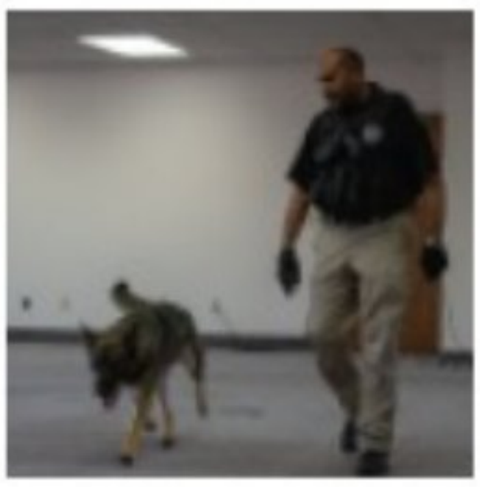
Attest:

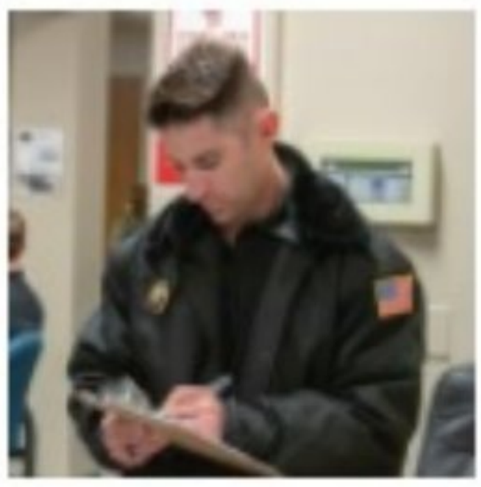
_____
Clerk of the Board

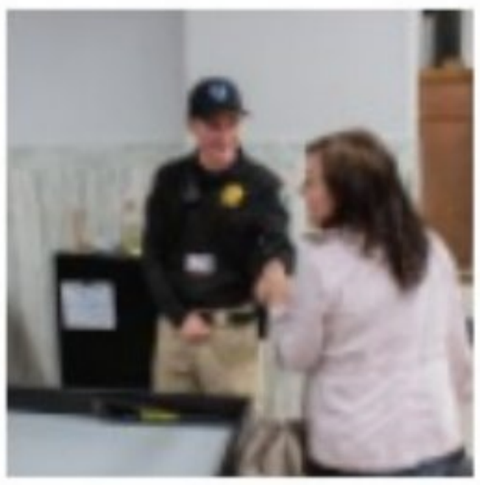
Constituting the Board of County Commissioners of Benton County, Washington

Cc: L. Roe, B. Chilton, PA

Josh Braun, Manager
(509)319-4835 | josh.braun@phoenixprotectivecorp.com








PROFESSIONAL
PROACTIVE
RESPONSIVE






Uniformed Security Officers

Prepared for:

Benton County Elections Department

PPC SOLUTIONS INC.

July 7, 2021

Benton County Elections Department
Amanda Hatfield
PO Box 1440
Prosser, WA 99350
Via Email: Amanda.hatfield@co.benton.wa.us

Dear Ms. Hatfield,

Thank you for contacting me regarding security services for the Benton County Primary Elections on August 2 and 3, 2021. Per our conversation, I have completed a pricing proposal below for the coverage.

Please don't hesitate to contact me if you have any questions.

SERVICE SUMMARY:

For armed uniform security services, we can provide two (2) officers from 0900-1630 (9:00 AM-4:30 PM) on August 2, 2021, and August 3, 2021.

The officers will provide a proactive approach to deter and detect possible activity that could disrupt the employees of the Elections Department from completing their duties.

COST TABLE:

Service	Rate	Unit	Quantity	Period	Period Cost	No. of Periods	Estimated Cost
Armed Security Services	$65.00	Hour	30	**Week**	**$1,950.00**	**1**	***$1,950.00***

**Uniform Service Invoices are provided weekly.*

Sincerely,

Josh Braun

Business Development Manager
Mobile: (509) 319-4835
Email: josh.braun@phoenixprotectivecorp.com

Please don't hesitate to contact us; our operations team is ready to serve you!

CORPORATE HEADQUARTERS | PPC SOLUTIONS
18303 E. APPLEWAY SPOKANE VALLEY, WA 99016
WWW.PHOENIXPROTECTIVECORP.COM | (509) 448-4277

PPC SOLUTIONS, INC.
SECURITY SERVICE AGREEMENT

This agreement is entered into between Benton County Elections Department, PO Box 1440, Prosser, WA 99350, phone (509)440-0824, email: Amanda.hetfield@co.benton.wa.us ("Client") and PPC Solutions, Inc. ("Supplier").

1. Scope of Service. Supplier agrees to provide uniformed security services for Client, consistent with operating procedures approved by Client.

Dates of service	April 28, 2021-May 1, 2021
Number of security officer (s)	Two (2)
Days of week/Hours of Coverage	0900-1630, Monday-Tuesday
Type of Coverage	Armed Security Services
Hourly Rate**	$65.00 per hour, per officer
Site Location	2610 Columbia Center Blvd, Richland, WA 99352
Client Emergency Contact	Amanda Hetfield (509)440-0824
Billing Frequency (Weekly/Semi Monthly or Monthly)	Weekly

**Overtime/Holiday Rate. Client will pay for work performed on state or federal holidays (including, but not limited to New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and Christmas) at one hundred fifty percent (150%) of the Hourly Rate.

2. Special Duty Assignment. In the event Client requests an emergency, extra, or special duty assignment with less than twenty-four (24) hours notice to Supplier, Client will pay one hundred fifty percent (150%) of the Hourly Rate. Client will also pay a minimum of five (5) hours for any emergency, extra, or special duty assignments.

3. Duration of Agreement. The term of this Agreement shall be for the "Dates of service." The duration may be extended by mutual written agreement.

4. Duties of Client. Client will promptly notify Supplier of any specific work site issues, safety issues, or suspicious activities observed by Client and/or its agents and employees.

5. Relationship between Supplier and Client. Supplier is an independent contractor. Supplier and Client are not joint venturers, partners, or principal and agent.

6. Termination. Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party. In the event of nonpayment or untimely payment by Client, Supplier may terminate this Agreement on two (2) days' written notice.

7. Payment. Client will pay Supplier within thirty days of invoice date. Client is eligible to receive a 1% discount if the invoice is paid in full within ten days of the invoice date. In the event Client fails to pay on time, Client agrees to pay a one point five percent (1.5%) finance charge for each month or portion of month during which invoice is not timely paid. Payment and notices to PPC Solutions, Inc. will be sent first class mail, with proper postage attached, to:

PPC Solutions, Inc.
18303 E Appleway Avenue
Spokane Valley WA 99016

8. Insurance. Supplier will maintain a policy of general liability insurance (with endorsements and/or limitations) with coverage of $1,000,000 per occurrence and $2,000,000 aggregate.

9. Worker's Compensation. Supplier will maintain Worker's Compensation coverage in accordance with applicable state requirements.

10. Indemnification. Supplier agrees to defend, indemnify, and hold harmless Client, its officers, directors, and employees from any and all claims, demands, losses, lawsuits, and other legal proceedings, including without limitation, judgments, for any negligent act or omission of Supplier while on or about Client's property. In no event will Supplier indemnify Client for Client's own negligence, concurrent negligence, or misconduct, or for a criminal act perpetrated by a third party. Client agrees to defend, indemnify, and hold harmless Supplier, its officers, directors, and employees from any and all claims, demands, losses, lawsuits, and other legal proceedings, including without limitation, judgments, for any negligent act or omission of Client on or about Client's property. In no event will Client indemnify Supplier for Supplier's own negligence or misconduct, or for a criminal act perpetrated by a third party. Nothing in this Agreement creates a liability to or a right of indemnification in any third party unless specifically identified in this paragraph. This paragraph shall survive the duration, expiration, or termination of this Agreement.

11. Warranty Disclaimer. There are no warranties which extend beyond the description on the face on this Agreement. Supplier disclaims all other express warranties and all implied warranties, including without limitation, any warranty of merchantability and/or fitness for a particular purpose.

12. Consequential Loss Limitation. In no event will Supplier be liable for any consequential losses suffered by Client.

13. No Third Party Beneficiaries. This Agreement is solely for the benefit of Client and Supplier. This Agreement does not create any third party beneficiaries.

14. Assignment. The rights and obligations of the parties hereto shall insure to the benefit of, be binding upon, and enforceable against, the parties' respective successors and assigns.

15. Integration Clause. This Agreement sets forth the entire agreement between the parties and supersedes all prior written and oral discussions, representations, and/or agreements. Except for paragraph three (duration of service), this Agreement shall only be amended in writing, signed by both Client and Supplier.

16. Counterparts. This Agreement may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this Agreement. Signatures exchanged by facsimile or other electronic transmission shall be deemed to be the same as originals.

17. Choice of Law/Venue. This Agreement shall be governed by the laws of the State of Washington, without reference to Washington's choice of law principles. In the event of any dispute arising out of this Agreement, the parties agree that jurisdiction and venue shall be exclusively in Spokane County, Washington. Client waives any objection to personal jurisdiction in Washington State or to venue in Spokane, Washington.

18. Prevailing Party Attorney Fees. In the event of any dispute arising out this Agreement, the court shall award the substantially prevailing party reasonable attorney fees, all expenses, and all costs, in addition to all other appropriate relief.

Client Signature: _____ Print Name: _____

Title: _____ Date: _____

PPC Solutions, Inc.

Rep. Signature: _____ Print Name: JOSH BRAUN

Title: BUSINESS DEVELOPMENT MANAGER Date: _____

CLIENTPOINT DOWNLOAD RECEIPT

DOWNLOADED: 07-09-2021
CLIENTPOINT ID: 560639

Lorene Roe

From: Reid Hay
Sent: Friday, July 9, 2021 2:21 PM
To: Lorene Roe
Cc: Brenda Chilton
Subject: RE: 2021-07-20 Elections Primary Election Security Contract Packet

Lorene,

I have reviewed the proposed agreement with PPC Solutions, Inc., and it is approved as to form.

-- Reid

Reid Hay
Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

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

From: Lorene Roe <Lorene.Roe@co.benton.wa.us>
Sent: Thursday, July 8, 2021 5:25 PM
To: Reid Hay <Reid.Hay@co.benton.wa.us>
Cc: Brenda Chilton <Brenda.Chilton@co.benton.wa.us>
Subject: 2021-07-20 Elections Primary Election Security Contract Packet

Reid-

Attached is the resolution packet for security services at the Voting Center for the Primary Election. Can I get an approve-to-form email from you so I can present it for review to the Commissioners tomorrow. Sorry for the last minute request.

Let me know if you have any questions.

Thanks,
Lorene



Lorene Roe
Benton County Auditor
Chief Deputy Auditor
620 Market St. | Prosser, WA 99350
(509) 786-5620 Ext. 5700
Email: lorene.roe@co.benton.wa.us
www.bentonauditor.com

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN JAIL DEPRECIATION FUND NUMBER 0142101, DEPARTMENT NUMBER 000

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Jail Depreciation | Fund Nbr: 0142101

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
523.500	4189	Contingency	$20,000	594.230	6401	Capital Outlay	$20,000
TOTAL			$20,000	TOTAL			$20,000

Explanation:

To appropriate funding for Resolution 2021-234 Jail Kitchen Table Purchase

Prepared by: Linda Ivey | Date: 12-Jul-2021

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 115 TO DEPARTMENT NUMBER 116

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental to Planning Dept Nbr: 115 to Department Number 116

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: Dept 115 TRANSFER TO: Dept 116

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
511.600	4931	Fenced Item Contingency	$235,000	558.602	4743	Intergovernmental Payments	$235,000
TOTAL			$235,000	TOTAL			$235,000

Explanation:

To appropriate funding for the Voluntary Stewardship Grant Program with the State Conservation Commission in the Planning Department. The Grant was not included in the 2021-2022 budget. The term of the Grant is July 1, 2021 - June 30, 2023

Prepared by: Linda Ivey Date: 24-Jun-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Memorandum of Understanding between Benton County Department of Human Services, the Local Continuum of Care Administrator (CoC) and Housing Authority City of Kennewick (KHA)
Presenter:	Kyle Sullivan
Prepared By:	Kyle Sullivan
Reviewed By:	Kyle Sullivan

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

Type of Agenda Item:	**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 Housing Authority City of Kennewick (KHA) received 28 Emergency Housing Vouchers (EHV) from the U.S. Department of Housing and Urban Development (HUD) in May of this year. A requirement from HUD is that KHA have a Memorandum of Understanding with the Local Continuum of Care Administrator, which is the Benton County Department of Human Services. This MOU outlines roles and responsibilities for the agencies within the CoC referring households to KHA for placement in this program.

Fiscal Impact

There is no impact to current expense

Recommendation

Sign the Memorandum of Understanding

Suggested Motion

Consent Agenda

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: MEMORANDUM OF UNDERSTANDING BETWEEN THE HOUSING AUTHORITY CITY OF KENNEWICK (KHA) AND BENTON COUNTY DEPARTMENT OF HUMAN SERVICES.

WHEREAS, KHA received 28 Emergency Housing Vouchers (EVHs) from the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, HUD requires an MOU be in place with the Local Continuum of Care Administrator to outline roles and responsibilities for the agencies within the CoC referring households to KHA for placement in this program.

WHEREAS, The Benton County Department of Human Services is the Local Continuum of Care Administrator (CoC); and

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the attached Memorandum of Understanding;

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign, on behalf of Benton County, the proposed Memorandum of Understanding.

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

_____
Chair

_____
Member

_____
Member
Constituting the Board of County Commissioners,

Benton County, Washington

Attest:

_____
Clerk of the Board

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) has been created and entered into on July ___, 2021, between the following parties:

Housing Authority City of Kennewick (KHA)
1915 West 4th Place, Kennewick WA 99336
Contact: Lona Hammer, PHM, Executive Director

AND

Benton & Franklin Department of Human Services (BFDHS)
Local Continuum of Care Administrator (CoC)
7102 West Okanogan Place, Kennewick, WA 99336
Contact: Kyle Sullivan, Administrator

I. INTRODUCTION & GOALS

a. KHA and the CoC are committed to administering the Emergency Housing Vouchers (EHVs) in accordance with all program requirements as outlined in HUD PIH-2021-15 Notice.

b. KHA goals and standards of success include: working collaboratively with the CoC with regard to program referrals, determining the essential needs of the EHV family and determining if additional case management resources will be needed for the voucher holder to remain successfully housed through this program.

c. Lead KHA Liaisons:

Amanda Taylor, PHM, HCV Supervisor/KHA Compliance Director
Lona Hammer, PHM, KHA Executive Director

Lead CoC Liaison:
Kyle Sullivan, BFDHS Administrator

II. ELIGIBLE POPULATIONS TO BE REFERRED BY CoC AND SERVED VIA EHV PROGRAM

Eligibility for EHV's is limited to individuals and families who are: (1) homeless; (2) at risk of homelessness; (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or (4) recently homeless or having high risk of housing instability.

III. SERVICES TO BE PROVIDED TO ELIGIBLE EHV FAMILIES

The following services will be provided by the Housing Resource Center, Domestic Violence Services, Veteran case management services for veterans, Community Action Connections, and in the case the voucher holder opts to live in a KHA-owned and managed property with on-site case management, the housing authority may provide these services. Services may include:

a. Application completion assistance and assistance in obtaining necessary supporting documentation to support referral and application for assistance; aid household in identifying and addressing barriers to housing;

b. Service providers will assist in providing housing search assistance once a family has been determined eligible for the EHV program; and assist voucher holder in determining low barrier housing resources in the Tri-Cities community;

c. Service providers will assist individuals and families who may require referrals for assistance on security deposits, utility hook-up fees and utility deposits;

d. Service provider will assess and refer individuals and families to beneficial supportive services, where applicable, either on-site at housing program or to off-site supportive services opportunities;

e. Provide case management and counseling, as needed, on compliance with lease requirements;

f. Provide referral services to other supportive service providers, as needed.

IV. KHA ROLES AND RESPONSIBILITIES

a. Coordinate and consult with CoC Representative in developing the services and assistance to be offered under the EHV services fee. KHA will provide a list of eligible services to the CoC as an attachment to this MOU.

b. Accept direct referrals for eligible individuals and families through the CoC Coordinated Entry system. KHA will also accept direct referrals from the local domestic violence services provider under the terms of a separate MOU.

c. Commit a sufficient number of staff and necessary resources to ensure that the application, certification, and voucher issuance process is completed in a timely manner.

d. Complete unit inspections promptly.

e. Comply with the provisions of this MOU and work with CoC Representative if any terms on this MOU require future modification;

V. CoC Roles and Responsibilities

a. Refer eligible individuals and families to KHA using the community's coordinated entry system;

b. Support eligible individuals and households in completing and applying for supportive documentation to accompany admissions application to KHA (ie. self-certifications, social security cards, birth certificates);

c. Attend EHV participant briefing when applicable;

d. Assess all households referred for EHV for benefits and supportive services available to support eligible individuals and family through their transition, providing, when appropriate, a list of supportive services and/or essential household needs for the family to KHA;

e. Identify and provide or provide a referral to supportive services to EHV families, as needed;

f. Comply with the provisions of this MOU and work with KHA Representative if any terms on this MOU require future modification;

VI. THIRD-PARTY ENTITY ROLES & RESPONSIBILITIES

a. The CoC and KHA liaisons will work together to identify ancillary services that may need to be accessed by the family through other third-party resources (faith-based organizations, victim services providers or local philanthropic organizations such as Impact Compassion or Kadlec Community Services).

b. Third-party entities referred to by KHA or CoC should have a significant number of staff and resources to assist the EHV participant in a timely manner.

VII. PROGRAM EVALUATION

KHA and the CoC agree to cooperate with HUD, provide requested data to HUD or HUD-approved contractor delegated the responsibility of program evaluation protocols as established by HUD.

VIII. TERMINATION

This agreement does not legally bind either party to provide, administer, or use any service. If at such time either party wishes to no longer work together in providing this service to the community, 14 days' notice shall be given and will terminate this MOU.

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: KHA

Lona Hammer
_____
Signature

Exec. Director
_____
Title:

LONA HAMMER
_____
Print Name

Approved as to Content:

Kyle Sullivan Human Services Manager
_____
Benton County Manager

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	07/20/21
Subject:	Award of public defense contract to Adam Sandoval
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 Superior and District Courts on criminal cases ("Services").

Until recently, attorney Adam Sandoval ("Attorney") was under contract (by and through the contract with Gravis Law, PLLC) to provide public defense services in Benton County District Court on a caseload basis, and in Benton County Superior Court on a certain homicide case.

Recently, because of Attorney's departure from the firm, Gravis Law, PLLC gave notice of early termination of his contract but Attorney agreed to continue handling a number of the cases to which he was assigned ("Residual Caseload"), including the homicide case to which he was appointed in Superior Court, well beyond the time for which he or Gravis Law, PLLC was contractually obligated to do so.

It therefore has been necessary to enter into a separate public defense contract with Attorney to address the terms and conditions (including compensation terms) under which he would continue to handle the Residual Caseload.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute contract with attorney Adam Sandoval for the handling Residual Caseload.

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 ADAM SANDOVAL TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR AND DISTRICT COURTS FOR CERTAIN RESIDUAL CASES REMAINING AFTER THE VOLUNTARY TERMINATION OF ATTORNEY SANDOVAL'S PUBLIC DEFENSE CONTRACT

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

WHEREAS, County has been contracting with, among others, attorney Adam Sandoval ("Attorney") – dba Gravis Law, PLLC ("Firm")- for Services in Benton County District Court on a caseload basis and in Benton County Superior Court for a specific (homicide) case only ("Cases"), by and through Resolution #2020-1023; and

WHEREAS, because of Attorney's departure from Firm, Firm gave notice of early termination of their contract but Attorney, nevertheless, agreed to continue handling certain Cases ("Residual Caseload") including the homicide case; and

WHEREAS, it is therefore now appropriate to enter into a new contract with Attorney to set out the terms and conditions under which he would continue handling Residual Caseload (including the terms of any compensation); **NOW, THEREFORE**

BE IT RESOLVED that the proposed public defense contract with attorney Adam Sandoval, for attorney Sandoval to handle the certain Residual Caseload, remaining after the public defense contract with Gravis Law, with which attorney Sandoval was involved, was terminated, be executed as presented, for the time period of 5/1/21 to 12/31/22, with compensation limited to reimbursements only for the District Court cases plus trial per diem, contained within the Residual Caseload and $85 per hour for the Homicide case, plus trial per diem.

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, Adam Sandoval
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2122AAS-01L

CONTRACT SUMMARY			
Contract Type	**Continued Case Responsibility Contract**		
Contract Number	**BCDC2122AAS-01L**	**Contract Holder**	**Adam Sandoval**
WSBA #	**47059**	**Effective Dates**	**05/01/21-12/31/22**
Caseload Cap	**No New Case Appointments**	**Compensation**	**$85 per hour for Homicide Case Compensation** ***No additional compensation for Residual District Court cases other than trial per diem and reimbursements.***
Assigned Court	**District Court Superior Court**	**Compensation Structure**	**By the hour (Homicide Case Compensation)**
Compensation Payable To:	**Adam Sandoval, Attorney at Law**		
Contract Slot Identifier: None			

THIS AGREEMENT is entered into by and between **Adam Sandoval,** attorney at law, Washington State Bar Association **# 47059** ("Attorney") and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court and District Court.

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

A. The County has the legal responsibility to provide public defense services to indigent persons charged with misdemeanor (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("District Court Cases").

B. The County also has the legal responsibility ty provide public defense services to indigent persons charged with homicide cases alleged to have

been committed within the County's jurisdictional boundaries ("Homicide Cases").

C. Attorney has been, until April 30, 2021, employed by Gravis Law, PLLC ("Gravis") and Gravis, in turn, has been party to a certain public defense contract with Benton County whereby Gravis would be appointed almost entirely Prosser-based Benton County District Court public defense cases. Gravis assigned almost all of these Benton County District Court public defense cases to be handled by Attorney.

D. Additionally, Attorney was also appointed to serve as public defense counsel in one homicide case:

E. Attorney has voluntarily terminated his employment with Gravis, effective April 30, 2021, and as a result, the vast majority of his caseload appointed through the Gravis contract has been re-assumed by Gravis to be handled by other attorneys. However, Attorney has agreed to continue handling District Court cases already set for trial ("Residual District Court Cases") and the *State v.Marin Rivera case* Benton County Superior Court Case No. 19-1-00561-03 ("Homicide Case").

F. It is very much in the interests of Benton County and the respective clients in the Residual District Court Cases, and the Homicide Case, for Attorney to continue handling such cases.

G. The purpose of this Agreement is to set out: a) the terms by which Attorney will be reimbursed for continuing to handle Residual District Court Cases; and b) his compensation for continued work handling the Homicide Case.

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, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. During the term of this Agreement, Attorney anticipates being employed by Skyview Law (though, for clarity, this Agreement is entered into by and between County and Attorney individually, not with Attorney's employer), located at 677 George Washington Way, Richland, WA 99352. His phone number will be (509) 588-0990 and email address will be **adamsandoval@skyviewlaw.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 and County acknowledge that Attorney does not meet the SID requirements for public defense appointment to a homicide case. However, attorney Dennis Hanson, WSBA #41655, an attorney who does meet SID requirements for public defense appointment to homicide cases, has been appointed to serve as second-chair and supervisory attorney in the matter so it is appropriate for Attorney to continue to handle the Homicide Case.

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.

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 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. Reserved

5. **CONTRACT DUTIES.** During the term of this Agreement, Attorney shall:

a) As to Benton County District Court cases to which he was appointed by the Court while he was employed by Gravis Law, PLLC, and which were already set for trial at the time of his separation from employment with Gravis Law, PLLC ("Residual District Court Cases"), Attorney shall provide professional legal representation of the defendants in such cases for all aspects of the applicable cases up until their resolution either by plea or trial, unless excused from such representation by Benton County District Court.

b) As to the case of *State v. Marin Rivera,* Benton County Superior Court cause number 19-1-00561-03 ("Homicide Case"), Attorney shall provide professional legal representation of defendant Marin Rivera for all aspects of this case up until its resolution

either by plea or trial, unless excused from such representation by Benton County Superior Court.

6. Reserved

7. **NUMBER OF APPOINTMENTS.**

Attorney **shall not** receive any additional public defense appointments of any sort by and through this Agreement.

8. Reserved

9. Reserved

10. **CONFLICTS.** If Attorney discovers that he has a bona fide conflict of interest that prevents him from continuing to represent any case that comprises Residual District Court Cases, or Homicide Case, then Attorney must request court authorization to withdraw from representation since all of Residual District Court Cases are set for trial and therefore require court authorization for withdrawal or reassignment, and Superior Court requires all withdrawals or reassignment to authorized by a Superior Court judge.

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. 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.

b. 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. For Residual District Court cases, Attorney shall not receive any compensation, it being presumed that he has already received compensation for his work on such cases while he was employed by Gravis Law, PLLC. Instead. For Residual District Court cases, Attorney shall only be entitled to trial per diem in the amount of $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.

b. For Homicide Case, Attorney shall receive compensation in the amount of $85 per hour, with billing rounded to the nearest 1/10th of an hour.

c. In order to receive Trial per diem or Homicide Case 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

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**: 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. **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. 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.

2. 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.

3. 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.

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

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

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

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

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

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for

any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

d. 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. Reserved.

22. Reserved.

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 (Jun 15, 2021 12:03 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Jun 15, 2021

Adam Sandoval, WSBA 47059
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

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

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

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

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

Attorney acknowledgment:



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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	07/20/21
Subject:	Award of public defense investigation contract to investigator Clay Vannoy
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 investigation services in Benton County Superior, Juvenile, and District Courts on criminal cases ("Services").

Because of caseload needs, OPD is needing to award one or more additional contracts to provide Services.

Investigator Clay Vannoy ("Investigator") is qualified to provide Services and interested in contracting with Benton County to do so. The proposed contract and resolution effectuate a contract with Investigator for the provision of such Services on the terms contained therein, for the period from 05/17/21 to 12/31/22 at the rate of $60 per hour.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute contract with investigator Clay Vannoy for public defense investigation services in Benton County Superior, Juvenile, and District Courts for criminal 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 INVESTIGATOR CLAY VANNOY TO PROVIDE PUBLIC DEFENSE INVESTIGATOR SERVICES IN BENTON COUNTY SUPERIOR, JUVENILE, AND DISTRICT COURTS FOR CRIMINAL CASES

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

WHEREAS, because of caseload needs, it is necessary for County to award an additional public defense contract at this time to provide Services; and

WHEREAS, investigator Clay Vannoy 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 investigator Clay Vannoy for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed public defense investigator contract with investigator Clay Vannoy, to provide public defense services in Benton County Superior Court for criminal cases, for the time period from 05/17/21 to 12/31/22 for compensation not to exceed $60 per hour, 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, Clay Vannoy
Copy – Auditor, S Godinez

E. Hsu

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE INVESTIGATIVE SERVICES FOR INDIGENT PERSONS CHARGED WITH CRIMES IN BENTON COUNTY DISTRICT AND SUPERIOR COURTS BCINV2122CV-001

CONTRACT SUMMARY			
Contract Type	**Investigator**		
Contract Number	**BCINV2122CV-001**	**Contract Holder**	**Clay Vannoy**
License #	**21012017**	**Effective Dates**	**May 17, 2021 – December 31, 2022**
Compensation	**$60 per hour base** **See Exhibit "B" for other itemized rates**		
Compensation Payable To:	**Clay Vannoy**		

THIS AGREEMENT is entered into by and between **Clay Vannoy,** Washington State Investigator's License **#21012017** ("Investigator") dba Clay Vannoy, and **BENTON COUNTY,** a Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court and Benton County District Court ("Courts").

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

A. The County has the legal responsibility to provide investigative services to support the publicly-provided legal defense of indigent persons charged with criminal offenses alleged to have been committed within the jurisdictional boundaries of the County.

B. Investigator is licensed in the state of Washington to engage in the business of providing private investigative services, has direct experience in investigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide such services to indigent persons subject to criminal charges in the State and local Courts of County.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **May 17, 2021**, and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **INVESTIGATOR'S OFFICE LOCATION.**

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

a. Investigator presently and regularly maintains an office adequate and appropriate for the business of providing private investigative services at **PO Box 16, Richland, WA 99352.** Investigator's current local office telephone and fax numbers are **509-222-9112** and ***no fax number*** respectively; and Investigator's current office/work e-mail address is **Cvannoyhm42@aol.com. This is and shall be the official email for Investigator (until changed as provided by the terms of this Agreement) to receive any and all communications from County and County's Office of Public Defense, including, but not limited to the following:**

a) Case assignments and related matters

b) Contract compliance notifications and reminders

c) Official contract related notices

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

c. The County prefers that Investigator locate and maintain Investigator's office in a commercial/professional building. However, regardless of the location Investigator decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Investigator and persons whom Investigator is assigned to assist under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from such persons Investigator is assigned to assist hereunder.

3. **INVESTIGATOR'S QUALIFICATIONS.** Investigator acknowledges and agrees that the County has an obligation to provide competent and effective legal defense services to indigent persons subject to criminal proceedings in the Courts. Investigator shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by investigators engaged in providing investigative services for persons accused of crimes in the state of Washington. Investigator acknowledges and agrees that Investigator has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Investigator is assigned to assist under this Agreement.

a. As of the date of this Agreement, Investigator represents and warrants that Investigator is unconditionally licensed to provide private investigative services within the state of Washington; has had at least one (1) year

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

of direct experience in providing investigation services in criminal defense or criminal prosecution matters; has not been a party to an agreement to provide criminal defense-related investigative services that was terminated due to Investigator's conduct, errors, or omissions; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior as an investigator that would negatively reflect on Investigator's duty and ability to effectively and competently render services hereunder; and does not have any complaints or lawsuits filed and/or pending against him/her relating to, or arising from, Investigator's past conduct or behavior as an investigator.

(i) This Agreement will be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 12 below in the event that Investigator's license to provide investigative services in Washington is revoked or otherwise limited or restricted in any manner.

(ii) Investigator shall notify the County and the PDM within three (3) business days if any event specified in paragraph 3.a.(i) above occurs.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Investigator acknowledges and agrees that the County may conduct criminal history background check(s) on Investigator. Investigator acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. During each calendar year of the term of this Agreement Investigator shall be required to pursue and participate in such training, education, and/or other applicable actions required to maintain Investigator's license to provide investigative services within Washington in full force and effect; and Investigator shall provide the PDM with written proof and confirmation that such requirements have been met no later than December 31st of each calendar year.

d. Investigator represents and warrants that, throughout the entire term of this Agreement, Investigator's client caseload on matters outside of this Agreement; Investigator's schedule; and Investigator's office resources, equipment, and support staff; will allow Investigator to competently undertake and effectively perform all services required under this Agreement. Investigator represents and warrants that Investigator's client caseload and schedule outside this Agreement will not interfere with Investigator's ability to timely and efficiently perform services under this Agreement.

4. **OTHER INVESTIGATIVE SERVICES AGREEMENTS.** On or about the date of this Agreement, the County contemplates entering into separate and independent investigative services agreements with other licensed investigators to provide investigative services to persons accused of crimes in the Courts. Investigator agrees to fully cooperate and coordinate with such other investigators, the Courts, and the PDM to establish a process to effectuate the efficient and equitable distribution of clients and

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

cases requiring investigative services. The PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE ASSIGNMENTS.** During the term of this Agreement, Investigator agrees to and shall accept assignments from the PDM to provide investigative services for 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 Courts in which publicly-provided legal defense services are furnished or required by law. For each case assigned hereunder, Investigator shall provide investigative services as further described in **"Exhibit A"** to this Agreement. Specifically, Investigator shall provide criminal defense investigative services of the same quality as Investigator provides to private clients.

Optional: Investigator may accept subpoena-service assignments by public defenders employed or contracted with the Benton County Office of Public Defense at the rate stated in Exhibit B and on the terms contained in Section if Investigator initials the following, indicating availability to serve subpoenas:

Investigator is (*please select one – if none selected, then defaults to "not available to serve subpoenas"*)**:**	
Available to serve subpoenas Initial CV DS	NOT available to serve subpoenas Initial_____

Investigator shall not accept assignments in any other manner than as described in this section. Specifically, Investigator shall not accept "public defense" or "appointed" case assignments directly from public defense attorneys, as the public defense attorneys have no authority whatsoever to directly assign or appoint an investigator to any case.

a. Individual case assignments for cases other than Class A felonies, persistent offender cases, or homicide cases, shall be made by the PDM utilizing the following procedure:

(i) Upon determining that a case needs an investigator assigned, the public defense attorney of record will contact the PDM, request an investigator, advise of the nature of the investigation, and request a particular investigative cost expenditure limit. The public defense attorney of record may also make a specific request for a particular investigator to be assigned.

(ii) Upon approval of the request for an investigator, if a specific request for a particular investigator has been made, then absent a conflict of interest or inability of that investigator to accept the appointment for any

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

other reason (including vacation or other plans or workload issues) then the PDM will honor the request and assign the requested investigator.

(iii) Upon approval of the request for an investigator, if a specific request for a particular investigator has not been made, the PDM will assign an investigator in his absolute and sole discretion, taking into consideration considerations including, but not limited to, workload equality, investigator skill, case complexity, investigator availability, economies of scale and efficiency.

b. Once an investigator has been assigned to a case, the PDM will provide written notice of the assignment to both the investigator and the public defense attorney of record. Investigator shall not commence any work until written notice of assignment has been received. Such written notice will contain an expenditure limit which shall constitute the maximum compensation and cost reimbursement payable to Investigator on the particular case unless additional expenditures are requested as provided in paragraph 9(d)(iv).

c. Individual case assignments for Class A felonies, persistent offender cases, and homicide cases, shall be made by the PDM in consultation with the public defense attorney of record.

d. Individual subpoena service assignments or "stand-alone" subpoena service (i.e., service of subpoenas separate from investigative services on a case) will be made by the PDM utilizing the following procedure:

(i) Upon determining that subpoenas need to be served, the public defense attorney of record will contact the PDM and request approval to serve such subpoenas.

(ii) Upon approval of the request, the PDM will assign the service of the subpoenas to a server from a list of approved subpoena servers on a rotating basis. **Investigator may elect not to be on this list. As stated above, this Agreement does not obligate Investigator to accept "stand-alone" subpoena service assignments.**

(iii) Once the subpoena service has been assigned to a particular investigator, both the investigator and the public defense attorney of record will receive written notification of the assignment from the PDM, which notice shall constitute authorization for the investigator to proceed.

e. Service of subpoenas in conjunction with an assigned investigation does not need prior approval or authorization. However, compensation is limited to the amount stated in Exhibit B to this Agreement.

f. In any case when Investigator has been assigned to a matter of any sort as provided herein, unless expressly excused by the public defense attorney

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

of record, Investigator shall notify the PDM and decline the assignment if Investigator is unable, for any reason, to commence work on the case (which shall mean, at a minimum, meeting with the public defense attorney of record for a case briefing and reviewing discovery as necessary) within 72 hours of the assignment, not including weekends and official holidays recognized by the State of Washington.

6. **CONTINUED SERVICES.**

a. Investigator shall have a duty to timely and fully complete all cases assigned to Investigator under this Agreement. Without limitation in that regard, Investigator shall continue to provide investigative services for those persons whom Investigator was assigned to assist and whose case was not concluded prior to the effective date of termination of this Agreement for up to ninety (90) days following the effective date of termination. Investigator's obligation to continue providing post-termination services shall not in any way entitle Investigator to receive any additional compensation beyond the maximum investigative cost expenditure limit expressly specified in the written notice from the PDM authorizing Investigator's assignment to the case.

b. Investigator will be assigned to no new cases under this Agreement during the thirty (30) day period prior to its expiration date specified in paragraph 1 above if Investigator provides written notice to the County at least sixty (60) days prior to such termination date of Investigator's desire and intent to not pursue contracting with the County again to provide investigative services in the Courts after such expiration date. Investigator may belatedly provide such written notice at any time within said sixty (60) day time period, but the assignment of new cases to Investigator will not stop until thirty (30) days after the date such notice has been received by the County.

7. **CLIENT ELIGIBILITY.** The Courts (or their designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for assistance by Investigator under this Agreement. Investigator is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly-provided assistance. However, if Investigator is assigned to provide services to a person and subsequently discovers that such person may not be eligible to receive publicly-provided assistance under applicable laws, rules and standards, Investigator, if able to do so within the bounds of ethical rules and professional standards applicable to investigators, shall promptly provide the public defense attorney(s) representing the person with such information.

8. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Investigator shall not be required to accept, and Investigator shall decline to accept, an assignment under this Agreement if the particular assignment would create a true and bona fide conflict of interest for Investigator or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to investigators in the state of

Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Investigator receiving an assignment under this Agreement (or in the event Investigator's continued involvement in a pending assigned case would cause or constitute an actual violation of any such ethical or professional standards), Investigator shall immediately make the public defense attorney(s) representing the affected indigent person aware of such development for purposes of the attorney(s) taking immediate action to pursue the assignment of another investigator.

9. **COMPENSATION AND REIMBURSEMENT.**

a. As full and exclusive compensation for Investigator's performance and rendering of independent professional investigative services hereunder, Investigator shall be compensated as provided in Exhibit B.

b. Payment of such compensation is based on time expended on the case by Investigator only. Time expended by other persons (including, without limitation, Investigator's support staff or associate investigators) on a case at Investigator's request or direction shall be part of Investigator's business overhead and shall not be billable to the County.

c. Investigator acknowledges and agrees that Investigator shall not be entitled to claim or receive any reimbursement/payment from the County for any business or office-related overhead costs or expenses incurred by Investigator during the course of rendering services under this Agreement (including, without limitation, costs and expenses associated with Investigator's office, office staff, office equipment/facilities, and/or other office-related resources). The County recognizes, however, that in certain circumstances the need may arise for Investigator to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as costs of out-of-area travel, meals and lodging.

(i) Investigator shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Investigator shall not incur any such expense nor shall Investigator be entitled to be reimbursed for any such expense unless such expense has been pre-approved as necessary and reasonable by the PDM in accordance with applicable rules, procedures, and standards. Such authorization 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 authorization may nevertheless provide approval for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Investigator for any approved expenditures and costs pertaining to case-related out-of-area travel, meals, and lodging, any reimbursement to Investigator for such expenditures and costs shall not exceed the amounts that are set forth in the Federal General Services Administration ("GSA")

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

reimbursement schedule existing for the locality (if applicable) and period of time when the costs are accrued.

(ii) Without limiting or expanding the preceding provisions of this paragraph 9, Investigator shall be reimbursed only for Investigator's vehicle mileage outside of the Tri-Cities (i.e., outside of the city limits of the Cities of Kennewick, Richland, West Richland and Pasco) accrued while directly engaged in investigations under this Agreement. The rate of such reimbursement shall be equivalent to the rate published by the GSA for the locality (if applicable) and period of time when the mileage is accrued. Such vehicle mileage shall be reimbursed only one time to Investigator, and Investigator shall not attempt to seek duplicative or excessive reimbursement for mileage accrued while simultaneously rendering services on more than one case (e.g., if Investigator accrues 10 miles to travel to a particular location to interview witnesses involved in two separate cases assigned to Investigator hereunder, Investigator shall only be reimbursed for that 10 miles, and not for 20 miles by attempting to claim reimbursement of 10 miles for each case). For such reimbursable case assignment travel, mileage shall be calculated beginning from the Benton County Justice Center in Kennewick to the location where the investigative services are actually rendered (e.g., witness's residence) utilizing and based on the most direct route over public roadways.

d. As a precondition to Investigator being paid the above-mentioned compensation and reimbursements for costs and expenses hereunder, Investigator shall submit a "Claim for Compensation" in such form as is prescribed by the PDM, including with such submission an invoice that descriptively sets forth and details the total number of hours (documented and stated in one-tenth ($1/10^{th}$) hour intervals) expended by Investigator on the case and that further describes and details the particular actions taken by Investigator on such case that correspond to such expended and billed hours including the date when such actions were taken (exercising appropriate discretion to protect client confidentiality given that such documents are matters of public record unless sealed by the court at the request of the defense attorney representing the client).

(i) Investigator's administrative time expended to prepare, submit, and process Claims for Compensation shall not be billable to the County.

(ii) All Claims for Compensation under this Agreement may be subject to the PDM's review and approval for payment.

(iii) Investigator shall timely submit such Claims for Compensation within sixty (60) days of the date on which Investigator expended time for which compensation is sought, and the County shall have the right to deny payment of any Claim for Compensation that is not timely

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

and properly submitted within said requisite sixty (60) day period or that is not properly itemized and billed in 1/10 hour intervals as required herein.

(iv) The cumulative sum of compensation and reimbursements being claimed shall be limited to the unclaimed expenditure limit stated in the written notice of assignment unless authorization for additional expenditure is requested and granted **prior to** providing the additional services that incur such additional expenditure. Such request for authorization for additional expenditure shall be in writing and shall be directed to the PDM by email to opdauthorizations@co.benton.wa.us or delivered to the PDM's office. Such a request shall contain the following information:

(a) The court case number and name,

(b) The initial expenditure limit,

(c) How much of the expenditure limit has been expended and whether it has been billed,

(d) What investigation has been completed,

(e) What investigation remains to be done, and

(f) The requested amount of the authorization for additional expenditure.

(v) Investigator should expect processing time for requests for authorization for additional expenditures of 2-3 business days. It is Investigator's responsibility to plan investigations and the submission of requests for authorization for additional expenditure in a manner that takes into account this anticipated processing lead time.

(vi) In situations of bona fide emergency, requests for authorization for additional expenditures may be submitted after additional services have been provided. However, the amount of services provided shall be limited to that amount which is essential to address the emergency, and a request for authorization for additional expenditure shall be submitted within 2 business days detailing and specifically describing the circumstances of the emergency. For purposes of this paragraph, the term "emergency" shall be defined as any situation where critically necessary investigative work, beyond what has already been authorized, must be completed within such a short timeframe that it is not possible to obtain authorization from the PDM in advance and the inability to complete such investigative work is reasonably likely to prejudice the rights of the indigent defendant whose criminal case Investigator is assigned to provide investigative services for.

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

(vii) If Investigator or Investigator's staff wish to make billing inquiries, such inquiries shall be made by email directed to such email address as the PDM designates for such purpose. Investigator should expect such emailed inquiries to be responded to within 3 business days. Repeated telephone contact with the PDM or the PDM's staff, for the sole purpose of making billing inquiries, shall constitute a breach of this Agreement.

e. Claims for Compensation may be submitted throughout any given month. However, Claims for Compensation will only be processed twice each month: The first time on the business day immediately prior to the 15th day of the month and the second time on the business day immediately prior to the 30th day of the month ("Cutoff Day"). In order to facilitate the processing of claims during those two days of the month, Investigator shall, by 5:00 pm no less than two business days prior to each Cutoff Day, provide, via email to such email address as is designated by the PDM, a Billing Summary, which shall clearly and concisely set out the following as to each Claim for Compensation being submitted that the Investigator wants to be processed on the particular Cutoff Day: case name, case number, date submitted, and total amount claimed. Properly submitted Claims for Compensation that are also properly referenced and included in an appropriate and duly-submitted Billing Summary will be paid within 30 calendar days. Failure to provide a Billing Summary shall constitute cause to delay processing of a Claim for Compensation until a summary is received, and may result in a delay in excess of 30 days before the claim is paid. **All claims must be submitted electronically by email to: OPDClaims@co.benton.wa.us.**

f. The above-stated compensation to Investigator will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective May 31, 2021, the above referenced compensation to Investigator also would terminate as of such date, and Investigator would not be entitled to receive any further compensation from the County; provided that, Investigator would be entitled to receive any then-accrued and unpaid compensation for services rendered hereunder prior to such termination date; and further provided that Investigator may be entitled to receive compensation for continuing post-termination services provided pursuant to paragraph 6.a. above.

10. **INDEMNIFICATIONS AND HOLD HARMLESS.** Investigator agrees to and shall fully indemnify the County and their elected/appointed representatives, officers, employees, and agents; and to hold the County and their 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 Investigator's (or any person, employee, agent, contractor, or entity acting for or on behalf of Investigator or at Investigator's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of investigative services for any person under this Agreement.

In the event any suit or legal proceeding is brought against the County or any of their 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, Investigator hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Investigator'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, Investigator waives, with respect to the County only, any immunity that would otherwise be available to Investigator 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.

11. **INSURANCE.**

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

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

(ii) The insurance policies required by this paragraph 11.a shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Investigator shall continuously maintain the insurance coverage required by this paragraph 11.a throughout the entire term of this Agreement and throughout any other longer time period during which

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

Investigator is obligated to continue performing services and duties hereunder.

b. Investigator shall also obtain and maintain, at Investigator's sole cost and expense, a policy of professional liability or errors and omissions insurance suitable for Investigator's profession, in the amount of no less than $1,000,000.00 per claim nor less than $2,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

(iii) Investigator shall continuously maintain the professional liability insurance coverage required by this paragraph 11.b throughout the entire term of this Agreement, throughout any other longer time period during which Investigator is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Investigator has fully completed all services and duties required hereunder.

c. Contemporaneously with Investigator's execution of this Agreement, Investigator shall provide the County and their designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 11, and Investigator shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

12. **TERMINATION.**

a. In addition to any automatic termination provisions set forth in this Agreement, the County may elect to terminate this Agreement in the event Investigator fails for whatever reason to comply with any provision of this Agreement after giving Investigator 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 Investigator'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

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

b. In addition to the foregoing provisions regarding termination, either Investigator or the County may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Investigator's obligation and duty to accept and complete cases assigned to Investigator, Investigator shall not be assigned to any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

13. **INDEPENDENT CONTRACTOR.** Investigator fully understands, acknowledges, and agrees that Investigator shall not be an agent, representative, or employee of the County or the Courts 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 Investigator, 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 Investigator's duties, responsibilities and obligations imposed under this Agreement, Investigator shall have sole and absolute discretion using Investigator's best professional judgment to determine the manner and means of providing the investigative services required under this Agreement; and neither the County, the PDM, nor the Courts shall have any authority or duty to directly control the actual performance of Investigator's services hereunder.

14. **NON-ASSIGNMENT; MILITARY LEAVE.** Investigator shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Investigator assign, subcontract out, or otherwise delegate any of Investigator's rights, responsibilities, or obligations under this Agreement. In the event Investigator is called up for active military duty or for direct civilian support of active military operations, Investigator shall provide the County and the PDM with written notice of such event within five (5) business days of Investigator being called up so that the PDM and Investigator can coordinate and arrange for an appropriate substitute to handle Investigator's duties under this Agreement while Investigator is on military leave and any reasonable back-to-civilian-life transition time requested by Investigator upon return. Investigator shall receive no compensation under this Agreement while on leave or during any such transition time.

15. **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 investigator to replace and succeed Investigator in providing investigative services to indigent persons in the Courts.

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

16. **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.

17. **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.

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

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

20. **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.

21. **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.

22. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

parties. The County shall pay one-half of the mediator's fees and expenses, and Investigator shall pay the other one-half of such fees and expenses.

b. 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 shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Investigator 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 of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. 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.

23. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Investigator under this Agreement shall be in writing and shall be personally delivered to Investigator or mailed to Investigator via certified U.S. mail, postage prepaid, at Investigator's office address specified and set forth in paragraph 2.a

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

above; or emailed to Investigator at his/her business email address set forth in paragraph 2.a.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

24. **LEGAL COMPLIANCE.** Investigator agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Investigator's pursuit and performance of activities and services under this Agreement. Without limitation in that regard, Investigator shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Investigator 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 its contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

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

DocuSigned by:
Eric Hsu
F80F3801778947...

Eric Hsu
Public Defense Manager

INVESTIGATOR

Date 6/23/2021

DocuSigned by:
Clay Vannoy
6FB1307F2DB1473...

Clay Vannoy, Private Investigator #21012017

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

EXHIBIT A - SCOPE OF SERVICES

INVESTIGATOR shall provide, as assigned and approved on a case by case basis, professional quality criminal defense investigation services to defense attorneys assigned to represent indigent defendants with criminal cases pending in Benton County Superior Court (including its Juvenile Division) and Benton County District Court.

The services to be provided under this agreement may include, but are not limited to:

- Attempting to locate witnesses
- Interviewing witnesses
- Interviewing victims
- Researching the criminal history or backgrounds of witnesses or victims
- Conducting surveillance of witnesses
- Diagramming crime scenes or other locations associated with a criminal case
- Photographing items, locations, persons or anything else relevant to defense of a criminal case
- Cataloging and tracking evidence (only permitted in cases with large amounts of evidence)
- Serving subpoenas

INVESTIGATOR may provide, as assigned, and only if CONTRACTOR elects to do so, subpoena service. Provided, however, that the maximum compensation for such subpoena services shall be as stated in Exhibit B – Compensation.

Absent **specific written instruction to do so from BCOPD**, CONTRACTOR shall not be compensated for any of the following services:

(e) "Evaluating" any legal document including search warrants
(f) Reviewing police reports or any other discovery for purposes of evaluating their sufficiency or for the purposes of determining what, if any, investigation needs to be done
(g) Spending time at any hearing or trial except when appearing for the purpose of testifying as a witness
(h) Appearing at or waiting during any criminal pre-trial docket

Furthermore, INVESTIGATOR shall not arrange for or bill for, the services of third-party experts since these experts are to be coordinated through the attorney of record with authorization from BCOPD. Experts include, but are not limited to:

- Polygraph examiners

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

- DNA, fingerprint, firearms experts
- Experts on the identification of substances including controlled substances
- Handwriting or document analysis experts
- Arson experts

DocuSign Envelope ID: 310D943B-E22D-4A97-B03C-31E11C65A15B

EXHIBIT B – COMPENSATION

Service	Rate	Comments
Investigator time	$60 per hour	Must be billed in increments of 1/10th of an hour together with date and description of services rendered.
Mileage	Published US GSA rate	Only for investigations outside of Tri-Cities area. Starts from the Benton County Courthouse.
Standard locate	$20 per locate	For locating addresses using subscription database services
Background investigation	$50 each	Only for background investigations that involve more than a WATCH inquiry. WATCH inquiry cases are compensated on a reimbursement basis only
Transcription	$5/page	Only upon specific advance written authorization
Subpoena service	$25 each service	Contractors are not required to accept subpoenas for service. However, if they do serve subpoenas, this is the maximum compensation for doing so.
Video and photo DVD	$35 each, $10 for extra copies	With menu, ready for trial format.
Photo CD	$10 each	
Photocopies	$0.13 per page	

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Amendment of public defense contract with Angel Betancourt in Juvenile Court
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 the following listed attorneys ("Attorneys") for public defense services in Benton County Juvenile Court:

- Angel Betancourt
- Michelle Alexander
- Michelle Trombley

Because of the increasing time and complexities associated with a legal process known as "revision," whereby a juvenile offender may seek a Superior Court judge's review of a Court Commissioner's decision, it has become necessary to amend the contracts with Attorney by providing for additional compensation for Attorney to handle such revision proceedings and hearings.

The proposed amendment accomplishes this.

Fiscal Impact

None beyond budgeted (though this process is laborious and does justify additional compensation, it is still anticipated to only take place on an infrequent basis).

Recommendation

Recommend approving the proposed contract amendment to the listed Attorneys, providing for additional compensation for Attorneys to handle juvenile court revision proceedings and hearings.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE JUVENILE COURT PUBLIC DEFENSE CONTRACT WITH ATTORNEY ANGEL BETANCOURT PROVIDING FOR ADDITIONAL COMPENSATION FOR ATTORNEYS TO HANDLE JUVENILE COURT REVISION PROCEEDINGS AND HEARINGS

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court for juvenile offender cases ("Services"); and

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

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of the increasing time and complexities associated with a legal process known as "revision," whereby a juvenile offender may seek a Superior Court judge's review of a Court Commissioner's decision; and

WHEREAS, it is therefore appropriate to amend the public defense contract with Attorney to provide for additional compensation for Attorney to handle juvenile court revision proceedings and hearings; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Angel Betancourt, previously executed by and through Resolution #2020-934, is hereby amended as proposed, to provide for additional compensation for Attorney to handle juvenile court revision proceedings and hearings effective 6/1/21 through 12/31/22.

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, Angel Betancourt
Copy – Auditor, S Godinez

E. Hsu

DocuSign Envelope ID: BC10EFEE-3B24-4CAE-B6B1-53F47E4CEC23

FIRST AMENDED

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT

BCJUV2122ADB001

CONTRACT SUMMARY			
Contract Type	**Full Caseload - Monthly**		
Contract Number	**BCJUV2122ADB001**	**Contract Holder**	**Angel D. Betancourt**
WSBA #	**49091**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**235**	**Compensation**	**$7,145/mo**
Assigned Court	**Juvenile Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Betancourt Law, PLLC**		
Contract Slot Identifier: JCF-3			

THIS AGREEMENT, previously entered into by and between **Angel D. Betancourt**, attorney at law, Washington State Bar Association **# 49091** ("Attorney"), dba Betancourt Law, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court Juvenile Division ("Juvenile Court") executed by and through Resolution #2020-934,

IS HEREBY AMENDED BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. From time to time, when Attorney is serving as "Attorney of the Week" it becomes necessary to file, brief, and argue motions for Revision pursuant to RCW 2.24.050, to challenge or appeal the decision of a Court Commissioner.

B. It is appropriate to provide for compensation to Attorney when such work becomes necessary.

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

DocuSign Envelope ID: BC10EFEE-3B24-4CAE-B6B1-53F47E4CEC23

12. **MONTHLY COMPENSATION.**

The following line shall be added to section 12c. regarding additional compensation for specific roles and duties:

Description	**Additional Compensation**
Any Motion for Revision by Superior Court, pursuant to RCW 2.24.050, when said motion has been filed, briefed, and argued before the court.	$400 per Motion for Revision

All other provisions shall remain in full force and effect. This Amendment shall take effect on June 1, 2021.

SIGNATURES APPEAR ON FOLLOWING PAGE

DocuSign Envelope ID: BC10EFEE-3B24-4CAE-B6B1-53F47E4CEC23

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

DocuSigned by:
Eric Hsu
E80F38017789473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/7/2021

DocuSigned by:
Angel Betancourt
41EE63432C0E456...

Angel D. Betancourt, WSBA 49091

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Amendment of public defense contract with Michelle Alexander in Juvenile Court
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 the following listed attorneys ("Attorneys") for public defense services in Benton County Juvenile Court:

- Angel Betancourt
- Michelle Alexander
- Michelle Trombley

Because of the increasing time and complexities associated with a legal process known as "revision," whereby a juvenile offender may seek a Superior Court judge's review of a Court Commissioner's decision, it has become necessary to amend the contracts with Attorney by providing for additional compensation for Attorney to handle such revision proceedings and hearings.

The proposed amendment accomplishes this.

Fiscal Impact

None beyond budgeted (though this process is laborious and does justify additional compensation, it is still anticipated to only take place on an infrequent basis).

Recommendation

Recommend approving the proposed contract amendment to the listed Attorneys, providing for additional compensation for Attorneys to handle juvenile court revision proceedings and hearings.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE JUVENILE COURT PUBLIC DEFENSE CONTRACT WITH ATTORNEY MICHELLE ALEXANDER PROVIDING FOR ADDITIONAL COMPENSATION FOR ATTORNEYS TO HANDLE JUVENILE COURT REVISION PROCEEDINGS AND HEARINGS

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court for juvenile offender cases ("Services"); and

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

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of the increasing time and complexities associated with a legal process known as "revision," whereby a juvenile offender may seek a Superior Court judge's review of a Court Commissioner's decision; and

WHEREAS, it is therefore appropriate to amend the public defense contract with Attorney to provide for additional compensation for Attorney to handle juvenile court revision proceedings and hearings; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Michelle Alexander, previously executed by and through Resolution #2020-933, is hereby amended as proposed, to provide for additional compensation for Attorney to handle juvenile court revision proceedings and hearings, effective 6/1/21 through 12/31/22.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

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

E. Hsu

DocuSign Envelope ID: FB277109-61A7-45A9-BC32-D2C8984266CF

FIRST AMENDED

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT

BCJUV2122MMA001

CONTRACT SUMMARY			
Contract Type	**Full Caseload - Monthly**		
Contract Number	**BCJUV2122MMA001**	**Contract Holder**	**Michelle M. Alexander**
WSBA #	**29291**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**235**	**Compensation**	**$7,145/mo**
Assigned Court	**Juvenile Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Alexander Law, PLLC**		
Contract Slot Identifier: JCF-2			

THIS AGREEMENT previously entered into by and between **Michelle M. Alexander**, attorney at law, Washington State Bar Association **# 29291** ("Attorney"), dba Alexander Law, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court Juvenile Division ("Juvenile Court"), executed by and through Resolution #2020-933

IS HEREBY AMENDED BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. From time to time, when Attorney is serving as "Attorney of the Week" it becomes necessary to file, brief, and argue motions for Revision pursuant to RCW 2.24.050, to challenge or appeal the decision of a Court Commissioner.

B. It is appropriate to provide for compensation to Attorney when such work becomes necessary.

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

DocuSign Envelope ID: FB277109-61A7-45A9-BC32-D2C8984266CF

1.

12. **MONTHLY COMPENSATION.**

The following line shall be added to section 12c. regarding additional compensation for specific roles and duties:

Description	**Additional Compensation**
Any Motion for Revision by Superior Court, pursuant to RCW 2.24.050, when said motion has been filed, briefed, and argued before the court.	$400 per Motion for Revision

All other provisions shall remain in full force and effect. This Amendment shall take effect on June 1, 2021.

SIGNATURES APPEAR ON FOLLOWING PAGE

DocuSign Envelope ID: FB277109-61A7-45A9-BC32-D2C8984266CF

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

DocuSigned by:
Eric Hsu
F80F38017789473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/8/2021

DocuSigned by:
6A82696F4E65452...

Michelle M. Alexander, WSBA 29291
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Amendment of public defense contract with Michelle Trombley in Juvenile Court
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 the following listed attorneys ("Attorneys") for public defense services in Benton County Juvenile Court:

- Angel Betancourt
- Michelle Alexander
- Michelle Trombley

Because of the increasing time and complexities associated with a legal process known as "revision," whereby a juvenile offender may seek a Superior Court judge's review of a Court Commissioner's decision, it has become necessary to amend the contracts with Attorney by providing for additional compensation for Attorney to handle such revision proceedings and hearings.

The proposed amendment accomplishes this.

Fiscal Impact

None beyond budgeted (though this process is laborious and does justify additional compensation, it is still anticipated to only take place on an infrequent basis).

Recommendation

Recommend approving the proposed contract amendment to the listed Attorneys, providing for additional compensation for Attorneys to handle juvenile court revision proceedings and hearings.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE JUVENILE COURT PUBLIC DEFENSE CONTRACT WITH ATTORNEY MICHELLE TROMBLEY PROVIDING FOR ADDITIONAL COMPENSATION FOR ATTORNEYS TO HANDLE JUVENILE COURT REVISION PROCEEDINGS AND HEARINGS

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Juvenile Court for juvenile offender cases ("Services"); and

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

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of the increasing time and complexities associated with a legal process known as "revision," whereby a juvenile offender may seek a Superior Court judge's review of a Court Commissioner's decision; and

WHEREAS, it is therefore appropriate to amend the public defense contract with Attorney to provide for additional compensation for Attorney to handle juvenile court revision proceedings and hearings; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Michelle Trombley, previously executed by and through Resolution #2020-942, is hereby amended as proposed, to provide for additional compensation for Attorney to handle juvenile court revision proceedings and hearings, effective 6/1/21 through 12/31/22.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Michelle Trombley
Copy – Auditor, S Godinez

E. Hsu

DocuSign Envelope ID: F005A86C-2859-44F5-8304-DA124AA1B5CB

FIRST AMENDED

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT

BCJUV2122MTT001

CONTRACT SUMMARY			
Contract Type	**Full Caseload - Monthly**		
Contract Number	**BCJUV2122MTT001**	**Contract Holder**	**Michelle T. Trombley**
WSBA #	**42912**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**235**	**Compensation**	**$7,145/mo**
Assigned Court	**Juvenile Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Trombley Law, PLLC**		
Contract Slot Identifier: JCF-1			

THIS AGREEMENT is entered into by and between **Michelle T. Trombley**, attorney at law, Washington State Bar Association **# 42912** ("Attorney"), dba Trombley Law, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court Juvenile Division ("Juvenile Court"), executed by and through Resolution #2020-942,

IS HEREBY AMENDED BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. From time to time, when Attorney is serving as "Attorney of the Week" it becomes necessary to file, brief, and argue motions for Revision pursuant to RCW 2.24.050, to challenge or appeal the decision of a Court Commissioner.

B. It is appropriate to provide for compensation to Attorney when such work becomes necessary.

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

DocuSign Envelope ID: F005A86C-2859-44F5-8304-DA124AA1B5CB

12. **MONTHLY COMPENSATION.**

The following line shall be added to section 12c. regarding additional compensation for specific roles and duties:

Description	**Additional Compensation**
Any Motion for Revision by Superior Court, pursuant to RCW 2.24.050, when said motion has been filed, briefed, and argued before the court.	$400 per Motion for Revision

All other provisions shall remain in full force and effect. This Amendment shall take effect on June 1, 2021.

SIGNATURES APPEAR ON FOLLOWING PAGE

DocuSign Envelope ID: F005A86C-2859-44F5-8304-DA124AA1B5CB

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

DocuSigned by:
Eric Hsu
F80F380177B9473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/7/2021

DocuSigned by:
Michelle Trombley
20E7964710174F3...

Michelle T. Trombley, WSBA 42912

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	20 July 2021
Subject:	Memorandum of Agreement with Benton Conservation District (Stargrass)
Presenter:	None
Prepared By:	Adam J. Fyall
Reviewed By:	AJF

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

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

Summary

For commissioner consideration is the signing of a new memorandum of agreement (MOA) with the Benton Conservation District for use of Horn Rapids Park during the District's water stargrass harvesting activity.

Background

On March 30, Benton Conservation District staff briefed commissioners on topics and projects relevant to the District. One of the main discussion points was the water stargrass abatement program, and specifically the implementation of the new "mower" that the District has purchased that will hopefully assist with harvesting stargrass from the lower Yakima River.

The District has requested use of Horn Rapids Park for staging of some of the stargrass harvesting activity. This would including launching the harvester (it is a boat) and parking vehicles at the park during the day when there is mowing in the river section above Wanawish Dam and alongside the park. It may include overnight parking from time to time, though that is expected to be infrequent if at all. Finally, the use would include off-loading harvested stargrass at a specific location in the park that has been identified for this purpose. This material may be composted onsite, burned in the winter, or removed by the District at a later time. Although this final disposition is not yet determined, it is not something that staff is concerned about, and the County and the District have a long history of cooperating on projects like this. The District is prepared to fully remove the stargrass cuttings if that is the County's preference.

County and District staffs have developed this MOA that would be in place for a period of five harvest seasons (2021-2025).

The Benton County Park Board has reviewed this project and is in support of the use of Horn Rapids Park and this MOA.

The Prosecutor has approved the MOA to form.

The Benton Conservation District has signed the MOA.

Fiscal Impact

None.

Recommendation

Staff recommends signing the memorandum of agreement.

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A MEMORANDUM OF AGREEMENT BY AND BETWEEN BENTON COUNTY AND THE BENTON CONSERVATION FOR THE USE OF HORN RAPIDS PARK FOR SUPPORT OF THE "WATER STARGRASS HARVESTING ACTIVITY"

WHEREAS, Benton County and the Benton Conservation District have been partners on numerous projects throughout the years and have developed a strong working relationship; and,

WHEREAS, the Conservation District has been working on the issue of *water stargrass* in the Lower Yakima River and the problems associated with the proliferation of this aquatic plant in the river system; and Benton County has supported the District's work and has endeavored in its own capacities to call attention to the *water stargrass* issue; and,

WHEREAS, the Conservation District has procured a waterborne harvesting machine that will be used to mechanically diminish *water stargrass*, and the District would like to use the County's Horn Rapids Park on certain occasions to launch the harvesting machine and to retrieve *water stargrass* cuttings; and,

WHEREAS, the County wishes to assist the Conservation District in making Horn Rapids Park available for these purposes related to the abatement of *water stargrass*, and the two entities have developed a memorandum of agreement to this end; **NOW THEREFORE**,

BE IT RESOLVED, that the Benton County Board of Commissioners authorizes the Board Chairman to sign the *Memorandum of Agreement between the Benton Conservation District and Benton County for Implementation of the Water Stargrass Harvesting Activity*, with said Memorandum of Agreement becoming effective upon signature by both parties and terminating December 31, 2025.

Dated this 20th day of July, 2021.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

orig: Parks
cc: Benton Conservation District

Prepared by: A.J. Fyall

MEMORANDUM OF AGREEMENT
between
the BENTON CONSERVATION DISTRICT *and* BENTON COUNTY, WASHINGTON,
for
IMPLEMENTATION OF THE
WATER STARGRASS HARVESTING ACTIVITY

I.

This Memorandum of Agreement is made by and between the Benton Conservation District, hereinafter referred to as the "District", and Benton County, hereinafter referred to as the "County", and the two entities being collectively referred to as the "Parties."

II.

Once signed by the Parties, this document will serve as an Agreement outlining the cooperative effort by the Parties that will allow the County to provide the District with material and logistical assistance with the District's *Water Stargrass Harvesting Activity*, hereinafter referred to as the "Project."

III.

The District is undertaking the Project as a part of its conservation mission. The Project consists of the physical and mechanical removal of a plant known as water stargrass (*Henterathera dubia*) from the lower reaches of the Yakima River in Benton County. Though the plant is naturally occurring and native to the river system, modern conditions of the river have led to unnatural elevated levels of growth and retention of the plant in the lower 50 miles of the river. Each summer during the height of its growth season, water stargrass now persists in such quantities and volumes that it slows the river's flow, removes dissolved oxygen from the water, cloaks and makes unusable vast stretches of the riverbed for spawning fishes, and impedes the movement of important migratory fishes. The conditions created by water stargrass make the Yakima River less healthy and supportive for many fish species, specifically threatened and endangered salmonids. Benton County supports efforts to protect salmonids, improve the river's functional condition, and specifically, the District's *Water Stargrass Harvesting Activity*.

IV.

Horn Rapids Park is a public park owned and operated by Benton County along the Yakima River, located north of Benton City and west of Richland and West Richland. The cooperative efforts described in this Memorandum of Agreement pertain to developed areas within *Horn Rapids Park*.

V.

The District's Project consists of two discrete though connected parts that are relevant to the County and that will occur within *Horn Rapids Park*:

1. Recurring launch and retrieval of a watercraft owned by the District whose function is to harvest and then collect, transport, and remove water stargrass from the Yakima River; described in **VI** below.
2. Storage of harvested water stargrass cuttings onsite within *Horn Rapids Park*, described in **VII** below.

VI.

The watercraft, hereinafter referred to as the "Harvester" may be launched and retrieved by the District at the *Horn Rapids Park* Boat Launch, shown as SITE A in **Exhibit A**. The Harvester may be launched from

this location at any time during the term of this Agreement but does not have priority over any other private or government watercraft which may also be using the Boat Launch at a given time. Benton County is not responsible for any aspect of launch, operation, retrieval, or storage of the Harvester at *Horn Rapids Park* or elsewhere.

The Harvester and associated portage trailers or staff vehicles may be stored during daytime hours at the Day Use Parking area at *Horn Rapids Park* (SITE B in **Exhibit A**), and may be stored overnight at SITE C, known as the "Horse Camp" or "Camp Smith". Benton County is not responsible for any vehicles parked or stored by the District at *Horn Rapids Park*.

VII.

Water stargrass clippings that are harvested from the Yakima River by the District may be stored at *Horn Rapids Park* in the area adjacent to and immediately south of the Horse Camp (SITE D in **Exhibit A**). The District and the County will work together to determine the precise location within the SITE D area. The District may store the water stargrass clippings at this location until the Parties determine a permanent disposition for the clippings, which may be composted or burned onsite, or removed from the site altogether.

VIII.

Benton County considers itself a partner in the Project in full support of improving Yakima Rivers health. The County has advocated for more proactive measures in addressing the water stargrass situation for many years. As such, the District will not be charged rent, fees, or any other remunerations for its uses of *Horn Rapids Park* for the Project. The Parties may work together to post informational signage onsite and cooperatively work to produce other informational products to introduce the public to the Project.

IX.

The designated contacts for the purposes of administration of this Memorandum of Agreement shall be:

District:	Mark Nielson Benton Conservation District 10121 W Clearwater Ave – Ste 101 Kennewick WA 99336 509-736-6000 mark-nielson@conservewa.net	County:	Adam J. Fyall Benton County 7122 W Okanogan Pl Kennewick WA 99336 509-736-3053 adam.fyall@co.benton.wa.us

X.

This Agreement may be modified only by written amendment signed by both Parties.

XI.

The District shall indemnify, hold harmless, and defend the County, its elected officials, employees, and agents, from all claims, lawsuits, or any liability whatsoever, including costs and attorney's fees, for property loss or damage, bodily injury, sickness or death, personal and advertising injury, and any other tort loss, related to or arising from the District's actions and activities related to implementation of the Project.

The District's responsibilities under this indemnification provision include investigating, adjusting, and defending any alleged loss. Provided, the District shall have no obligation to indemnify the County to the

extent that the alleged loss is caused by the sole negligence of the County, its elected officials, employees, or agents.

XII.

It is not the intention of this Agreement to create a separate legal entity for the purposes of proceeding with the Project.

XIII.

This Memorandum of Agreement shall become effective when signed by both Parties and shall terminate on December 31, 2025 – a period of five (5) water stargrass harvesting seasons. Either Party may terminate this Agreement before the term date by notifying the other Party in writing

This Memorandum of Agreement is executed by the persons signing below, who warrant that they have the authority to execute this Agreement of behalf of their respective Party.

BENTON CONSERVATION DISTRICT

Jack Clark, Chair

Date: 7/2/2021

Attest:

Mark Nielson, District Manager

Date: 7/2/21

BENTON COUNTY

Jerome Delvin, Chairman

Date: _____

Attest:

Cami McKenzie, Clerk to the Board

Date: _____

Approved as to Form:

Deputy Prosecuting Attorney

EXHIBIT A



SITE A: Boat Launch – harvester launch/retrieval, support, temporary parking/staging.

SITE B: Day Use Parking – daytime working hours parking for DISTRICT vehicles.

SITE C: Camp Smith Parking – overnight/off-hours parking/staging.

SITE D: stargrass drying and temporary storage area.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 117

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by:
Ginny Baddley

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Prosecuting Attorney Dept Nbr: 117

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: Dept 117 TRANSFER TO: Dept 117

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
515.300	4103	Professional Services	3,000	515.300	1925	Overtime	3,000
TOTAL			3,000	TOTAL			3,000

Explanation:

Line item transfer is needed to cover extensive overtime worked in order to process public records requests and for work on the Blake Project.

Prepared by: Ginny Baddley Date: 09-Jul-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Interlocal Agreement between Benton County and State of Washington Department of Children, Youth, and Families (DCYF) for Jail Bed Space
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Chief Souza; Robert Blain; Ryan Lukson

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

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

Summary / Background Information

Per Resolution 2019-545 dated July 23, 2019, the Board of Benton County Commissioners, Benton County, Washington approved the Interlocal Agreement between Benton County and State of Washington Department of Children, Youth, and Families (DCYF) for the provision of providing jail bed space at the Benton County Jail for Juvenile Justice and Rehabilitation Administration (JJ&RA) to house youth eighteen (18) years old, or older through June 30, 2021.

The attached Interlocal Agreement is necessary as both parties wish to renew the provisions of providing jail bed space at Benton County Jail to house youth eighteen (18) years old, or older for a period of July 1, 2021 through June 30, 2023.

Fiscal Impact

Revenue bed day rate of $75.00/per day.

Recommendation

Approve the attached Resolution and Interlocal Agreement between Benton County and State of Washington Department of Children, Youth, and Families (DCYF) for an amount not to exceed $40,0000, with a term commencing July 1, 2021 and expiring June 30, 2023.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE INTERLOCAL AGREEMENT BETWEEN BENTON COUNTY AND STATE OF WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES (DCYF) FOR THE PROVISION OF PROVIDING JAIL BED SPACE FOR YOUTH EIGHTEEN (18) YEARS OLD, OR OLDER

WHEREAS, per Resolution 2019-545 dated July 23, 2019, the Board of Benton County Commissioners, Benton County, Washington approved the Interlocal Agreement between Benton County and State of Washington Department of Children, Youth, and Families (DCYF) for the provision of providing jail bed space at the Benton County Jail for Juvenile Justice and Rehabilitation Administration (JJ&RA) to house youth eighteen (18) years old, or older through June 30, 2021; and

WHEREAS, the attached Interlocal Agreement is necessary as both parties wish to renew the provisions of providing jail bed space at Benton County Jail to house youth eighteen (18) years old, or older for a period of July 1, 2021 through June 30, 2023; and

WHEREAS, the cost per bed day rate is set at $75.00 per day with a maximum contract amount not to exceed $40,000; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby approves the Interlocal Agreement between Benton County and State of Washington Department of Children, Youth, and Families (DCYF) for the provision of providing jail bed space at Benton County Jail to house youth eighteen (18) years old, or older; and

BE IT FURTHER RESOLVED, the cost per bed day rate is set at $75.00 per day with a maximum Agreement amount not to exceed $40,000; and

BE IT FURTHER RESOLVED, the term of the Interlocal Agreement shall commence July 1, 2021 and shall terminate June 30, 2023; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board to sign the attached Interlocal Agreement.

Dated this _____ day of _____, 2021.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: BCCD

Cc: Auditor, PA, DCYF

Prepared by: L. Small

COUNTY PROGRAM AGREEMENT

Jail Service for 18 Yrs and Older

DCYF Agreement Number
2163-17844

This Program Agreement is by and between the State of Washington Department of Children, Youth & Families (DCYF) and the County identified below, and is issued in conjunction with a County and DCYF Agreement On General Terms and Conditions, which is incorporated by reference.

Administration or Division Agreement Number

County Agreement Number

DCYF ADMINISTRATION	DCYF DIVISION	DCYF INDEX NUMBER	DCYF CONTRACT CODE
Department of Children, Youth, and Families	Children, Youth and Families	1122	2000CC-63

DCYF CONTACT NAME AND TITLE	DCYF CONTACT ADDRESS
Karena McGovern Contract Specialist	1115 Washington St SE Olympia, WA 98504

DCYF CONTACT TELEPHONE	DCYF CONTACT FAX	DCYF CONTACT E-MAIL
(360)870-5727	Click here to enter text.	karena.mcgovern@dcyf.wa.gov

COUNTY NAME	COUNTY ADDRESS
Benton County Benton County Corrections Department	Benton County Corrections Department 7122 W Okanogan Place Bldg B Kennewick, WA 99336
COUNTY FEDERAL EMPLOYER IDENTIFICATION NUMBER	COUNTY CONTACT NAME Chief Scott Souza

COUNTY CONTACT TELEPHONE	COUNTY CONTACT FAX	COUNTY CONTACT E-MAIL
(509) 837-1451		Scott.Souza@benton.wa.us

IS THE COUNTY A SUBRECIPIENT FOR PURPOSES OF THIS PROGRAM AGREEMENT?	CFDA NUMBERS
No	

PROGRAM AGREEMENT START DATE	**PROGRAM AGREEMENT END DATE**	MAXIMUM PROGRAM AGREEMENT AMOUNT
07/01/2021	06/30/2023	$40,000.00

EXHIBITS. When the box below is marked with an X, the following Exhibits are attached and are incorporated into this County Program Agreement by reference:

☒ **Exhibits (specify): Exhibit A - Data Security Requirements; Exhibit B - Statement of Work**

☐ **No Exhibits.**

The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DCYF only upon signature by DCYF.

COUNTY SIGNATURE(S)	PRINTED NAME(S) AND TITLE(S)	DATE(S) SIGNED

DCYF SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
Karena McGovern	Karena McGovern Contract Specialist	7/8/2021

Approved as to Form:
Ryan J. Lukson DPA

Special Terms and Conditions

1. Definitions

The words and phrases listed below, as used in this Agreement, shall each have the following definitions:

a. "County" means Benton County.

b. "DCYF" means the Department of Children, Youth, and Families.

c. "Juvenile Rehabilitation" or "JR" means the Division under the Department of Children, Youth, and Families.

2. Purpose

The purpose of this Agreement is for the County to provide detention services at the County's jail located at the Benton County Justice Center, 7122 W. Okanogan Place, Bldg. B, Kennewick, WA 99336 to DCYF, by and through the JR, for youth eighteen (18) years old, or older. JR is solely responsible for determining what youths are legally permitted to be housed in the County's jail. Such use shall be solely for the purpose of incarcerating youth otherwise subject to incarceration at JR facilities and shall be further subject to all terms and conditions contained herein.

3. Data Security Requirements – Exhibit A. The Contractor shall protect, segregate, and dispose of data from DCYF as described in Exhibit A.

4. Statement of Work-Exhibit B. The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in Exhibit B-Statement of Work.

5. Billing and Payment

(a) The County may bill JR on the 15th day of each month for all amounts due to the County under this Agreement for the services rendered in the prior calendar month. Payment shall be due from JR within 30 days of receipt. Account balances overdue 30 days or more will be subject to a service charge of 1% per month (12% per annum). Should it become necessary, the JR shall pay all collection costs associated with late payments.

(b) The County shall submit an A-19 Invoice Voucher, or other JRA pre-approved invoice document, to DCYF each month for services provided. The invoice shall describe and document the following:

1) Date and time period of service(s) performed;
2) Name or other client identifier; and
3) Description of work performed.

(c) Payment shall be considered timely if made by DCYF within 30 days after the receipt of the properly completed invoice from the County.

(d) Payment shall be sent to the County's address on page one of this Agreement.

(e) The County accepts the DCYF payment as the sole and complete payment for the services provided under this contract.

(f) DCYF shall not reimburse the County for authorized services not provided to clients, or for services provided which are not authorized or are not provided in accordance with Exhibit B-Statement of Work. If DCYF pays the County for services authorized but not provided by the County in accordance with this Agreement's Statement of Work, the amount paid shall be considered to be an overpayment.

(g) If this Contract is terminated for any reason, DCYF shall pay for only those services authorized and provided through the date of termination.

6. Background Checks and Sexual Misconduct

Background Check/Criminal History - In accordance with Chapters 388-700 WAC (JR-Practices & Procedures), 72.05 RCW (Children & Youth Services), and by the terms of this Agreement, County and each of its employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile must be cleared through a JR approved criminal history and background check. In addition, County, each of their employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile, may be required to be cleared through a JR approved criminal history and background check. The County may forgo this requirement if the County provides a letter that certifies all employees, subcontractors, and/or volunteers, have or will go through a criminal history and background check prior to access to a youth.

By execution of this Agreement, County affirms that County, each of its employees, subcontractors, and/or volunteers, who may or will have regular access have not been convicted of any of the following: Any felony sex offense as defined in 9.94A.030 RCW (Sentencing Reform Act-Definitions) and 9A.44.130 RCW (Sex Offenses);

Any crime specified in Chapter 9A.44 RCW (Sex Offenses) when the victim was a juvenile in the custody of or under the jurisdiction of JR; or

Any violent offense as defined in 9.94A.030 RCW (Sentencing Reform Act-Definitions).

County must require that current employees, volunteers, and contracted service providers who are authorized for regular access to a juvenile(s) report any guilty plea or conviction of any of the above offenses. The report must be made to the person's supervisor within seven (7) days of conviction and any person who have reported a guilty plea or conviction for one or more of these offenses must not have regular access to any offender. County shall also document background checks/criminal history clearances for monitoring purposes.
Sexual Misconduct - 13.40.570 RCW (Sexual misconduct by state employees, contractors) states that when the Secretary of the Department of Social and Health Services (hereinafter "Secretary") has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an offender has occurred, the Secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any offender.

By execution of this Agreement, County affirms that County, each of its employees, subcontractors, and/or volunteers are knowledgeable about the requirements of 13.40.570 RCW (Sexual misconduct by state employees, contractors) and of the crimes included in 9A.44 RCW (Sex Offenses).

In addition, the Secretary shall disqualify for employment with a contractor in any position with access to an offender, any person:

Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

Convicted of any crime specified in chapter 9A.44 RCW (Sex Offenses) when the victim was an offender

If any actions are taken under 13.40.570 RCW, subsections (3) or (4), the County must demonstrate to the Secretary they have greatly reduced the likelihood that any of its employees, volunteers, or subcontractors could have sexual intercourse or sexual contact with any offender. The Agreement shall not be renewed unless the Secretary determines significant progress has been made.

7. PREA Requirements

In accordance with the Federal Prison Rape Elimination Act (PREA) of 2003, 28 CFR Part 115, Subpart A, the County shall:

a. Adopt and be in compliance with the PREA standards for preventing, detecting and responding to sexual misconduct in adult prisons and jail.

b. Allow the JR reasonable access to the County Jail so it may ensure to its satisfaction that the Contractor is in compliance with the PREA standards.

c. Reference is located at: http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf

8. Compliance with County Policies and Procedures

The County shall comply with all Benton County Jail policies and procedures throughout the duration of this Agreement.

9. Disputes

Either the County or JR may initiate a dispute claim for consideration by the other party, as it relates to the terms of this Agreement, or to the services provided by the County under the terms of this Agreement. Attempts to resolve disputes shall initially be addressed and be resolved at the lowest level possible between the County and the JR.

10. Mailing and Contact Address

All written notices, billings, reports and correspondence required or allowed by this Agreement shall be sent to the following:

Procurement/Contract Coordinator:
Lisa Small
Benton County Purchasing Department
7122 W Okanogan Place, Bldg. A
Kennewick, WA 99336

Chief:
Scott Souza
Benton County Chief of Corrections
7122 W. Okanogan Place, Bldg. B
Kennewick, WA 99336
Tel: (509) 837-1451 Ext. 3787
Scott.Souz@co.benton.wa.us

JR Region 1 Administrator:
Lori Kesl or Designee
1626 West Boone Avenue
Spokane, WA 99201
Tel: (509) 363-5031
lori.kesl@dcyf.wa.gov

Notices shall be effective immediately upon receipt if delivered in person. If notice is delivered by US Mail, then it shall be effective three days following the day when it is deposited, postage prepaid, in an official mail receptacle, properly addressed to the other party's contact address and person. If notice is made by facsimile, then it shall be effective at the time of start of business, on the next business day following successful transmission.

Each party must have a contact person at all times this Agreement is in force. Parties may change their contact person by submitting notice of such change to the other party in writing.

11. Medical Costs and Treatment

(a) Services Provided. Upon transfer of custody to the County, the County shall provide or arrange for the JR's youths to receive all necessary medical, psychiatric and dental services in accordance with the policies and procedures of the County and applicable law.

(b) Cost Responsibility. The JR shall be responsible for, or shall pay for the cost of all medication prescribed for any of its youths. The JR shall also pay for all costs associated with the delivery of medical, psychiatric and dental services provided to a youth which, in the sole discretion of the County, require the services of a third-party medical, dental or psychiatric services provider, and for all emergency medical, dental or psychiatric services, wherever provided. These costs shall be paid directly to the provider or as a reimbursement to the County, as directed by the County. The County shall bill the JR only for the actual costs charged to the County and shall provide an itemization with such billing.

(c) Notice. Except in case of situations deemed an emergency at the sole discretion of the County, the County shall notify the JR's contact person in writing, by mail or facsimile, prior to transfer of a JR's youth to a medical, dental or psychiatric provider outside of the County jail or to a hospital for medical, psychiatric or dental services.

(d) Pre-Confinement Consents or Refusals. If a JR youth has either 1) received medical, psychiatric or dental treatment; or 2) refused any medical, psychiatric or dental treatment, from the JR or any third-party provider of such services before transfer for confinement in the County jail, the JR shall provide to the County all written verification of any authorization of or refusal to authorize care or treatment for such youth(s).

(e) Return for Medical Services. Nothing herein shall preclude JR from retaking custody of an ill or injured youth by retaking custody of such youth at the County jail. Such retaking of custody shall be preceded by written notice at least 24 hours in advance of the desired time of retaking custody. However, in situations where the County, in its sole discretion determines, that a youth requires emergency medical care, the County shall have the right to arrange for emergency medical services (at JR's expense) notwithstanding a request from JR to retake custody of the youth.

(f) Records. The County shall keep records of all medical, psychiatric or dental services it provides to a youth. Upon resumption of custody by the JR&RA, the JR shall receive a copy or summary of the medical, psychiatric or dental records held by the County for a youth of the JR.

(g) Transportation of Medications and Records. The JR agrees to transport with the youth, any and all applicable medical records, current care instructions, as well as an appropriately labeled 5-day supply of the youth's current non-controlled substance medications, and any previously issued over-the-counter medication. The medical record shall at a minimum include the youth's name, JR number, date of birth, any known allergies, current medication list and description of current medical problem(s), the in facility medical care provided, and the facility health staff contact information.

12. Transportation of JR Youth

(a) Regular Transport. For all youths accepted by the County, the JR shall be responsible for transporting youth to and from the Benton County Jail for all purposes including but not limited to the youth's initial detention and release from the Benton County Jail as well as regular appointments, court hearings, medical appointments, and hospital stays.

(b) Additional Transport with Costs. For any additional transports by the County required by court order or made at the JR's request, the JR shall reimburse the County for all costs associated with such transport; provided, this Agreement shall not be deemed to create an obligation of the County to provide any transports.

(c) JR Transport. In the event either party requests that custody of a youth be transferred back to the JR, in accordance with any such right set forth in this Agreement, the JR shall transport said youth in accordance with Section 12 (a) or (b) above. If the JR desires to take custody of a youth, and the County does not agree to transport the youth, the JR shall take custody of the youth at the County jail and handle all transport responsibility. The JR shall cause written notice of any such expected transport by the JR to be received by the County at least 24 hours before the time of such transport.

13. Transfer of Custody

(a) Commencement of Custody by County. JR youths shall not be deemed to be in the legal custody of the County until Benton County Corrections Department takes physical control of such youth. The County shall not be required to take such control of a youth until the JR has delivered copies of all youth records pertaining to the youth's incarceration by the JR or its agent, including a copy of the youth's medical records held by the JR or its agent, and a copy of the document that provides legal authority for the incarceration of the youth. If additional information is requested by the County regarding a particular youth, the parties shall mutually cooperate to obtain such information. In the absence of documentation and information satisfactory to the County, the receiving officer may refuse to accept the JR's youth for confinement. County shall not be required to take custody of or assume control of or responsibility for any property of the youth, except for such property that the County allows youths to keep in their cell. The JR's officers delivering a youth to the transportation location shall be responsible for ensuring that all paperwork is in order and that all property allowed to be transported with the youth is properly packaged. At such time, and only at such time, as all paperwork and property are in order, will the County take physical control of and assume custody of and responsibility for the JR's youth to be confined.

(b) Further Transfer of Custody. Except as otherwise allowed by Section 15 of this Agreement, the County shall not be required to, under any circumstances, transfer custody of any youth confined pursuant to this Agreement to any agency other than to the JR without the written authorization from a court of competent jurisdiction. Even with such authorization, such transfer to another agency shall be at the discretion of County and shall be further subject to the provisions of Section 12 above.

(c) Responsibilities Upon Assumption of Custody. During such confinement, the County shall provide and furnish or arrange for all necessary medical and hospital services and supplies in accordance with Section 11 of this Agreement.

(d) Resumption of Custody by JR. The JR shall be deemed to have resumed legal custody of a youth previously transferred to the County for incarceration pursuant to this agreement, upon either presentation of such youth to the JR at the facility identified by the JR, or upon the JR's officers taking physical control of a youth at any other location.

14. Right to Refuse/Return a Youth

As set forth in Exhibit B-Statement of Work, the County shall accept a youth requested for detention by the JR at its sole discretion. To that effect, the County shall have the right to refuse to accept, or to return, any of the JR's youths at its sole discretion, for any reason, including but not limited to the following:

(a) Pending Medical Needs. The County shall have the right to refuse to accept any JR youth who, at the time of presentation of drop off to the County jail for confinement, is without the required medication and records as provided in Section 11(g), or appears as determined by the County, in need of medical, psychiatric or dental attention, until the JR has provided medical, psychiatric or dental treatment to the youth to the satisfaction of the County.

(b) Problematic Physical History or Behavior and New Medical Conditions. The County shall have the right to refuse to accept, or to return, any JR's youth that, in the sole judgment of the County, has a history of serious medical problems, presents a serious risk of escape, presents a serious risk of injury to other persons or property, represents a risk to the orderly and safe operation of the jail, or develops an illness or injury that may adversely affect or interfere with the operations of the County Jail. Any special transport costs, medical or otherwise, incurred in the return of JR's youth under this subsection shall be the responsibility of the JR. The County agrees to make immediate notification to the JR and forward copies of any and all incident reports, disciplinary reports, findings and actions, including documentation of removal of earned early release credits to the JR.

(c) Pending Charges. The County shall further have the right to refuse to accept or return any youth from the JR for confinement that has misdemeanor, gross misdemeanor or felony charges pending.

(d) Claims/Litigation. The County shall have the right to refuse to accept or to return any JR youth that files a claim or lawsuit against the County or indicates intent to do so.

(e) Return for Release. The County shall have the right to return any JR youth at any time within six (6) days of the scheduled completion of a sentence of confinement by such youth.

(f) Return Due to Upcoming Expiration. The JR shall have the obligation to begin picking up JR's youths during the thirty days preceding expiration of this Agreement so that all youths may be transported pursuant to the regular transports under Section 12(a).

(g) Notice of Return and Transport. The County shall provide written notice, via facsimile or mail, of the anticipated return of a youth under this Section 14 to the contact person identified herein for the JR & RA. JR shall transport the youth(s) authorized for return under this Section 14, in accordance with Section 12 (a) and within seven days of such notice.

15. Removal from Jail - Other Grounds

The JR's youths may be removed from the County jail for the following reason(s):

(a) Request by the JR. Upon written request of the JR for transfer of custody back to the JR. In such case, the youth will either be transported by the JR or by the County pursuant to Section 12 above.

(b) Court Order. By order of a court having jurisdiction over a JR's youth, transport shall be according to the terms expressed in the court order, or by the JR or the County pursuant to Section 12 above.

(c) Treatment Outside of Jail. For medical, psychiatric or dental treatment or care not available within the County jail, or which, in the County's sole discretion, requires the services of a third-party medical, psychiatric or dental care provider at a location outside of the Jail.

(d) Catastrophe. In the event of any catastrophic condition presenting, in the sole discretion of the County, an eminent danger to the safety of the youth(s) or personnel of the County. In such case, the County will inform the JR, at the earliest practicable time, of the whereabouts of the youth(s) so removed and shall exercise all reasonable care for the safekeeping and custody of such youth(s).

16. Transfer of Youth Upon Termination of Agreement

Termination by JR or the County. In the event of a notice of termination from the JR or the County in accordance with Section 26 below, the JR agrees to transport according to Section 12 (a) until all youths are returned to the JR before the termination date of the Agreement. Release dates schedule shall be determined between the County and the JR according to the youth's normal release date or earlier if necessary to transport prior to the termination date. Until such removal, the JR shall pay the compensation and costs set forth herein related to the housing of such youth(s). The County shall retain all rights hereunder, notwithstanding such termination, until all of the JR's youths are removed from the jail. If the population of JR youth is so great, or the timing of notice of termination is such that transports pursuant to Section 12 (a) will not be completed prior to the anticipated termination date, then the County may transport youths incarcerated at the Benton County Jail at the JR's sole expense.

17. Youth Rights, Accounts and Programs

(a) Discipline. With respect to the JR's youths, the County shall maintain and manage disciplinary issues and shall administrator sanctions in accordance with Benton County's policies and procedures. No discipline prohibited by federal or state law will be permitted. The disciplinary policies and rules of the County jail shall apply equally to youths confined pursuant to this Agreement and to those otherwise confined. The County agrees to provide JR notification within 3 days of any disciplinary action on any JR youth and forward copies of any and all incident reports, disciplinary reports, findings and actions, including documentation of removal of earned early release credits to the JR.

(b) Youth Accounts. The County shall establish and maintain an account for each youth received from the JR and shall credit to such account all money received from a youth or from the JR on behalf of a youth. The County shall make disbursements from such accounts by debiting such accounts in accurate amounts for items purchased by the youth for personal needs. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. At termination or expiration of this Agreement, a youth's return to the JR or death or escape of a youth, the County shall submit a check to each youth eligible for reimbursement.

(c) Programs. The County shall provide the JR's youths with access to all educational, recreational and social service programs currently offered at the County jail.

(d) Inability to Serve Time Outside of Facility. In accordance with Exhibit B-Statement of Work in this Agreement, the JR's youths shall not be allowed to leave the jail for participation in correctional work crews, work release programs, home monitoring or any other program in which other youth are sometimes allowed to leave the physical confines of the jail as part of their sentence.

18. Access to Facility and Prisoners

(a) Access to Facility. JR shall have the right to inspect, at mutually agreeable times, the County jail in order to confirm such jail maintains standards acceptable to the JR and that its youths are treated appropriately. The County agrees to manage, maintain and operate its facilities consistent with all

applicable federal, state and local laws applicable to the location of the jail in Benton County, Washington.

(b)Access to Youths. JR personnel shall have the right to interview youths from the JR at any reasonable time within the jail. JR officers shall be afforded equal priority for use of jail interview rooms with other departments.

19. Escapes and Deaths

(a) Escapes. In the event of an escape by a JR's youth from the County jail, the JR will be notified by phone and in writing as soon as practical. The County shall have the primary authority to direct the investigation and to pursue the youth within its jurisdiction. Any costs related to the investigation and pursuit within its jurisdiction will be the responsibility of the County. The County shall not be required to pursue and return the JR's escaped youths from outside of the County's jurisdiction.

(b) Deaths.

(1) In the event of a death of a JR youth in the County jail, the JR shall be promptly notified by phone and in writing. The Kennewick Police Department and the Benton County Coroner will investigate the circumstances. The JR may, if it wishes, join in the investigation and receive copies of all records and documents in connection with the investigation.
(2) The County shall, subject to the authority of the Benton County Coroner, follow the written instructions of the JR regarding the disposition of the body. Such written instructions shall be provided within three working days of receipt by the JR of notice of such death. All expenses related to necessary preparation of the body and transport charges shall be the responsibility of the JR. With written consent from the JR, the County may arrange burial and all matters related or incidental thereto, and the JR shall pay all such expenses. This paragraph deals with relations between the parties to this Agreement and shall not affect the liability or rights of any relative or other person for the disposition of the deceased or any expenses connected therewith.

20. Posting of Bail

The County shall not serve as agent for the JR in receipt of any bail bonds or any monies posted for or by a JR's youth. Any such bonds or monies will be posted at the JR. In the event bail is posted for a JR youth, timely and appropriate notification will be made to the County.

21. Record Keeping

The County agrees to maintain a system of record keeping relative to the booking and confinement of each JR youth consistent with the record keeping by the County for all other inmates. The County shall make copies of said records available to the JR upon its request. Monthly medical charges will be itemized indicating all medical costs and procedures performed. JR will be bound by all confidentiality laws applicable to jail and/or medical records.

22. Indemnification and Insurance

(a) Indemnification of JR. The County shall indemnify the JR, its officers, agents and employees, from and against any claim, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising from the County's performance under this Agreement; provided, to the extent the claim, damages, losses and expenses are caused by intentional acts of or by the concurrent negligence of JR, its officers, agents, or employees, the County's indemnification

obligation hereunder shall be limited to the County's proportionate share of liability as agreed to by the parties to this Agreement or determined by a court of competent jurisdiction.

(b) Indemnification of County. JR shall indemnify the County, its officers, officials, agents and employees, from and against any claim, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising from JR's performance under this Agreement; provided, to the extent the claim, damages, losses and expenses are caused by intentional acts of or by the concurrent negligence of the County, its officers, agents, or employees, JR's indemnification obligation hereunder shall be limited to JR's proportionate share of liability as agreed to by the parties to this Agreement or determined by a court of competent jurisdiction.

(c) Insurance Requirement. Each party shall obtain and maintain liability coverage in minimum liability limits of Two Million Dollars ($2,000,000) per occurrence and Three Million Dollars ($3,000,000) in the aggregate for its conduct creating liability exposures related to confinement of youth(s), including general liability, errors and omissions, auto liability. The insurance policy shall provide coverage for those events that occur during the term of the policy, despite when the claim is made. Self-insurance or participation in a risk pool shall be sufficient to comply with the provisions of these insurance requirements.

(d) Certificate of Insurance. Each party to this Agreement agrees to provide the other with evidence of insurance coverage in the form of either 1) a certificate from a solvent insurance provider confirming coverage from a solvent insurance pool which is sufficient to address the insurance obligations set forth above; or 2) written evidence of participation in a program of self-insurance or participation of a risk pool that is sufficient to address the insurance obligations set forth above.

23. Non-Discrimination Policy

The County and JR agree not to discriminate in the performance of this Agreement on the basis of race, sexual orientation, 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, or any other classes of persons protected from discrimination by any Federal or State law.

24. Administration/Disposal of Property

This Agreement is executed in accordance with the authority of Chapter 39.34 RCW, the Inter-local Cooperation Act. Pursuant to the provisions of RCW 39.34.030, the Benton County Corrections Department shall be responsible for administering the confinement of youths hereunder. No real or personal property will be jointly acquired by the parties under this Agreement. All property owned by each of the parties shall remain its sole property to hold and dispose of in its sole discretion.

25. Waiver of Rights

No waiver of any right under this Agreement shall be effective unless made in writing by an authorized representative of the party to be bound thereby. Failure to insist upon full performance or failure to enforce breach of this agreement on any occasion shall not constitute consent to or waiver of any continuation of nonperformance or any later nonperformance; nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto.

26. Termination

This Agreement may be terminated prior to expiration by written notice from either party delivered by regular mail to the contact person at address set forth herein. Termination by said notice shall become effective ninety (90) days after receipt of such notice. The notice shall set forth the reason the party wishes to terminate the Agreement and the specific plan for accommodating the affected youth(s), if any.

27. Duration

This Agreement shall be effective July 1, 2021 and shall continue through June 30, 2023, unless terminated earlier under the terms set forth in Section 26 above. This Agreement may be renewed for successive periods of one year by written addendum executed by all parties hereto under such terms as the parties agree in writing. Nothing in this Agreement shall be construed to make it necessary for JR to continuously house youth(s) with the County.

28. Governing Law

The parties hereto agree that, except where expressly otherwise provided, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to this Agreement and a youth's confinement under this Agreement.

29. Miscellaneous.

In providing these services to JR, the County is an independent contractor and neither its officers, agents, or employees are employees of JR for any purpose including responsibility for any federal or state tax, industrial insurance or Social Security liability. No provision of services under this Agreement shall give rise to any claim of career service or civil service right, which may accrue to an employee of JR under any applicable law, rule, or regulation.

EXHIBIT A

DATA SECURITY REQUIREMENTS

ORGANIZATION OF DATA SECURITY REQUIREMENTS

1. Definitions
2. Authority
3. Scope of Protection
4. Compliance with Laws, Rules, Regulations, and Policy
5. Administrative Controls
6. Authorization, Authentication, and Access
7. Protection of Data
8. Method of Transfer
9. System Protection
10. Data Segregation
11. Confidentiality Protection
12. Data Disposition
13. Data shared with Subcontractors
14. Notification of Compromise or Potential Compromise
15. Breach of Data
16. Public Disclosure

1. Definitions. The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:

a. "AES" means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf).

b. "Authorized Users(s)" means an individual or individuals with a business need to access DCYF Confidential Information and who has been authorized to do so.

c. "Business Associate Agreement" means an agreement between DCYF and a contractor who is receiving Data covered under the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996. The agreement establishes permitted and required uses and disclosures of protected health information (PHI) in accordance with HIPAA requirements and provides obligations for business associates to safeguard the information.

d. "Category 4 Data" is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. Data classified as Category 4 includes but is not limited to data protected by: the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), 45 CFR Parts 160 and 164; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 CFR Part 99; Internal Revenue Service Publication 1075 (https://www.irs.gov/pub/irs-pdf/p1075.pdf); Substance Abuse and Mental Health Services Administration regulations on Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; and/or Criminal Justice Information Services, 28 CFR Part 20.

e. “Cloud” means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor. Physical storage of data in the cloud typically spans multiple servers and often multiple locations. Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities. Examples of consumer grade storage would include iTunes, Dropbox, Box.com, and many other entities. Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, and Rackspace.

f. “Confidential Information” means to encode Confidential Information into a format that can only be read by those possessing a “key”; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

g. “Data” means DCYF’s records, files, forms, information and other documents in electronic or hard copy medium. “Data” includes, but is not limited to, Confidential Information, Category 4 Data, Sensitive Personal Information, or Materials.

h. “Encrypt” means to encode Confidential Information into a format that can only be read by those possessing a “key”; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

i. “FedRAMP” means the Federal Risk and Authorization Management Program (see https://www.fedramp.gov/), which is an assessment and authorization process that federal government agencies have been directed to use to ensure security is in place when accessing Cloud computing products and services.

j. “Hardened Password” means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.

k. “Mobile Device” means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, or Windows Phone. Mobile Devices include smart phones, most tablets, and other form factors.

l. “Multi-factor Authentication” means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. “PIN” means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.

m. “Portable Device” means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.

n. “Portable Media” means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.

o. “Physically Secure” means that access is restricted through physical means to authorized individuals only.

p. “Secure Area” means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.

q. “Sensitive Personal Information” means personally identifying information including, but not limited to: names, addresses, health information, GPS [Global Positioning System] coordinates, telephone numbers, email addresses, social security numbers, driver’s license numbers, or other personally identifying information, and any financial identifiers.

r. “Staff” means the Contractor’s directors, officers, employees, and agents who provide goods or services pursuant to this Contract. “Staff” also means Subcontractors’ directors, officers, employees, and agents who provide goods or services on behalf of the Contractor. The term “Staff” also means the Subcontractors’ directors, officers, employees, and agents who provide goods or services on behalf of the Subcontractor and Contractor.

s. Trusted Network” means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DCYF Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.

t. “Unique User ID” means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.

2. **Authority**. The security requirements described in this document reflect the applicable requirements of Standard 141.10 (https://ocio.wa.gov/policies) of the Office of the Chief Information Officer for the State of Washington, and of the DCYF Information Security Policy and Standards Manual.

3. **Scope of Protection.** Applies to Confidential Information, Data, Category 4 Data, Sensitive Personal Information, and Materials related to the subject matter of this Contract that is delivered, received, used, shared, acquired, created, developed, revised, modified, or amended by DCYF, the Contractor, or Subcontractors.

4. **Compliance with Laws, Rules, Regulations, and Policies.** For Confidential Information, Data, Category 4 Data, Sensitive Personal Information, and Materials that is delivered, received, used, shared, acquired, created, developed, revised, modified, or amended in connection with this Contract the parties shall comply with the following:

a. All federal and state laws and regulations, as currently enacted or revised, regarding the protection, security, and electronic interchange of Confidential Information, Data, Category 4 Data, Sensitive Personal Information, and Materials; and

b. All federal and state laws and regulations, as currently enacted or revised, regarding the use, disclosure, modification or loss of Confidential Information, Data, Category 4 Data, Sensitive Personal Information, and Materials.

5. Administrative Controls. The Contractor must have the following controls in place:

a. A documented security policy governing the secure use of its computer network, mobile devices, portable devices, as well as, any form of paper/hard copy documents, and which defines sanctions that may be applied to Contractor staff for violating that policy.

b. Security awareness training for all staff, presented annually, as follows:

(1). Contractor staff responsibilities under the Contractor's security policy;

(2). Contactor staff responsibilities as outlined under contract Exhibit A; and

(3). Must successfully complete the DCYF Information Security Awareness Training, which can be taken on this web page: https://www.dcyf.wa.gov/sites/default/files/pdf/Security-in-Contracts.pdf

6. Authorization, Authentication, and Access. In order to ensure that access to the Data is limited to authorized staff, the Contractor must:

a. Have documented policies and procedures that:

(1). Govern access to systems; and

(2). Govern access to paper/hard copy documents and files.

b. Restrict access through administrative, physical, and technical controls to authorized staff;

c. Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one staff member to whom that account is assigned. For purposes of non-repudiation, it must always be possible to determine which staff member performed a given action on a system housing the Data based solely on the logon ID used to perform the action;

d. Ensure that only authorized users are capable of accessing the Data;

e. Ensure that an employee's access to Data is removed within twenty-four (24) hours:

(1). Upon suspected compromise of the user credentials;

(2). When their employment, or the contract under which the Data is made available to them, is terminated;

(3). When they no longer need access to the Data to fulfill the requirements of the Contract; and

(4). When the staff member has been suspended from performing services under this Contract.

f. Have a process to review and verify, quarterly, that only authorized users have access to systems

containing Confidential Information, Data, Category 4 Data, Sensitive Personal Information, or Materials;

g. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:

(1). A minimum length of eight (8) characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point;

(2). That a password does not contain a user's name, logon ID, or any form of their full name;

(3). That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words; and

(4). That passwords are significantly different from the previous four (4) passwords. Passwords that increment by simply adding a number are not considered significantly different.

h. When accessing Confidential Information, Data, Category 4 Data, Sensitive Personal Information, and Materials from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures that include:

(1). Ensuring mitigations applied to the system don't allow end-user modification;

(2). Not allowing the use of dial-up connections;

(3). Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix;

(4). Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network;

(5). Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than fifteen (15) minutes of inactivity; and

(6). Ensuring use of Multi-Factor Authentication to connect from the external end point to the internal end point.

i. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:

(1). The PIN or password must be at least five (5) letters or numbers when used in conjunction with at least one other authentication factor;

(2). Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable); and

(3). Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable).

j. If the Contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:

(1). Be a minimum of six (6) alphanumeric characters;

(2). Contain at least three unique character classes (upper case, lower case, letter, number); and

(3). Not contain more than a three consecutive character run. Passcodes consisting of (12345, or abcd12 would not be acceptable).

k. Render the device unusable after a maximum of five (5) failed logon attempts.

7. Protection of Data. The Contractor agrees to store Data on one or more of the following media and protect the Data as described:

a. **Hard disk drives**. For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.

b. **Network server disks**. For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

c. **Optical discs (CDs or DVDs) in local workstation optical disc drives**. Data provided by DCYF on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers**. Data provided by DCYF on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

e. **Paper documents**.

(1). All paper documents must be protected by storing the records in a Secure Area, with access controlled through use of a key, card key, combination lock, or comparable mechanism, and which is only accessible to authorized personnel.

(2). When being transported outside of a Secure Area, paper documents must be under the physical control of Contractor staff with authorization to access the Data.

(3). Paper documents will not be secured or stored in a motor vehicle any time a staff member is away from the motor vehicle.

(4). Paper documents will be retained in a Secure Area, per the state of Washington records retention requirements.

f. **Data storage on portable devices or media**.

(1). Except where otherwise specified herein, Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:

(a). Encrypt the Data; and

(b). Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics; and

(c). Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is fifteen (15) minutes; and

(d). Apply administrative and physical security controls to Portable Devices and Portable Media by:

i. Keeping them in a Secure Area when not in use;

ii. Using check-in/check-out procedures when they are shared; and

iii. Taking quarterly inventories.

(2). When being transported outside of a Secure Area, Portable Devices and Portable Media with Data must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted. Portable Devices and Portable Media will not be secured or stored within motor vehicles at any time the staff member is away from the motor vehicle.

g. **Data stored for backup purposes**.

(1) DCYF Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DCYF Confidential Information still exists upon it, refer to Section 12 Data Disposition.

(2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DCYF Confidential Information still exists upon it, refer to Section 12 Data Disposition.

h. **Cloud storage**. Data requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DCYF nor the Contractor has control of the environment in which the Data is stored. For this reason:

(1). Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:

(a). Contractor has written procedures in place governing use of the Cloud storage and Contractor attests in writing that all such procedures will be uniformly followed;

(b). The Data will be Encrypted while within the Contractor network;

(c). The Data will remain Encrypted during transmission to the Cloud;

(d). The Data will remain Encrypted at all times while residing within the Cloud storage solution;

(e). The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor and/or DCYF;

(f). The Data will not be downloaded to non-authorized systems, meaning systems that are not on either the DCYF or Contractor networks;

(g). The Data will not be decrypted until downloaded onto a computer or portable devise within the control of an Authorized User and within either the DCYF or Contractor's network; and

(h). Access to the cloud storage requires Multi Factor Authentication or Two Step Authentication.

(2). Data will not be stored on an Enterprise Cloud storage solution unless either:

(a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or

(b) The Cloud storage solution used is FedRAMP certified.

(3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.

8. Method of Transfer.

a. All Data transfers to or from the Contractor shall only be made by using the secure data.wa.gov portal provided by the state of Washington with login and hardened password security.

b. The Contractor shall use an encrypted email account for electronic submissions which contain Confidential, and Personal Information, as defined in the General Terms and Conditions. Information regarding encrypted email accounts can be obtained at DCYF's website, located at: https://www.dcyf.wa.gov/services/child-welfare-providers/encrypted-email.

9. System Protection. To prevent compromise of systems which contain DCYF Data or through which that Data passes:

a. Systems containing Data must have all security patches or hotfixes applied within three (3) months of being made available;

b. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes;

c. Systems containing Data shall have an Anti-Malware application, if available, installed; and

d. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

10. Data Segregation.

a. Data must be segregated or otherwise distinguishable from non-DCYF data. This is to ensure that when no longer needed by the Contractor, all Data can be identified for return or destruction. It also aids in determining whether Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation:

(1). Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DCYF Data; and/or;

(2). Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to Data; and/or;

(3). Data will be stored in a database which will contain no non-DCYF data; and/or;

(4). Data will be stored within a database and will be distinguishable from non-DCYF data by the value of a specific field or fields within database records; and

(5). When stored as physical paper documents, Data will be physically segregated from non-DCYF data in a drawer, folder, or other container.

b. When it is not feasible or practical to segregate Data from non-DCYF data, then both the Data and the non-DCYF data with which it is commingled must be protected as described in this exhibit.

11. Confidentiality Protection. To safeguard confidentiality, and ensure that access to all Data is limited to authorized staff, the Contractor must:

a. Ensure that the Contractor's Staff, Subcontractors, and the Subcontractors' Staff use Data solely for the purposes of accomplishing the services set forth in this Contract;

b. Ensure that no Data is released, disclosed, published, modified, transferred, sold, or otherwise made known to unauthorized persons without the prior written consent of the individual named or as otherwise authorized by law;

c. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information of a minor except as provided by law or with the prior written consent of the minor's parent, legal representative or guardian. If a child is a dependent of Washington State, then prior written consent must be obtained from DCYF; and

d. Require that the Contractor's Staff and Subcontractors' Staff having access to Data sign a Statement of Confidentiality and Non-Disclosure Agreement (DCYF Form 03-374B), which can be found at this webpage: https://www.dcyf.wa.gov/forms. Data shall not be released to the Contractor's Staff person(s) or Subcontractors' Staff person(s) until the following conditions have been met:

(1). DCYF approves the Contractor's Staff person(s) or Subcontractors' Staff person(s), to work on this Contract; and

(2). If requested by DCYF, Contractor must submit the signed original Statement of Confidentiality and Non-Disclosure Agreement, signed by the Staff person(s) or Subcontractors' Staff person(s).

12. **Data Disposition**. Contractor is responsible to ensure that all Data, including paper and electronic records, is retained pursuant to Washington State retention standards. Prior to the destruction of any Data, the DCYF Contact specified for this contract, must be notified in writing and permission given in writing to destroy any such Data. When the contracted work has been completed or when the Data is no longer needed, Data shall be retained pursuant to the retention standards required by chapter 40.14 RCW, or returned to DCYF.

a. Once written permission to destroy Data has been granted by DCYF to the Contractor, the following acceptable methods of destruction must be used:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding

b. If any Data is required to be destroyed pursuant to this Section, within fifteen (15) calendar days after completion of such destruction the Contractor shall complete and deliver to DCYF a signed Certification of Data Disposition, which can be found at this webpage: https://www.dcyf.wa.gov/forms.

13. **Data shared with Subcontractors**. If Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the subcontractor must be submitted to the DCYF Contact specified for this contract for review and approval.

14. **Notification of Compromise or Potential Compromise**. The compromise or potential compromise of DCYF shared Data must be reported to the DCYF Contact designated in the Contract within one (1) business day of discovery. If no DCYF Contact is designated in the Contract, then the notification must be reported to the DCYF Privacy Officer at: dcyfprivacyofficer@dcyf.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DCYF.

15. **Breach of Data.** In the event of a breach by the Contractor of this Exhibit and in addition to all other

rights and remedies available to DCYF, DCYF may elect to do any of the following:

a. Terminate the Contract;

b. Require that the Contractor return all Data to DCYF that was previously provided to the Contractor by DCYF; or

c. Suspend the Contractor's access to accounts and other information.

16. Public Disclosure.

a. If a third party requestor seeks information of the Contractor for DCYF Data, a copy of the notice/request shall be emailed to DCYF by way of the DCYF Contracts and Procurement Office email at dcyf.contractdatabreach@dcyf.wa.gov within three calendar (3) days of third party request.

b. DCYF Contracts and Procurement Office will respond to the Contractor on how to proceed with the request within five (5) calendar days of receiving such notification.

Exhibit B

Statement of Work
Jail Services for 18 Years and Older

Organization of Statement of Work

1. Intent of Services
2. Services Provided
3. Consideration
4. Compensation from JR
5. DCYF/JR Program Contact

1. Intent of Services

The purpose of this Agreement is for Benton County to provide detention services at the County's jail located at the Benton County Justice Center, 7122 W. Okanogan Place, Bldg. B, Kennewick, WA 99336 to DCYF, by and through the JR, for youth eighteen (18) years or older.

JR is solely responsible for determining which youth are legally permitted to be housed in the County's jail. Such use shall be solely for the purpose of incarcerating youth otherwise subject to incarceration at JR facilities and shall be further subject to all terms and conditions contained herein.

2. Services Provided

The County shall accept a youth requested for detention by the JR at its sole discretion. This discretion is in addition to the County's rights with respect to certain youths set forth in Sections 14 and 15 of the Special Terms & Conditions. The JR shall only submit youths for confinement under this Agreement who are held 24 hours a day in jail confinement. JR youths will not be eligible for participation in work crew, work release, home monitoring or any other programs in which inmates serve all or part of their sentences outside the confines of a jail.

3. Consideration

Total consideration payable to County for satisfactory performance of the services provided under this Agreement is up to a maximum of **$40,000**. JR and the County shall monitor its total accounts payable to ensure that the County does not provide services in excess of the maximum program agreement amount, and that total billings will not exceed said amount. JR shall inform the County promptly in writing when its cumulative accounts payable reaches 80% of the maximum program agreement amount. If JR fails to notify the County when its accounts payable reaches 80% of the maximum program agreement amount, JR agrees to pay County for any and all services provided in excess of the maximum program agreement amount.

4. Compensation from JR

The contracted activities shall be paid up to the amount specified for the deliverables identified in this Statement of Work and payment shall be made as stated below.

(a) Base Rate. In return for the County's housing of a youth of the JR, the JR shall pay the County seventy-five dollars and zero cents, ($75.00) for every 24-hour period, or portion thereof, that said youth is in the custody of the County. Such time period shall be measured from the time said youth

is transferred to the custody of the County and ends when the JR resumes custody. The County shall provide JR with notice of any rate changes.

(b) Other Costs. The JR shall also pay such other costs as are incurred by County or third parties in incarcerating youths on behalf of JR, as set forth herein, including but not limited to any medical costs required by Section 11 and any other extraordinary costs as mutually agreed upon by all parties.

(c) Booking Fee. The collection of a booking fee from the JR's youths pursuant to RCW 70.48.390 shall be subject to the discretion of the JR and shall not be collected by the County from such youths. JR shall not request or require County to assess such a fee on its behalf.

5. DCYF/JR Program Contact

The Contractor shall notify the DCYF Program Contact listed below for all notices, billings and correspondence, or any questions or issues related to services under this Agreement:

Chad Kline
Program Manager
Juvenile Rehabilitation-Region 1
Chad.Kline@dcyf.wa.gov
PO Box 11205
Yakima, WA 98909
(509) 225-7919

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Contract w/ Fire Protection Specialists for Hood & Fire Extinguisher Inspection & Testing Services
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

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

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

Summary / Background Information

Benton County has multiple fire suppression hoods at various locations around the County that need to be inspected and tested on a semi-annual basis.

Benton County also has fire extinguishers at every location that need to be inspected and tested annually.

Section 5.3.2 of the Procurement, Leasing, and Contracting policy states that qualifications and performance are the primary considerations in selecting the contractor with price secondary or subject to negotiation. The County need not advertise or follow a formal competitive bidding procedure for service contracts.

When possible, the Purchasing Department does attempt to do a formal competitive bidding process.

The Purchasing Department attempted to do a formal competitive bidding process by soliciting contractors through MRSC but were not comfortable with the results.

The Purchasing Department solicited a quote for the requested service from our previous contractor, reviewed it for completeness, and recommends awarding the said contract to Fire Protection Specialists, Liberty Lake, WA.

Fiscal Impact

Amount: $50,000.00 plus WSST

Fund: Fund # 0000-101 – Facilities Department

Recommendation

The Purchasing Department recommends approving the contract with Fire Protection Specialists for hood & fire extinguisher inspection and testing services.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING A CONTRACT TO FIRE PROTECTION SPECIALISTS, LIBERTY LAKE, WASHINGTON FOR HOOD AND FIRE EXTINGUISHER INSPECTION & TESTING SERVICES AND AUTHORIZING THE CHAIRMAN TO SIGN SAID CONTRACT

WHEREAS, Section 5.3.2 of the Procurement, Leasing, and Contracting policy states qualifications and performance are the primary considerations in the selection of the contractor with price being secondary or subject to negotiation, and the County need not advertise or follow a formal competitive bidding procedure for service contracts; and

WHEREAS, when possible though, the Purchasing Department does attempt to do a formal competitive bidding process; and

WHEREAS, the Purchasing Department attempted to do a formal competitive bidding process by soliciting contractors through MRSC but were not comfortable with the results; and

WHEREAS, the Purchasing Department solicited a quote for the requested service from our previous contractor, reviewed it for completeness, and recommends awarding the said contract to Fire Protection Specialists, Liberty Lake, WA; and

WHEREAS, a contract has been prepared, and reviewed and approved as to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division, and has been executed by Fire Protection Specialists; and

WHEREAS, the Purchasing Department recommends the Chairman sign said contract; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Purchasing Department recommendation and awards the contract for Hood & Fire Extinguisher Inspection & Testing Services to Fire Protection Specialists in the amount not to exceed $50,000.00 excluding WSST; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County the said contract with Fire Protection Specialists; and

BE IT FURTHER RESOLVED, the contract shall begin on the date last signed and expire on December 31, 2023.

Dated this 20th day of July 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing Department
C: Auditors, PA, Fire Protection Specialists

P. Schut

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 **FIRE PROTECTIONS SPECIALISTS** , a corporation organized under the laws of the State of Washington with its principal offices at 1611 N Molter Rd, Liberty Lake, WA 99301 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Quote Form
b. Exhibit B – Washington State Prevailing Wage Rates
c. Exhibit C – Background Check Form
d. Exhibit D – Specifications

2. DURATION OF CONTRACT

The term of this Contract shall begin upon execution by both parties and shall terminate December 31, 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.

3. SERVICES PROVIDED

a. The CONTRACTOR agrees to provide Hood & Fire Extinguisher Inspections and Testing Services for all Benton Locations in accordance with the Specifications, attached hereto 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.

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 28.

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:	Janelle Jencke – Service Coordinator
Address:	1611 N Molter Rd
	Liberty Lake, WA 99019
Phone:	509-324-1844
Email:	Janelle@firepro-wa.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, "Quote 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 fifty thousand dollars and zero cents ($50,000.00), excluding 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 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

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:_____

BENTON COUNTY

Jerome Delvin, Chairman
Benton County Commissioners

Approved as to Form:

Eric Andrews, Civil DPA

Date: 7/8/21

FIRE PROTECTION SPECIALISTS

Signature

Service Coordinator
Title

Janelle Jenecke
PRINTED NAME

QUOTE FORM

Benton County Hood & Fire Extinguisher Inspection, Testing, and Servicing

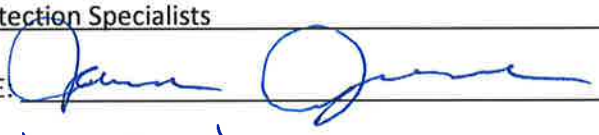
Company Name: **Fire Protection Specialists**

Bid Item	2021 Rate	2022 Rate	2023 Rate
Annual Inspection (All Sizes)	$8.00	$8.50	$9.00
Hydro Static Test (2.5 LB)	$18.00	$18.50	$18.00
Hydro Static Test (5 LB)	$19.00	$19.50	$20.00
Hydro Static Test (10 LB)	$22.00	$22.00	$22.00
Hydro Static Test (20 LB)	$35.00	$35.00	$35.00
Hydro Static Test (K Class)	$75.00	$75.00	$75.00
6 Year Maintenance (2.5 LB)	$15.00	$15.50	$16.00
6 Year Maintenance (5 LB)	$16.00	$16.50	$17.00
6 Year Maintenance (10 LB)	$18.00	$18.00	$18.00
6 Year Maintenance (20 LB)	$28.00	$28.00	$28.00
6 Year Maintenance (K Class)	$75.00	$75.00	$75.00
Ansul Semi Annual Service	$150	$150	$150
FM-200 Semi Annual Service	$775	$775	$775
Hourly Labor Rate	$120 per Tech	$120 per Tech	$120 per Tech
Hourly Labor Rate – FM-200 System	$145 per Tech	$145 per Tech	$145 per Tech

The undersigned hereby certifies that they have examined the location of the work outlined in the request for bids, and has read and thoroughly understands the specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement in accordance with the said scope of work, and the above schedule of rates and prices. **All rates above shall be inclusive of truck charges, per diem, and mileage. The County will not pay any additional charges that are not listed above.**

Respectfully submitted this 7th day of July 2021.

FIRM NAME: Fire Protection Specialists

AUTHORIZED SIGNATURE: 

TYPE OR PRINT NAME: Janelle Jenecke

TITLE: Service Coordinator

STREET ADDRESS: 1611 N Molter

CITY, STATE, ZIP: Liberty Lake, WA 99019

TELEPHONE NO.: (509)324-1844

EMAIL: Janelle@firepro-wa.com

CONTRACTOR'S LICENSE NO.: FIREPSL010CC / FIREPSL014CC

UBI NO.: 601925323

WASHINGTON STATE EMPLOYMENT SECURITY NO.: 06199-00-9

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 July 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

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:

Fire Extinguisher Inspection & Testing Services:

Provide annual inspections and certification tags on all fire extinguishers available for inspection. This will involve walk-throughs in all County buildings for inspections. County Personnel will accompany walk-throughs. Some locations may take more than one walk-through to complete service.

Perform hydrostatic pressure testing on all cylinders and systems requiring such testing.

Allow County personnel to bring fire extinguishers to a local service facility for inspection, testing, or certification if needed.

Provide Fire Extinguisher servicing for all extinguishers needing any maintenance or repairs such as six-year required maintenance.

Ansul System Hoods

2 ANSUL kitchen hood systems require semi-annual inspection, servicing, and as-needed servicing. One is located at the Benton County Fairgrounds Sundowns building, and the other is in the Benton County Jail Kitchen.

Inspections to be performed in accordance with state and local requirements and include, but not limited to, the following:

- Perform visual inspection
- Put system out of service to avoid discharge
- Changing fusible links as required
- Testing the proper operation of system components
- Inspect, test if necessary, bottles of agent and charging gas
- Verify the system activation also activates the fire alarm system
- Replace protective blow-off caps as required
- Document any issues or need for repairs
- Install properly marked equipment service tag
- Inspection report left at the site and sent to TegrisFire for City of Kennewick
-

After inspection, ensure the system has been completed returned to normal operating mode

FM-200 Clean Agent System

There is 1 FM-200 Clean Agent System at the Benton-Franklin Health District Building, located on the 2nd Floor in the Human Services IT closet.

- Perform visual inspection
- Put system out of service to avoid discharge
- Testing the proper operation of system components
- Inspect, test if necessary, bottles of extinguishing agent
- Verify the system activation also activates the fire alarm system
- Document any issues or need for repairs
- Install properly marked equipment service tag
- Inspection report left at the site and sent to TegrisFire for City of Kennewick

After inspection, ensure the system has been completed returned to normal operating mode.

Reporting:

The Contractor shall file all necessary reports with state and local agencies after completing the inspection, testing, or service.

Location of the work:

All fire extinguishers shall be inspected, tested, and serviced as required at the following locations:

1. Benton County Justice Center, 7122 W. Okanogan Pl, Kennewick, WA 99336
2. Benton County Administration Building (Scheduled to be Completed Fall 2021) 7122 W. Okanogan Pl, Kennewick, WA 99336
3. Benton County Coroner, 7110-A W. Okanogan Pl, Kennewick, WA 99336
4. Facilities Maintenance Shop, 7110-B W. Okanogan Pl, Kennewick, WA 99336
5. Benton-Franklin Health District, 7102 W. Okanogan Pl, Kennewick, WA 99336
6. Benton County Animal Control, 1116 N. Grant Pl, Kennewick, WA 99336
7. Benton County Kennewick Annex, 5600 W. Canal Drive, Kennewick, WA 99336
8. Richland Auditor's Office, 101 Wellsian Way, Suite E, Richland, WA 99352
9. Benton County Fairgrounds, 1500 S. Oak St, Kennewick, WA 99336
10. Benton County Courthouse, 620 Market St, Prosser, WA 99350
11. Benton County Planning Annex, 1002 Dudley Ave, Prosser, WA 99350
12. WSU Benton County Extension, 1121 Dudley Ave, Prosser, WA 99350
13. Road Maintenance Shop, 14303 N. Hinzerling Road, Prosser, WA 99350
14. Road Maintenance Shop, 102808 Wiser Parkway, Kennewick, WA 99338
15. Horn Rapids Park, 115803 HWY 225, Benton City, WA 99320
16. Two Rivers Park, 213316 E. Finley Rd, Kennewick, WA 99337
17. Public Services Building, 102806 Wiser Parkway, Kennewick, WA 99338

HOURS OF SERVICE:

Work performed by Contractor at the above County facilities pursuant to this Contract shall be performed between 8:00 am and 4:00 pm Monday thru Friday. Except for that, work at the two road maintenance shops shall be performed between 7:00 am and 2:00 pm.

MEASUREMENT & PAYMENT:

Unit prices for service, inspection, and repair of ANSUL & FM-200 Clean Agent systems shall include the cost of filing necessary reports (TEGRIS Fee).

In the event service or testing is performed on an item whose size is not listed on the proposal, the work will be paid for at the unit price for the next largest item. For example, if a 6-pound unit is serviced, it would be paid for at the same rate as the 10-pound unit.

Labor for work on items not specifically listed above shall be paid at the hourly labor rate provided by the Contractor on the quote form.

Materials shall be paid for at the actual cost to the Contractor plus the Contractors standard markup. Alternatively, the Contractor may provide a schedule of prices for materials expected to be used under this Contract. The Contractor may be required to provide invoices for parts showing the actual amount paid by the Contractor.

The Contractor may only request payment once during 30 days. Invoices shall be broken down by service location. Multiple invoices covering multiple service locations may be submitted simultaneously for a single payment.

OTHER REQUIREMENTS:

The Contractor shall have a current Washington State Business License and any business licenses required by the appropriate cities.

All work must be performed to industry standards and the specific door manufacture's recommendations.

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

The Contractor must have employees in its direct employment and self-perform a minimum of 60% of the work under this Contract (based on cost). Use of subcontractors shall be requested in writing and approved by the County before beginning subcontractor work.

The Contractor, its employees, and subcontractors who will be working onsite at the Jail must complete the Security Background Check form provided by the County. 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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Rejection of Bid – Justice Center Security Gate
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

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

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

Summary / Background Information

The Purchasing Department solicited bids to replace one of the security gates on the Justice Center Campus in April 2021. Only one bid was received as follows:

- Perimeter Security Group, LLC – Coeur d Alene, ID - $48,000.00

After nearly three months of working with the lone bidder to get a contract in place, the Director of Operations & Capital Programs believes it is in the County's best interest to reject the bid.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The Director of Operations & Capital Programs recommends that the County reject the bid.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF REJECTING ALL BIDS FOR THE REPLACEMENT OF A SECURITY GATE ON THE JUSTICE CENTER CAMPUS

WHEREAS, the Purchasing Department solicited bids, utilizing the MRSC Roster, for the replacement of a security gate on the Justice Center Campus in April 2021; and

WHEREAS, there was a total of one hundred and thirty-two (132) companies that were sent bid packets, with only one responding with a proposal:

- Perimeter Security Group, LLC; Coeur d Alene, ID - $48,000.00

WHEREAS, after nearly three (3) months of working with the lone bidder to get a contract in place, the Director of Operations & Capital Programs believes it is in the best interest of the County to reject the bid; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with the Director of Operations and Capital Programs and rejects the bid listed above for the replacement of a security gate on the Justice Center Campus.

Dated this _____day of _____, 2021.

_____
Chairman of the Board

_____
Member

_____
Member

Attest……
Clerk of the Board

Constituting the Board of Commissioners
of Benton County, Washington

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Authorizing purchase of GPS units and monitoring subscription from GPS Insight, LLC
Presenter:	
Prepared By:	S. Christen
Reviewed By:	Michael McGhan

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

Previously, Global Positioning System (GPS) units were installed in Public Works Department vehicles for fleet management purposes. The current units did not live up to expectations due to low refresh rates, poor customer support and the inability to download information to the County GIS mapping program, and are no longer in service.

GPS Insight, LLC has units that have variable refresh rates, a user friendly maintenance reporting system, the ability to track vehicle accessory systems and are compatible with the current County GIS programs.

The Public Works Department desires to install GPS units on 58 vehicles. An Agreement has been prepared with GPS Insight, LLC for the purchase of the units and the yearly monitoring plans, which will be paid up front by the ER&R Fund and reimbursed back from the appropriate departments through a surcharge to the vehicle rental rate. Our departmental Deputy Prosecuting Attorney has reviewed and approved said Agreement and it has been signed by GPS Insight.

Fiscal Impact

Amount: Not to exceed $60,000.00 over the 3 year term

Fund: ER&R Fund

Recommendation

The Fleet Superintendent recommends the Board authorize the purchase of GPS units and the monitoring subscription for 3 years at a cost of approximately $20,000.00 per year with a total not to exceed $60,000.00.

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING AN AGREEMENT WITH GPS INSIGHT, LLC FOR THE PURCHASE OF GLOBAL POSITIONING SYSTEM (GPS) UNITS AND MONITORING SERVICES

WHEREAS, the Public Works Department would like to install GPS units on some of their vehicles in order to manage the fleet more efficiently; and

WHEREAS, pursuant to County Procurement, Leasing and Contracting Policy (Resolution 2021-233) service contracts are awarded based on qualifications and performance with price being a secondary consideration; and

WHEREAS, GPS Insight, LLC provides a GPS unit and monitoring that have variable refresh rates, a user friendly maintenance reporting system, the ability to track vehicle accessory systems and are compatible with the current County GIS programs; and

WHEREAS, the Fleet Superintendent deems it is in the best interest of the County to enter into an Agreement with GPS Insight, LLC for the purchase of the GPS units as well as the yearly monitoring plans; and

WHEREAS, our departmental assigned Deputy Prosecuting Attorney from the Civil Division has reviewed and approved as to form said agreement and it has been signed by GPS Insight; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby authorizes the Fleet Superintendent to proceed with the purchase of the global positioning system (GPS) units from GPS Insight, LLC as well as the yearly monitoring plans in an amount not to exceed $60,000.00; and

BE IT FURTHER RESOLVED, the ER&R Fund will be reimbursed by the appropriate departments through a surcharge to the vehicle rental rate; and

BE IT FURTHER RESOLVED, the Chairman of the Board of County Commissioners is authorized to sign said Agreement which shall be for a period of 3 years.

Dated this 20th day of July 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing Dept.
c: Auditor, Sonia-P.A.

S. Christen

GPS Insight, LLC
7201 E Henkel Way #400
Scottsdale AZ 85255

Estimate #39366
04/20/2021

Bill To
Michael McGhan
Benton County Road Department
620 Market Street
Prosser WA 99350

Ship To
Michael McGhan
Benton County Road Department
620 Market Street
Prosser WA 99350

Sales Rep	Sales Rep Phone	Sales Rep Email
David Pope	480-663-9475	david.pope@gpsinsight.com

Payment Method Due at Signing	Recurring Payment Method	Shipping Method
Net 15	No Automatic Payment	UPS 2nd Day Air®

Active Term and Billing Start Date

3 Years after the first day of the month after the Billing Start Date. Additional services ordered on subsequent Estimates within the Subscription Term will be coterminous with the Subscription Term set forth herein. For orders that include tracking devices, Billing Start Date is 30 days after shipping. Otherwise Billing Start Date is 30 days after order processing.

1. Sourcewell Contract: #020221-GPI
2. Additional labor for installation, if required, will be billed at $96.00 per hour
3. All PTO engagement will be monitored at 10 second intervals while in use

Recurring Charges

Item	Quantity	Billing Frequency	Rate	Amount	Sales Tax	Line Total
Device Monitoring: Vehicle Monthly Per Vehicle Monitoring	58	Annually	$299.40	$17,365.20	$1,493.41	$18,858.61
Subtotal				$17,365.20	$1,493.41	$18,858.61

Hardware and Other Charges

Item	Quantity	Rate	Amount	Sales Tax	Line Total
Solution Hardware: GPSI-5000AB Device GPSI-5000AB Tracking Device	1	$0.00	$0.00	$0.00	$0.00
Solution Hardware: GPSI-5000 HD Accessories (Threaded) GPSI-5000 HD Accessories with Threaded Diagnostics Connector	1	$0.00	$0.00	$0.00	$0.00
Solution Hardware: PNP-3100LB Device PNP-3000LB Tracking Device	1	$0.00	$0.00	$0.00	$0.00
Solution Hardware: PNP Accessories OBD-II Pass Thru Cable and Installation Kit	1	$0.00	$0.00	$0.00	$0.00
Startup Cost: Vehicle Tracking: Enterprise: Waived GPS Insight Startup Cost Waived	1	$0.00	$0.00	$0.00	$0.00
Subtotal			$0.00	$0.00	$0.00

GPS Insight, LLC
7201 E Henkel Way #400
Scottsdale AZ 85255

Estimate #39366
04/20/2021

Billed Upon Signing

	Amount	Sales Tax	Line Total
Hardware and Other Charges	$0.00	$0.00	$0.00
Shipping	$232.00	$19.95	$251.95
Total Due	$232.00	$19.95	$251.95

Install Estimate

Estimated fees for professional installation to be invoiced as work is completed. Additional fees, including any service, trip, or other fee as described in the Requirements section of Professional Installation Terms and Conditions, may be charged as required. GPS Insight reserves the right to charge for fees designated as "Waived" if Requirements are not followed.
See Standard Installation Fees for rates.

Based on a standard 8 hour workday, it's estimated that your project will take **0.13** days to complete.

Item	Quantity		Rate	Amount	Sales Tax	Line Total
Install Estimate: Additional Labor Professional Installation additional hour of labor (per hour/if required)	1		$96.00	$96.00	$8.26	$104.26
Install Estimate: Trip Fee per Trip Estimated Trip Fee Per Location Per Visit	1	Waived	$0.00	$0.00	$0.00	$0.00

GPSINSIGHT

GPS Insight, LLC
7201 E Henkel Way #400
Scottsdale AZ 85255

Estimate #39366
04/20/2021

Payment Form

Purchase Order Payment

You have requested the items and their respective amounts due on this Estimate and governed by the attached Terms and Conditions be covered by a Purchase Order. In the space below, please enter the applicable Purchase Order number. You may also upload a hardcopy of your Purchase Order, if available. Your execution of this Estimate without identifying a Purchase Order number will not alter or amend your payment obligations to GPS Insight pursuant to this Estimate and the Terms and Conditions. If you do not timely provide GPS Insight with a Purchase Order number, GPS Insight will still provide you with invoices in the ordinary course, but without a Purchase Order number. All amounts invoiced will be due and payable on the applicable invoice due date.

Purchase Order Number _____

Purchase Order Upload

Please Sign to Authorize _____
Michael McGhan, Fleet Superintendent

GPS Insight, LLC
7201 E Henkel Way #400
Scottsdale AZ 85255

Estimate #39366
04/20/2021

GPS Insight Monitoring Agreement

You are agreeing to the GPS Insight Monitoring Agreement posted to https://help.gpsinsight.com/agreement/monitoring/solution/v3/, which is hereby incorporated by reference as if fully set forth herein.

The installation of the devices on this Estimate are governed by https://help.gpsinsight.com/agreement/installation/professional/, which is hereby incorporated by reference as if fully set forth herein.

Active Term: 3 Years after the first day of the month after the Billing Start Date. Additional services ordered on subsequent Estimates within the Subscription Term will be coterminous with the Subscription Term set forth herein. For orders that include tracking devices, Billing Start Date is 30 days after shipping. Otherwise Billing Start Date is 30 days after order processing.

BY SIGNING BELOW, EACH PARTY HERETO ACKNOWLEDGES HAVING READ THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE ABOVE REFERENCED MONITORING AGREEMENT AND TERMS AND CONDITIONS ASSOCIATED THEREWITH, AND FURTHER REPRESENTS AND WARRANTS THAT IT UNDERSTANDS ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES TO BE STRICTLY BOUND THEREBY.

Name	Jerome Delvin	Name	David Pope
Title	Chairman, Board of Benton County Commissioners	Title	Strategic Sales Manager
Date	_____	Date	7-8-21
Signature	_____	Signature	David Pope

Approved as to form:

Reid Hay, Civil Deputy Prosecuting Attorney

7/8/21
Date

GPSINSIGHT

This GPS Insight agreement language provided for the purposes of review only. This language is normally presented in conjunction with a formal "Estimate", which the language below likely makes reference to. Contact your Sales Rep for a formal Estimate with this Agreement to be provided through our electronic signature service, Adobe Sign. You cannot sign this document and a signature block has been intentionally omitted.

Professional Installation Terms and Conditions

These Installation Terms and Conditions ("Terms and Conditions") are hereby incorporated into that certain Monitoring Agreement, by and between GPS Insight and the Customer (the "Monitoring Agreement"), as if fully set forth therein and applies to the installation of Devices as set forth on the applicable Estimate to which the Monitoring Agreement relates. Capitalized terms used, but not otherwise defined in these Terms and Conditions, shall have the meanings set forth in the Monitoring Agreement.

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intend to be legally bound and do hereby agree as follows:

Payments

Charges. Customer will pay all applicable fees for the installation of the Devices as set forth on the Estimate, in the Monitoring Agreement or in these Terms and Conditions. If Customer is located outside of the standard coverage area or more than one (1) scheduled installation is required, or additional parts and/or labor are required, Customer will pay any additional charges that may accrue upon completion of the installation. All such payments are non-refundable.

Requirements

Vehicle Data. Prior to GPS Insight submitting its request to a certified third party installer (the "Installer"), Customer shall provide GPS Insight with vehicle data for each vehicle included in the installation (each, a "Vehicle"), including vehicle make, model, year and VIN, as well as any Device accessories or specific installation requirements per Vehicle which differ from the Installation Guide. If Customer changes any requirements, Customer shall be charged, and Customer shall pay, for any such additional work performed.

Work Environment. Customer shall provide a safe and non-hostile work environment. Site requirements must be provided to GPS Insight when scheduling the installation. Customer shall provide a restroom for the Installer and a working electrical outlet whenever possible. Customer shall (i) make each Vehicle available consecutively over consecutive days to permit Installer to complete the installations with limited to no downtime between installations, (ii) make a driver available during the installation, as the Installer is not permitted to drive Vehicles, and (iii) have Vehicles keys present during the entire installation.

Scheduling. All scheduling is made by the Installer and GPS Insight has no control over such Installer's availability. One technician is capable of completing approximately 8-10 vehicles in a 9-hour day (with 1 hour for lunch). Additional charges may apply if more than one technician is required. A standard installation takes approximately one hour. A standard installation means no additional inputs/ accessories. Non-standard installations may take additional time, depending on the inputs/accessories required.

Cancellations. Once booked, scheduled and confirmed, Customer must give GPS Insight no less than ten (10) business days' notice to cancel an installation, or Customer shall be charged, and Customer shall pay, a $50/Vehicle fee, plus any uncancellable expenses incurred by GPS Insight or Installer. Customer shall be charged, and Customer shall pay, an additional $50/Vehicle fee if less than all scheduled Vehicles are available for installation. If booked, scheduled and confirmed and the Installer fails to arrive as scheduled, GPS Insight will credit Customer $50/vehicle.

Installation

Third Party Installer. Other than the fact that the Installer has been certified by GPS Insight and instructed to follow all industry standards and GPS Insight's quality guidelines, Customer acknowledges and agrees that the Installer is a third party with no legal affiliation to GPS Insight.

Installation Procedures. The Installer will perform installations according to the most current version of the Installation Guide specific to the hardware purchased unless otherwise requested by Customer and approved by GPS Insight prior to scheduling the Installation.

Verification. The Installer will verify and report to GPS Insight the success of each Vehicle installation. Verification means the confirmation that the Device is functional and sending data to the Tracking Solution.

Device Registration. Registrations are completed by the Installer or GPS Insight upon successful verification of the Device.

Out of Scope Requirements. Should Customer's installation require the utilization of a sensor or any other connection not supplied by GPS Insight, Customer must either have that sensor/connection installed and ready before the Installer arrives, or contact GPS Insight Installation team prior to the installation to confirm the price and availability of the Installer to perform such additional work.

Installation Warranties

Installation Warranty. GPS Insight warrants that the installation will be performed in a good and workmanlike manner for a period of one (1) year from the date of installation.

Installation Warranty Claims. Customer shall contact GPS Insight Customer Support at support@gpsinsight.com to assist in troubleshooting if Customer believes that an installation was not performed properly by the Installer, resulting in a Device or the Vehicle not functioning properly. The GPS Insight Customer Care team will work with Customer in an effort to resolve the issue. If GPS Insight is unable to resolve the issue remotely and determines it was the result of an improper installation by the Installer, GPS Insight will schedule a technician to correct such installation at no additional cost to Customer. Failure on the part of Customer to notify GPS Insight of any such Installation Warranty Claims shall relieve GPS Insight of any liability therefor.

Exclusive Remedy. The Installation Warranty Claims section above is Customer's sole and exclusive remedy for any breach of the Installation Warranty set forth above.

INTERRUPTION OF USE OF THE DEVICES, THE TRACKING SOLUTION, INSTALLATION SERVICES, SUPPORT AND TRAINING OR ANY OTHER SERVICES, OR (C) FOR LOSS, INACCURACY OR CORRUPTION OF DATA. THIS LIMITATION SHALL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL GPS INSIGHT'S AGGREGATE LIABILITY HEREUNDER EXCEED THE AMOUNT THAT GPS INSIGHT RECEIVED UNDER THE ESTIMATE GIVING RISE TO THE CLAIM IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENTS FIRST GIVING RISE TO A CLAIM.

Indemnification. Customer hereby indemnifies and holds GPS Insight, its directors, officers, employees and agents harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees and costs, arising out of, connected with or resulting from Customer's misuse of the Devices and/or Tracking Solution.

General

Notice. Notices regarding this Agreement to GPS Insight shall be in writing and sent by first class mail or overnight courier (if from within the USA), or international courier, addressed to GPS Insight at the address provided on the Estimate. GPS Insight may give notice applicable to GPS Insight's general customer base by means of a general notice on the Tracking Solution, and notices specific to Customer by electronic mail to Customer's e-mail address on record with GPS Insight, or by written communication sent by first class mail or overnight courier (if to an address within the USA), or international courier, to Customer's address on record in GPS Insight's account information. All notices shall be deemed to have been given three days after mailing or posting (if sent by first class mail), upon delivery in the case of courier, or 12 hours after sending by confirmed facsimile, e-mail or posting to the Tracking Solution.

Export. Customer agrees that U.S. export control laws and other applicable export and import laws govern Customer's use of the Tracking Solution and the Devices. Customer represents that Customer is not a citizen of an embargoed country or prohibited end user under applicable U.S. export and anti-terrorism laws, regulations and lists. Customer will not use, export or allow a third party to use or export the Tracking Solution or Devices in any manner that would violate applicable law, including but not limited to export control laws and regulations.

Force Majeure. Except for Customer's obligation to pay, neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, espionage, civil unrest, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of Arizona and controlling U.S. federal law, disregarding any choice of law provisions providing otherwise. The Uniform Computer Information Transactions Act, the United Nations Convention on the International Sale of Goods, and choice of law rules of any jurisdiction will not apply to this Agreement. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Maricopa County, Arizona, and each party hereby submits to the personal jurisdiction of such courts and waives any defense relating to venue or forum non convenience.

Entire Agreement; Amendments. This Agreement together with any applicable Estimate represents the parties' entire understanding relating to the subject matter hereof, and supersedes any prior or contemporaneous, conflicting or additional, communications. The terms and conditions of this Agreement may only be amended by written agreement of the parties. Nothing contained in any purchase order submitted by Customer other than order dates, identity, location, quantity and price shall in any way serve to modify or add to the terms of this Agreement or the Estimate.

Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

Relationship of Parties. No joint venture, partnership, employment, or agency relationship exists between Customer and GPS Insight as a result of this Agreement.

Assignment. Customer may not assign this Agreement without the prior written approval of GPS Insight. Any purported assignment in violation of this Section shall be void. GPS Insight reserves the right to provide some or all of the goods and services offered hereunder (including but not limited to Support and Training) from locations, and/or through use of third party providers, located worldwide.

Waiver. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing.

GPSINSIGHT

This GPS Insight agreement language provided for the purposes of review only. This language is normally presented in conjunction with a formal "Estimate", which the language below likely makes reference to. Contact your Sales Rep for a formal Estimate with this Agreement to be provided through our electronic signature service, Adobe Sign. You cannot sign this document and a signature block has been intentionally omitted.

GPS Insight Solution Monitoring Agreement 3.0

This Monitoring Agreement (this "Agreement") sets forth the terms and conditions to which the undersigned (the "Customer") agrees with respect to the acquisition and use of GPS-proprietary vehicle-mounted hardware devices (the "Devices") and use of GPS Insight's developed, hosted and managed vehicle and asset tracking hosted solution (the "Tracking Solution"), all as set forth on the applicable Estimate to which this Agreement relates (the "Estimate").

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intend to be legally bound and do hereby agree as follows:

Term and Termination

Term. Unless otherwise set forth on the applicable Estimate, the subscription term ("Subscription Term") for using the Tracking Solution is calculated per Device, with the initial Subscription Term commencing upon execution and delivery of this Agreement (the "Effective Date") and ending upon expiration of the Active Term set forth on the Estimate. Unless otherwise set forth on the Estimate, once a device is Activated, the Tracking Solution will continue through the balance of the Subscription Term. Notwithstanding the foregoing, the then-current Subscription Term may be renewed if the parties execute a renewal agreement associated with such Devices (a "Renewal Agreement"). For the purposes of this Agreement, a Device is "Active" when it is communicating and sending data to the Tracking Solution; and a Device is "Shipped" when GPS Insight ships the Device to Customer (as evidenced by GPS Insight's shipping records).

Renewals. Upon expiration of the then-current Initial Subscription Term for a Device, the Subscription Term automatically renews for successive 1-year term unless either Party provides the other with written notice of termination at least 60 days before the end of the then-current term. The Initial Subscription Term and any Renewal Subscription Terms together are the "Term".

Termination for Cause. Either party may terminate the Subscription Term in the event the other party materially breaches and fails to cure within thirty (30) days after written notice detailing such breach.

Subscription Term Buyout. Customer may terminate the Subscription Term early without cause upon thirty (30) days prior written notice; provided that Customer pays all fees, including Tracking Solution Fees, that would have been owed through the remainder of the Subscription Term, which fees shall become due and payable in full on the effective date of termination.

Effect of Termination. Upon any termination of the Subscription Term, (i) Customer's right to access and use the terminated Tracking Solution shall terminate; and (ii) GPS Insight has no obligation to retain any data collected through Customer's use of the Tracking Solution.

Devices

Shipment. GPS Insight will ship the Devices using the shipping method set forth on the Estimate. Customer shall be solely responsible for all costs associated with transporting the Devices to and from Customer's premises, including payment of all charges, taxes and other amounts related thereto and being responsible for any loss or damage to the Devices that may occur during transport. Customer shall promptly fulfill any customs obligations arising hereunder at its sole cost and expense, including any payments required to release Devices from customs.

Delivery. The Devices shall be deemed accepted by Customer, unless Customer notifies GPS Insight in writing of any order discrepancies or damaged Devices no later than two (2) days after receipt. GPS Insight shall investigate any order discrepancies or damaged Devices and take all appropriate remedial action.

Upgrade Devices. Customer acknowledges that Devices acquired as part of the upgrade program set forth on the Estimate may be a used and/or refurbished product. Refurbished Devices are previously used, reconditioned and tested Devices, which must pass GPS Insight's quality control standards.

Tracking Solution

Use Rights. Subject to the terms of this Agreement, GPS Insight grants Customer during the Subscription Term the non-transferable, non-exclusive, non-sublicensable right to use the Tracking Solution for information collected from the Device, solely for Customer's own internal business operations.

Support; Training. During the Subscription Term, Customer will be entitled to access training, online user guides, knowledge bases and self-help tools, and any additional standard technical support resources (collectively, "Support and Training") offered by GPS Insight from time to time.

User Accounts. Customer will be provided one Customer account, which will allow Customer's authorized users to see data collected from all Customer's Activated Devices. Customer will be provided unique user accounts to access the Customer account. Customer may designate and add user accounts pursuant to the applicable product tier purchased by Customer. Customer will be responsible for the confidentiality and use of its passwords and user accounts. GPS Insight will act as though any electronic communications it receives under Customer's passwords, user accounts, and/or account numbers have been sent by Customer. Customer agrees to immediately notify GPS Insight if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, user accounts, and/or account numbers. Customer agrees not to access the Tracking Solution by any means other than through the interfaces that are provided by GPS Insight.

Transmission of Data. Customer understands that the technical processing and transmission of Customer's data (including data collected from the Devices) is necessary to Customer's use of the Tracking Solution, and hereby consents to GPS Insight's interception and storage of such data. Customer understands that Customer or GPS Insight may be transmitting data over the Internet, and over various networks, only part of which may be owned and/or operated by GPS Insight. Customer agrees that GPS Insight is not responsible for any portions of data that are lost, altered, intercepted or stored without authorization during the transmission of data across networks not owned and/or operated by GPS Insight.

Restrictions. The rights granted in this Agreement are subject to the following additional restrictions: (i) use of the Tracking Solution shall be limited to the Customer's authorized users and other limitations set forth in the applicable product tier purchased by Customer; (ii) Customer shall not license, sell, rent, lease, transfer, assign, distribute, host, outsource, disclose or otherwise commercially exploit or make the Tracking Solution or Devices available to any third party; (iii) Customer shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Tracking Solution or Devices, or access or use the Tracking Solution or Devices in order to build a similar or competitive product or service; (iv) Customer shall not bypass or breach any security device or protection used by the Tracking Solution or the Devices, nor shall Customer intentionally damage, destroy, disrupt or otherwise impede or harm in any manner the Tracking Solution, Devices or any systems used by GPS Insight; and (v) Customer acknowledge and agree that, as between Customer and GPS Insight, GPS Insight owns all right, title and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Tracking Solution, Devices, and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any of Customer's authorized users relating to the Tracking Solution or Devices.

Payments

Charges. Customer will pay all applicable fees as set forth on the Estimate and acknowledges that all fees are non-refundable. Customer hereby authorizes GPS Insight to collect payment via the payment method and upon the terms set forth on the Estimate for all items listed on the Estimate (including the Activation fees, Tracking Solution fees, installation fees, and shipping fees) and any other amounts that come due under this Agreement on the first day of the applicable recurring payment period. Late payments shall be subject to a service charge of one and a half percent (1.5%) per month, or the maximum charge permitted by law, whichever is less.

Recurring Payments

(a) *Tracking Solution Fees.* The monthly per Device Tracking Solution fee begins upon the Billing Start Date set forth on the Estimate.

One-Time Payments

(b) *Device Activation Fee*. The Activation Fee for the Device will be paid either (i) in advance, upon shipment of the Device, or (ii) if Customer provides a valid purchase order, upon the terms set forth on the invoice.

(c) *Other Hardware Purchase Fees*. The purchase price other hardware listed on the Estimate will be paid either (i) in advance, upon shipment of such hardware, or (ii) if Customer provides a valid purchase order, upon the terms set forth on the invoice.

Payments

Taxes. Customer shall pay all personal property, sales, use, value-added, withholding and similar taxes (other than taxes on GPS Insight's net income) arising from the transactions described in this Agreement. To the extent Customer is exempt from sales or other taxes, Customer agrees to provide GPS Insight, upon request, with the appropriate exemption certificate.

Suspension Right. GPS Insight reserves the right to disable access to the Tracking Solution when any payment is overdue or when GPS Insight believes that Customer is using the Devices, Tracking Solution and/or any other services provided hereunder not in accordance with GPS Insight's instructions, this Agreement and/or applicable laws and government regulations. If Customer is suspended for failure to pay, upon payment in full of all amounts due (including any interest owed), Customer may request the reactivation of its Customer and user accounts.

Device Warranties; Replacement Devices

Device Warranty. Unless otherwise set forth herein or on the Estimate, GPS Insight warrants that the Devices will perform substantially in accordance with their documentation until the later of (i) one (1) year from when the Device is Shipped or (ii) expiration of the initial Subscription Term.

Device Warranty Claims. Customer shall contact GPS Insight Customer Support at 866.477.4321 to assist in troubleshooting if Customer believes that a Device is not functioning properly. The GPS Insight Customer Care team will work with Customer in an effort to resolve the issue. If GPS Insight is unable to resolve the issue remotely, the Device, antenna or harness may need to be replaced. The procedure for issuance of the GPS Insight RA# and for shipment of replacement parts depends on the warranty coverage status of the particular Device. GPS Insight shall promptly, in its reasonable discretion, determine whether warranty coverage applies.

Voided Warranty. Device Warranty coverage is VOID if GPS Insight determines that Customer is in breach of this Agreement or if the Device failure is due to any of the following reasons: (i) physical damage caused by negligent/improper handling and treatment of the Device; (ii) damage caused by water or any other liquid; (iii) tampering with the Device or associated peripherals or the vehicle itself e.g. intentionally denying power to the device; (iv) improper installation; (v) cutting or otherwise impairing the Device connector harness; (vi) cutting or otherwise impairing the antenna and/or antenna cables; (vii) defects or damage caused by the use of non-GPS Insight branded or approved products, accessories or other peripheral equipment; (viii) GPS Insight serial number has been removed or defaced; or (ix) any other circumstance that GPS Insight deems to constitute intent on the part of the Customer, vehicle driver or any other party to purposefully impair the functionality of the Device.

Replacement Devices. GPS Insight will ship a replacement Device, and/or peripherals, within 48 business hours of issuing the RA#. Replacement Device may be a refurbished product. Refurbished Devices are previously used, reconditioned and tested Devices, which must pass GPS Insight's quality control standards. For approved RA's GPS Insight will pay for 2-day air shipping of replacement Device and/or peripherals. If Customer wishes to expedite shipping from 2-day air to overnight delivery, Customer will need to provide consent to be billed for the expedited shipping charges. Replacement Devices are covered under warranty for the greater of (i) the balance of the remaining warranty period of the original Device or (ii) ninety (90) days from date of activation of the replacement Device. The scope of warranty coverage on the replacement Device will match the scope of warranty coverage of the original Device.

Return Shipping. All materials replaced under an approved GPS Insight RA# become the property of GPS Insight. If requested by GPS Insight, (i) Customer is required to return the defective Device to GPS Insight using pre-paid return shipping labels that will be sent to Customer along with the replacement Device, and (iii) the defective Device must be returned to GPS Insight within 60 calendar days after GPS Insight's issuance of the RA, and if the defective Device is not returned within 60 calendar days, Customer will be billed a Device Non-Return Fee at the then current rate. The shipping box used to return the Device must clearly be labeled "GPS Insight RA#XXXXXX" and the serial number of the defective Device must match the Device stipulated at the time the RA# was issued. If Customer returns the wrong Device and the serial number does not match GPS Insight's records, GPS Insight will return the Device to Customer at Customer's expense and the RA will remain open pending return of the correct Device (which correct Device shall be shipped at Customer's expense).

Exclusive Remedy. The Device Warranty Claims and Replacement Devices sections above are Customer's sole and exclusive remedy for any breach of the Device Warranty set forth above.

[[custbody_agreement_eld_provision_text]]

Other Warranties

Disclaimer of Additional Warranties. EXCEPT FOR THE SPECIFIC WARRANTIES SET FORTH IN THIS AGREEMENT, THE DEVICES, TRACKING SOLUTION, INSTALLATION, SUPPORT AND TRAINING, AND ALL OTHER SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY GPS INSIGHT AND THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY USAGE OR TRADE, COURSE OF DEALINGS OR COURSE OF PERFORMANCE. NO WARRANTY IS GIVEN AS TO ACCURACY, ERROR-FREE OR UNINTERRUPTED SERVICE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TRACKING SOLUTION, INSTALLATION AND SUPPORT AND TRAINING ARE NOT SUBJECT TO ANY WARRANTIES UNDER THIS AGREEMENT.

Limitation of Liability; Indemnification

Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOST PROFITS, COST OF COVER, LOST SAVINGS, CURRENCY CONVERSION LOSSES, OR LOSS OF OTHER ECONOMIC ADVANTAGE) ARISING FROM BREACH OF CONTRACT, OR NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (A) DEVICES, THE TRACKING SOLUTION, INSTALLATION SERVICES, SUPPORT AND TRAINING OR ANY OTHER SERVICES, (B) ANY

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Authorizing an Amazon Business Account utilizing the State of Utah Cooperative Contract #MA3457
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Robert Blain; Purchasing Dept.; Ryan Lukson

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

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

Summary / Background Information

As per Resolution 2020-749, Benton County entered into an agreement with National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise. The State of Utah is also a member with OMNIA Partners and issued solicitation #MG20-81 for an online marketplace with dynamic pricing to establish a national cooperative contract with Amazon.com Services, LLC.

This contract allows for purchase items that fall within the categories of Education-Based Accessories, Display, Products and Related Supplies; Information Technology-Peripheral Devises and Related Products; Maintenance, Repair and Operation Products; and Office-Based Accessories, Décor, Products, and Related Supplies, as further outlined in the attached Agreement.

Purchases over the amount of $10,000 shall not be made by utilizing this Amazon Business account.

Fiscal Impact

Expenditures shall be paid from the approved 2021-2022 budget of each department that utilizes the Amazon Business account.

Recommendation

Approve the attached Resolution authoring an Amazon Business account with Amazon.com Services, LLC for all Benton County Departments.

Suggested Motion

Approved as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING AN AMAZON BUSINESS ACCOUNT UTILIZING THE OMNIA PARTNERS CONTRACT AND STATE OF UTAH COOPERATIVE MASTER AGREEMENT CONTRACT #MA3457 FOR ALL BENTON COUNTY DEPARTMENTS

WHEREAS, per Resolution 2020-749 dated October 20, 2020, the Board of Benton County Commissioners approved the agreement between Benton County and National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise; and

WHEREAS, the State of Utah is also a member with OMNIA Partners and issued solicitation #MG20-81 for an online marketplace with dynamic pricing to establish a national cooperative contract with Amazon.com Services, LLC; and

WHEREAS, the purpose of the contract governs access to, use of, and transactions made through Amazon Business. Amazon Business enables registered business customers to purchase products and services for business purposes and to access and use a set of features, services, software, and applications specifically intended for business customers; and

WHEREAS, different Benton County departments currently purchase from Amazon based on individual accounts and the Director of Operations and Capital Programs recommends the County establish an Amazon Business account for all County users to utilize; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington concurs with the Director of Operations and Capital Programs' recommendation and hereby authorizes the use of the OMNIA Partners and State of Utah Cooperative Master Contract #MA3457 to purchase items that fall within the categories of Education-Based Accessories, Display, Products and Related Supplies; Information Technology-Peripheral Devises and Related Products; Maintenance, Repair and Operation Products; and Office-Based Accessories, Décor, Products, and Related Supplies, as further outlined in the attached contract between Amazon.com Services LLC and State of Utah; and

BE IT FURTHER RESOLVED, the Amazon Business account shall commence upon Board of Commissioners' approval and shall terminate May 5, 2025; and

BE IT FURTHER RESOLVED, expenditures shall be paid from the individual department's budget whom choses to utilize the Amazon Business account for items that fall within the above stated categories; and

Orig: Purchasing Dept.
Cc: Auditors, S. Godinez, County Depts, Amazon.com L. Small

BE IT FURTHER RESOLVED, purchases over the amount of $10,000 shall not be made by utilizing this Amazon Business account.

Dated this _____ day of _____, 2021.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: Purchasing Dept.
Cc: Auditors, S. Godinez, County Depts, Amazon.com L. Small

Contract # MA3457

STATE OF UTAH COOPERATIVE CONTRACT
MASTER AGREEMENT

1. CONTRACTING PARTIES: This contract is between the Division of Purchasing and the following Contractor:

Amazon.com Services LLC
Name
410 Terry Ave N
Address
Seattle | WA | 98109
City | State | Zip

LEGAL STATUS OF CONTRACTOR
- ☐ Sole Proprietor
- ☐ Non-Profit Corporation
- ☐ For-Profit Corporation
- ☐ Partnership
- ☒ Limited Liability Company

Contact Person Marcus Handler Email mahandle@amazon.com
Vendor # VC220555 Commodity Code #00000

2. CONTRACT PORTFOLIO NAME: Online Marketplace

3. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: an online marketplace with dynamic pricing.

4. PROCUREMENT: This contract is entered into as a result of the procurement process on Solicitation # MG20-81.

5. CONTRACT PERIOD: Effective Date: September 9, 2020; Termination Date: May 5, 2025 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.

6. Payment: Prompt Payment Discount (if any): NA.

7. Administrative Fee, as described in the Rebate Agreement between OMNIA Partners and the State of Utah.

8. The Contract contains the following documents listed in the order of precedence:

ATTACHMENT A: Terms and Conditions
ATTACHMENT B: Scope of Work

9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED (listed in order of precedence and below those documents listed in Section 8 in order of precedence):
   a. All other governmental laws, regulations, or actions applicable to this contract.
   b. Utah State Procurement Code, Procurement Rules, Contractor's response to solicitation #MG20-81, and Solicitation # MG20-81.
   [redacted]

10. Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the parties and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 5 above.

CONTRACTOR		STATE	
DocuSigned by: Anne Rung 58F45C4A6E4F4C6...	October 1, 2020	DocuSigned by: Chris Hughes 9DD542D4030440F...	October 1, 2020
Contractor's signature	Date	Director, Division of Purchasing	Date
Anne Rung Authorized Signatory		Chris Hughes	
Type or Print Name and Title			

Michael Glenn	801-957-7137	NA	michaelglenn@utah.gov
Division of Purchasing Contact Person	Telephone Number	Fax Number	Email

(Revised 4/22/20 RS)

DS

MG

Attachment A
Terms and Conditions

Below is a copy of the Amazon Business Accounts Terms and Conditions in effect on the Effective Date of the contract. Pursuant to Section 10 of the Amazon Business Accounts Terms and Conditions (as amended by the Amendment), Amazon may make changes at any time. The Amazon Business Accounts Terms and Conditions are available electronically at https://www.amazon.com/gp/help/customer/display.html/?nodeId=201613180.

1. **PURPOSE OF AGREEMENT**. This Agreement governs your access to, use of, and transactions made through Amazon Business. **"Amazon Business"** enables registered business customers to purchase products and services for business purposes and to access and use a set of features, services, software, and applications specifically intended for business customers. We may make available to you, through Amazon Business, certain services or products that are subject to additional terms and conditions, and if you use such services or purchase such products, those terms and conditions (the **"Feature Terms"**) will also apply to you. Products made available through Amazon Business may be designed for, and only appropriate for, specialized uses; accordingly, you may only use them as intended by, and in compliance with all instructions provided by, the manufacturer. Finally, certain policies accessible through Amazon Business apply to your and your users' use of and access to Amazon Business. These **"Policies"** include the Amazon Business Acceptable Use Policy, the Amazon Business Pricing Policy, the Amazon Business Sanctions and Export Policy, the Amazon.com Privacy Notice, the Amazon Business Gift Card Policy, and the Healthcare Disclosure Policies. This Agreement incorporates by reference the Feature Terms and the Policies.
2. **ELIGIBILITY; ACCOUNT SECURITY**. By creating a Business Account, you represent that (i) the individual acting on behalf of the Customer has the authority to bind the Customer, (ii) the Customer has all requisite right, power, and authority to enter into, perform its obligations under, and grant the rights and authorizations in the Agreement, and (iii) the Customer is an Eligible Entity. **"Eligible Entities"** include all types of businesses (for example, LLCs, LLPs, corporations, partnerships, sole proprietorships, and PLLCs), all types of governmental entities (federal, state, local, and quasi-governmental entities), and all types of non-profit organizations (including 501(c) organizations, 527 organizations, and similar tax-exempt organizations). Individual consumers should use Amazon.com. Upon completion of your registration, a **"Business Account"** will be created for your organization. You may authorize others to create a **"User Account"** associated with your Business Account. You are responsible for all activities that occur under your Business Account and any associated User Accounts, and must ensure your Users comply with the Acceptable Use Policy and this Agreement. You are responsible for maintaining the security of the passwords associated with your Business Account and User Accounts; if you believe an unauthorized person has access to your password, Business Account, or an associated User Account, you must contact us immediately and change any compromised passwords.
3. **SHIPPING; RETURNS; REPLACEMENT CHARGES; PAYMENT METHODS; TAXES.** Your purchases are subject to Amazon's Shipping and Returns Policies. All purchases of physical items from Amazon are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon our delivery to the carrier. Unless you are participating in the Pay by Invoice service, payment for all purchases made through your Business Account is due upon shipment or on the date indicated on the checkout page, or, for digital products, when we make the digital product available to you. For returns, Amazon does not take title to returned items until the item arrives at our fulfillment center. At our discretion, a refund may be issued

without requiring a return. In this situation, Amazon does not take title to the refunded item. To purchase through Amazon Business, you will need at least one valid payment method associated with your Business Account; if there is a problem charging your selected payment method for any purchase, we may charge any other valid payment method associated with your Business Account. If we send any User a replacement product for a product they originally ordered using an individual payment method (such as a personal credit card) and the original product ordered is not returned within 30 days of the replacement request, you acknowledge and consent that we may charge any eligible payment method on record for the relevant User Account for the replacement product. Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement.

4. **DISCLAIMER.** UNLESS OTHERWISE SPECIFIED IN WRITING, ANY INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES MADE AVAILABLE TO YOU BY AMAZON ARE ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND AMAZON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO SUCH INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES. TO THE FULLEST EXTENT PERMITTED BY LAW, AND UNLESS OTHERWISE SPECIFIED IN WRITING, AMAZON DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS IT SELLS AND THE SERVICES AND INFORMATION IT PROVIDES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

5. **INDEMNIFICATION.** You will defend, indemnify, and hold harmless Amazon and its affiliates, and their respective directors, officers, employees, representatives, contractors, and agents, from and against any loss, damage, judgment, settlement, expense, interest, and any other liability (including reasonable attorneys' fees and costs) related to or arising out of any third party allegation, claim, lawsuit, or proceeding (a **"Claim"**) to the extent such Claim is based on: (a) any breach of the Agreement, (b) any unlawful, improper or negligent use by anyone of any product sold or service provided to you under the Agreement, (c) any dispute between you and your Users, or (d) your gross negligence or willful misconduct. You will use counsel reasonably satisfactory to us to defend each indemnified Claim. If at any time we reasonably determine that any indemnified Claim might adversely affect us, we may take control of the defense at our expense. You may not consent to the entry of any judgment or enter into any settlement of a Claim without our prior written consent, which may not be unreasonably withheld.

6. **LIMITATIONS OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL AMAZON BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, THAT RESULT FROM YOUR PURCHASE OF ANY PRODUCTS OR USE OF ANY SERVICES, EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, AMAZON'S LIABILITY IN ALL EVENTS IS LIMITED TO THE PURCHASE PRICE PAID FOR THE PRODUCT OR SERVICE THAT GIVES RISE TO THE LIABILITY.

7. **CUSTOMER INFORMATION, PRIVACY, CONFIDENTIALITY.**

7.1. Customer Information. We require you to provide information about you and your Users to access and use Amazon Business, and you may need to provide supplemental information to use or purchase some Amazon Business products or services. You will ensure that all information that you provide to us is at all times accurate and complete. We may share information you provide (for example, your organization's name, addresses, Taxpayer Identification Number) with others in your organization and third parties to confirm the accuracy of such information and your eligibility to use Amazon Business or certain services (for example, to confirm you hold a valid license, certification, or credential where required). To enable us to improve our services, including by making available additional product selection or business pricing, we may share specific order information about the products or services you purchase through your Business Account with the suppliers who provide such products or services. For example, for certain transactions, Amazon Business may share your organization's name or credentials, shipping address, shipment date, ASIN/SKU, quantity or other relevant information.

7.2. Privacy. Except as disclosed in this Agreement, our use of your information is governed by the terms of the Amazon.com Privacy Notice. Please review the Privacy Notice to understand our practices with respect to your information. Please note that all information about Users and User Accounts associated with a Business Account may be shared with your organization.

7.3. Confidentiality. In connection with your use of Amazon Business, we may share with you information which is identified as confidential or that should reasonably be considered confidential (**"Confidential Information"**). You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You may use Confidential Information only in connection with your use of Amazon Business. You will not disclose Confidential Information during the term of this Agreement or at any time during the 5-year period following the termination of the Agreement, unless required by law. This applies to all Confidential Information in your possession, regardless of when or where you receive it.

8. GOVERNING LAW, DISPUTES, GOVERNMENTAL ENTITIES.

8.1. Governing Law. The laws of the State of Washington, without reference to conflict of law rules, as well as the Federal Arbitration Act and federal arbitration law, govern the Agreement and any dispute that might arise between you and us that pertains to Amazon Business or this Agreement. The United Nations Convention for the International Sale of Goods does not apply to the Agreement.

8.2. Disputes. Any dispute or claim relating in any way to Amazon Business or this Agreement will be resolved by binding arbitration. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules (available at www.adr.org or by calling 1-800-778-7879). An arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages). You may choose to have the arbitration conducted by telephone, based on written submissions, or at a mutually agreed location. We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If, for any reason, a claim proceeds in court rather than in arbitration we

each waive any right to a jury trial. We and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

8.3. Public Sector Entities. If you are a public sector entity and precluded by law from agreeing to any of the provisions of Section 8 as set forth above, then any disputes with you will be governed by the substantive laws of the sovereign under whose laws you were formed and the venue for any such dispute will be the venue required by the laws of such sovereign. Similarly, if the laws of such sovereign would result in other provisions in this Agreement being deemed unlawful, void or for any reason unenforceable against you, those provisions will not apply to you and will be deemed severable from this Agreement. All other provisions in the Agreement remain in full force and effect.

9. **THIRD-PARTY OFFERINGS.** Parties other than Amazon operate stores, provide services or software, or sell product lines through Amazon Business. In addition, we provide links to the sites of affiliated companies and certain other businesses. If you purchase any of the products or services offered by these businesses or individuals, you are purchasing directly from those third parties, not from Amazon. We are not responsible for examining or evaluating, and we do not warrant, the offerings of any of these businesses or individuals (including the content of their sites). Amazon does not assume any responsibility or liability for the actions, product, and content of all these and any other third parties. You should carefully review their privacy statements and other conditions of use.

10. **MODIFICATIONS.** We may, at any time in our discretion, change the Agreement by posting such a change on Amazon Business or by notifying your account administrators. YOUR CONTINUED USE OF AMAZON BUSINESS AFTER WE CHANGE THE AGREEMENT CONSTITUTES YOUR ACCEPTANCE OF THE CHANGES. IF YOU DO NOT AGREE TO ANY CHANGES, YOU MAY CANCEL YOUR BUSINESS ACCOUNT OR REFRAIN FROM USING THE AMAZON BUSINESS SERVICES IMPLICATED BY SUCH CHANGES.

11. **ENTIRE AGREEMENT.** The Agreement constitutes the exclusive and complete agreement between us and you. We will not be bound by any term, condition, obligation, or other provision which is different from or in addition to the provisions of the Agreement or which may be in any order, receipt, acceptance, confirmation, correspondence or other document, including informational forms we complete, sign or otherwise provide to you for your convenience.

12. **TERM; TERMINATION.** This Agreement takes effect when you create a Business Account and continues in effect until you or we terminate it. We may terminate the Agreement by providing notice to your administrators. We reserve the right, in our sole discretion, and with or without notice unless required by applicable law, to refuse service; remove or edit content; modify, suspend or discontinue the availability of any features, products, or services; terminate your right to use some or all of the Amazon Business services; and/or cancel orders. Amazon may choose to charge, modify, or stop charging a fee for any service in its sole discretion. You may

terminate the Agreement by giving us notice and closing your Business Account and each User Account. Upon termination, all rights and obligations under the Agreement automatically terminate except for rights of action occurring prior to termination, payment obligations, and Sections 1, 4, 5, 6, 7.3, 8, 10, 11, 12, 14, 15.

13. **COPYRIGHTS; TRADEMARKS; PATENTS.** Use of Amazon Business does not give you the right to frame, use or reproduce any of our copyrighted material, trademarks, service marks, or other proprietary rights or material, or to use any of our patents, except as expressly permitted in writing by Amazon. Please see the Amazon Business Help Pages for further detail on Amazon owned or licensed copyrights, trademarks, patents, as well as how to address concerns about the use of your intellectual property rights by third parties.

14. **LICENSE; SOFTWARE.** The following Amazon Software Terms and License apply to your access and use of Amazon Business and all features and software (including any updates or upgrades to the software) and any related documentation we make available to you in connection with Amazon Business (the **"Amazon Software"**). Subject to your compliance with the Agreement and your payment of any applicable fees, Amazon or its content providers grant you a limited, non-exclusive, non-transferable, non-sublicensable license to access and use Amazon Business and Amazon Software. You may not use data mining, robots, or similar data gathering and extraction tools in connection with Amazon Business, nor may you download or copy Amazon Business information, including any collection of product listings, descriptions, reviews, or prices without our consent or for the benefit of another merchant. The following terms apply to your use of Amazon Software.

14.1. Use of the Amazon Software. You may use Amazon Software solely for purposes of enabling you to use Amazon Business, as permitted by the Agreement. You may not incorporate any portion of the Amazon Software into other programs or compile any portion of it in combination with other programs, or otherwise reproduce, duplicate, copy (except to exercise rights granted in this section), modify, exploit, create derivative works of, distribute, sell, resell, assign any rights to, or license the Amazon Software in whole or in part (including any features of Amazon Business). All software used in Amazon Business is the property of Amazon or its software suppliers and is protected by U.S. and international copyright Laws. You may not make any derivative use of Amazon Business without the express written consent of Amazon.

14.2. Use of Third Party Services. When you use the Amazon Software, you may also be using the services of one or more third parties, such as a wireless carrier or a mobile software provider. Your use of these third party services may be subject to the separate policies, terms of use, and fees of these third parties.

14.3. No Reverse Engineering. You may not reverse engineer, decompile or disassemble, tamper with, or bypass any security associated with the Amazon Software, whether in whole or in part.

14.4. Updates. We may offer automatic or manual updates to the Amazon Software at any time and without notice to you.

14.5. Government End Users. If you are a U.S. Government end user, we are licensing the Amazon Software to you as a "Commercial Off-the-Shelf Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101), and the rights we grant you to the Amazon Software are the same as the rights we grant to all others under this Agreement.

14.6. Reserved Rights, Termination. All rights not expressly granted to you in the Agreement are reserved and retained by Amazon or its licensors, suppliers, publishers, rights holders, or other content providers. The licenses granted by Amazon terminate if you do not comply with the Agreement.

14.7. Conflicts. In the event of any conflict between the Agreement and any other Amazon or third-party terms applicable to any portion of Amazon Software, such as open-source license terms or specific product feature restrictions that are conveyed to you in the feature experience, such other terms will control as to that portion of the Amazon Software and to the extent of the conflict.

15. MISCELLANEOUS.

15.1. Suggestions. If you make any suggestions about Amazon Business or the features (including any related technology), we will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner.

15.2. Assignment. Except in connection with a reorganization, merger, sale, or transfer of substantially all of your assets (in which cases you must promptly provide written notice following assignment), you may not assign the Agreement without our prior written consent. Subject to that restriction, the Agreement will be binding on, inure to, and be enforceable against the parties and their respective successors and permitted assigns.

15.3. Severability. If any provision of this Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.

15.4. Waiver. Our failure to enforce your strict performance of any provisions of this Agreement will not constitute a waiver of our right to enforce such provisions or any other provision of this Agreement subsequently.

15.5. Conflicts. In the event of any conflict between the Agreement and the Policies, the Agreement will prevail. In the event of any conflict between the Agreement and the Feature Terms, the applicable Feature Terms will control.

15.6. Construction. The word "including" will be interpreted without limitation when used in this Agreement.

15.7. Notices. You consent to receive communications from us electronically, including through e-mails, text messages, in-app push notices, notices and messages posted on Amazon Business or in your Message Center and other communications made available to you on a desktop or mobile device. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You may retain copies of all of these communications for your records. We may also



send you notices at the address provided when registering your Business Account, which you agree is a proper and valid address for any legal or contractual purpose. If you are sending Amazon a legal or contractual notice, you must comply with our notice procedures available here.

AMENDMENT NO. 1 TO AMAZON BUSINESS ACCOUNTS TERMS AND CONDITIONS

This Amendment No. 1 (this "**Amendment**") to the Amazon Business Accounts Terms and Conditions, above and available at https://www.amazon.com/gp/help/customer/display.html/?nodeId=201613180 (as updated from time to time, the "**Agreement**"), between Amazon Services LLC ("**Amazon**", "**we**", "**us**", or "**our**") and the State of Utah ("**Customer**" or "**you**") is effective as of the last date of signature below (the "**Amendment Effective Date**"). This Amendment amends the Agreement as stated below. Unless otherwise defined in this Amendment, capitalized terms have the meanings ascribed to them in the Agreement. The parties agree as follows:

1. **GOVERNING LAW**. The Section in the Agreement entitled "**GOVERNING LAW**" (currently Section 8.1) is deleted in its entirety.

2. **DISPUTES**. The Section in the Agreement entitled "**DISPUTES**" (currently Section 8.2) is deleted in its entirety.

3. **MODIFICATIONS**. The Section in the Agreement entitled "**MODIFICATIONS**" (currently Section 10) is amended by adding the following sentence:

   "Notwithstanding this Section 10, no changes or updates to Amazon's Business Accounts Terms and Conditions will have the effect of changing the provisions set forth in this Amendment without the parties' written agreement in a subsequent amendment."

4. **TERM; TERMINATION**. The Section in the Agreement entitled "**TERM; TERMINATION**" (currently Section 12) is amended by adding a second paragraph as follows:

   "Notwithstanding this Section 12, either party may elect to terminate this Agreement without cause upon delivery of at least 30 days' prior written notice to the other party."

5. **AMAZON BUSINESS ANALYTICS**. Amazon will provide participating organizations, and other eligible organizations participating in the cooperative contract (MA3457) access to Amazon Business Analytics, whereby they can generate reports based on their purchase activity. Amazon Business analytics functionality includes the ability to customize, view, and download reports, including orders, returns, and refunds."

6. **LAWS AND REGULATIONS**. A new Section 17 is added to the Agreement entitled "**LAWS AND REGULATIONS**" that states as follows:

   "Amazon represents and warrants that it will comply with all applicable laws, rules, and regulations in the performance of the Agreement."

7. **FEDERAL FUNDS CERTIFICATIONS.** A new Section 18 is added to the Agreement entitled "**FEDERAL FUNDS CERTIFICATIONS**" that states as follows:

   "18.1. Debarment. Amazon certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of laws. Amazon further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. You may terminate this Agreement if knowledge of debarment, suspension or other ineligibility has been withheld by us.

   "18.2 Lobbying. Amazon certifies, to the best of its knowledge and belief, that:

   (A) No Federal appropriated funds have been paid or will be paid, by or on behalf of us, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

   (B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL.

   (C) This Agreement is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

8. **ENTIRE AGREEMENT**. Except as amended by this Amendment, the Agreement remains in full force and effect. This Amendment, together with the Agreement as modified by this Amendment: (a) constitutes the exclusive and complete agreement between the parties; and (b) supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof.

9. **CONFLICTS**. In the event of any conflict between the Agreement or any other applicable terms, conditions, policies, limitations, and requirements on the Amazon.com website and this Amendment, precedence will be as follows: (a) this Amendment; (b) the Agreement; and (c) the Amazon Business Acceptable Use Policy, and any other applicable terms, conditions, policies, limitations, and requirements on the Amazon.com website.

10. **COUNTERPARTS AND DELIVERY**. This Amendment may be executed in two or more counterparts, each of which will be deemed an original and all of which taken together will be deemed to constitute one and the same document. The parties may sign and deliver this Amendment by electronic means.

legal

Attachment B

Online Marketplace Scope of Work

Background:

This contract is in place in order for end users to receive access to the Contractors Online Marketplace. This contract utilizes a dynamic pricing structure in which the price for items is what is currently listed on the digital marketplace and is driven by the market. The State is seeking to provide users with access to and use of an online digital marketplace to purchase of goods and services that may be used routinely and needed quickly to address the everyday needs of public entities, schools, and universities.

Categories:

The contract includes four (4) awarded categories. This contract may only be used to purchase items that fall within the category/categories below. The items listed in each category are not restrictive or exhaustive but included to provide a general description of products and supplies that may be included. While all items described are available through an award contract, the State and Participating Public Agencies may choose to limit which categories their end users have access to:

1) Education-Based Accessories, Display, Products and Related Supplies
   a) Items related to products and supplies used in an education-based setting which may include but is not limited to: animal and pet supplies, art supplies, craft products, books, lesson plans and curriculum, school equipment, white boards, blackboards, teaching material, and other related products.

2) Information Technology-Peripheral Devices and Related Products
   a) Product-based supplies and solutions that involve information technology peripheral devices which may include but is not limited to: mouse, copiers, printers, cameras, video cameras, microphones, speakers, keyboard, multifunction printers, scanners, plotters, and other related items. Items in this category should not connect to a user's network.

3) Maintenance, Repair and Operations Products (MRO)
   a) Product-based items related to the maintenance, repair, and/or general operations that include but is not limited to: building materials, hardware, cabinets, motors, pumps, paints and coatings, plumbing equipment, power tools, windows, doors, cleaning products (to include green and dye-free), carpet care products and supplies, restroom care products and supplies, waste receptacles and liners, industrial tools and supplies (such as carts, dusters, brushes, spray bottles, squeegees, and gloves), rags, wipes, and related supplies.

4) Office-Based Accessories, Décor, Products, and Related Supplies
   a) Items that could be utilized in an office-like setting and used on a semi-regular basis which may include but is not limited to: binders, folders, filing materials, storage,

calendars, paper (copy, printer, photo, and presentation), notebooks, labels, post-it notes, shipping materials, envelopes, staplers, staples, paper punches, paper clips, scissors, rubber bands, cash register and thermal rolls, ink, toner cartridges, pens, pencils, markers, framing, tabletop or floor lamps, mirrors, general signage, wall décor, display cases, area rugs, mats, and other office related products.

Contract Deliverables:

Contractor will provide the following deliverables for the contract:

- **Online Marketplace:** Contractor will provide access and use to a digital marketplace for users of this contract to order goods and services through.
- **Digital Analytics:** Contractor will provide some form of data analytics.
- **Ability to Restrict Categories:** Contractor will provide the ability to restrict certain items (IT, furniture, etc.) as designated by participating end users as needed by each end users laws and applicable rules. Some of these features and tools are only available with Business Prime.

Dynamic Pricing:

The Amazon Business uses dynamic marketplace pricing. This contract will not need to be amended when prices fluctuate.

Cooperative Agreements:

Utilization of the Contract by OMNIA Partners' participating agencies will be at the discretion of the individual participating agency. Any modifications agreed to by participating agency and Contractor may not expand upon the Scope of Work in the Master Agreement and are exclusively between the participating agency and the Contractor.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	2021 Byrne Justice Assistance Grant
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Jon Law, Commander

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

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

Summary / Background Information

The Benton County Sheriff's Office would like to participate in the 2021 Byrne Justice Assistance Grant (JAG) to fund the purchase of secure storage in marked police vehicles. The total award is $31,870 and the breakdown of funds is as follows:

KPD - $19,122

RPD - $7,968

BCSO - $4,780

Fiscal Impact

This is a reimbursable grant through the City of Kennewick, with no cash match requirement. This grant was included in the 2021/2022 budget process for both revenue and expenditures in Department 121.

Recommendation

Authorize the Chairman of the Board to sign the attached Interlocal Agreement between the City of Kennewick, City of Richland, and Benton County.

Suggested Motion

The Board of Benton County Commissioners hereby approves the 2021 Byrne Justice Assistance Grant (JAG) and authorizes the Chairman to sign the Interlocal Agreement between the City of Kennewick, City of Richland, and County of Benton.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENNEWICK, WA, CITY OF RICHLAND, WA, AND COUNTY OF BENTON, WA FOR THE 2021 BYRNE JUSTICE ASSISTANCE GRANT (JAG).

WHEREAS, the Benton County Sheriff's Office would like to participate in the 2021 Byrne Justice Assistance Grant (JAG) to fund the purchase of secure storage in marked police vehicles; and

WHEREAS, the total amount awarded to the City of Kennewick was $31,870, and will be split between Kennewick, Richland and Benton County; and

WHEREAS, the City of Kennewick agrees to pay Benton County a total of $4,780 of JAG funds; and

WHEREAS, if there is a balance of grant funding remaining after the purchase of secure storage for marked police vehicles, the Board of Commissioners hereby authorizes the Benton County Sheriff's Office to apply it towards other equipment needed after receiving approval from the JAG Grant Committee; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby authorizes the Chairman to sign the Interlocal Agreement for the 2021 Byrne Justice Assistance Grant (JAG); and

BE IT FURTHER RESOLVED, Benton County's portion of the 2021 JAG award is $4,780; and

BE IT FURTHER RESOLVED the term of the attached Interlocal agreement shall commence upon signature of all parties and shall terminate September 30, 2024.

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

Orig: Sheriff's Office
cc: Auditor, City of Kennewick

Prepared by: K. Gillies

THE STATE OF WASHINGTON
COUNTY OF BENTON **KNOW ALL BY THESE PRESENT**

INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENNEWICK, WA THE CITY OF RICHLAND, WA AND COUNTY OF BENTON, WA

2021 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this **July 20, 2021**, by and between The County of Benton, acting by and through its governing body, the Benton County Commissioners (hereinafter referred to as COUNTY) and the City of Kennewick, acting by and through its governing body, the Kennewick City Council (hereinafter referred to as KENNEWICK), and Richland, acting by and through its governing body, the Richland City Council (hereinafter referred to as RICHLAND), all three of Benton County, State of Washington, witnesseth:

WHEREAS, this Agreement is made under the authority of RCW 39.34; and,

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and,

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and,

WHEREAS, the total award to KENNEWICK, RICHLAND and COUNTY is $31,870, which will be shared between KENNEWICK, RICHLAND, and COUNTY, as they are certified as disparate, therefore requiring one application and award to be shared between all three jurisdictions; and,

WHEREAS, KENNEWICK, RICHLAND and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, KENNEWICK, RICHLAND and COUNTY agree as follows:

Section 1.

KENNEWICK is the fiscal agent for this grant as only one jurisdiction can make application for the funds. KENNEWICK agrees to pay RICHLAND a total of $7,968 and COUNTY a total of $4,780 of JAG funds from the 2021 award.

Section 2.

COUNTY agrees to use $4,780 for secure storage in marked patrol vehicles.

Section 3.

RICHLAND agrees to use $7,968 to acquire bicycles for patrol and non-ballistic helmet visors for crowd control helmets.

Section 4.

KENNEWICK agrees to use $19,122 to purchase five in-car computers for patrol and detective vehicles.

Section 5.

RICHLAND and COUNTY agree to submit timely quarterly reports to KENNEWICK, the grantee/fiscal agency, by the fifth calendar day at the end of each quarter (January 5, April 5, July 5 and October 5), consistent with, and for the purpose of compliance with the reporting requirements for the JAG program.

Section 6.

Nothing in the performance of this Agreement shall impose any liability on KENNEWICK for claims against COUNTY or RICHLAND, or on COUNTY or RICHLAND for claims against KENNEWICK.

Section 7.

Any party hereto may terminate this Agreement upon one hundred and twenty (120) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other party's contract representative listed in Section 13 for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Termination of this Agreement by any party shall not affect or diminish authority exercised prior to delivery of required notice of termination.

Section 8.

Each party to this Agreement shall be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 9.

The parties to this Agreement do not intend for any third party to obtain any right by virtue of this Agreement.

Section 10.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

Section 11.

The term of this Agreement shall be from the date of signing through September 30, 2024.

Section 12.

By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the party, and the party agrees to the terms of this Agreement.

Section 13.

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

Benton County:	Sheriff Jerry Hatcher
City of Richland:	Chief John Bruce
City of Kennewick:	Chief Ken Hohenberg

Section 14.

The parties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understanding not incorporated in this Agreement are specifically excluded.

City of Kennewick, Washington

_____
DON BRITAIN, Mayor

ATTEST:

_____
TERRI WRIGHT, City Clerk

APPROVED AS TO FORM:
Contract Authorization

_____
LISA BEATON, City Attorney

City of Richland, Washington

_____
JON AMUNDSON, ICMA-CM
Interim City Manager

ATTEST:

_____
JENNIFER ROGERS, City Clerk

APPROVED AS TO FORM:
Contract Authorization

_____
HEATHER KINTZLEY, City Attorney

County of Benton, Washington

_____
Chairman of Benton County Commission

APPROVED AS TO FORM:

_____
Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	07/20/21
Subject:	Award of public defense contract to S. Ajax, J. Azure, A. Dahlhauser, M. Alexander
Presenter:	Tiffany Deaton; Eric Hsu
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 court appointed counsel in Benton County Superior Court on Uniform Guardianship Act cases due to a law change in 2021 ("Services").

Because of this new legal obligation, OPD is needing to award one or more additional contracts to provide Services.

The following attorneys are qualified to provide Services and interested in contracting with Benton County to do so. The proposed contracts and resolutions effectuate a contract with the attorneys for the provision of such Services on the terms contained therein, for the period from 06/01/21 to 12/31/22 at the rate of $175 per Hour (up to a maximum fee of $1,750 per case, subject to additional compensation as approved for demonstrated need):

- Shelley Ajax
- Jennifer Azure
- Allyson Dahlhauser
- Michelle Alexander

Other qualified attorneys have also agreed to provide these services under contract with Benton County. However, their contracts are pending their signature and will be presented to the Board for signing at a future Board Meeting on the Consent Agenda.

Fiscal Impact

Appointments of this new case type are estimated to cost Benton County over $100,000 per year. For more information, please refer to Board presentation by Benton County Superior Court (since these contracts will be funded out of a line item from Superior Court Administration).

Recommendation

Execute contract with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander for court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolutions as presented.

Suggested Motion

Move to approve contracts with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander to provide court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases (will be part of a group of contracts to be presented for signing).

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY SHELLEY AJAX TO PROVIDE COURT APPOINTED COUNSEL SERVICES IN BENTON COUNTY SUPERIOR COURT FOR UNIFORM GUARDIANSHIP ACT CASES

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Superior Court for Uniform Guardianship Act cases because of a change in the law in 2021 ("Services"); and

WHEREAS, because of this change in the law, it is necessary for County to award professional services contracts at this time to provide Services; and

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

WHEREAS, a proposed professional services contract with attorney Shelley Ajax for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services contract with attorney Shelley Ajax, to provide court appointed counsel in Benton County Superior Court for Uniform Guardianship Act cases, for the time period from 06/01/21 to 12/31/22 for compensation not to exceed $175 per Hour, 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, Shelley Ajax
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2122SAA001-UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2122SAA001-UGA**	**Contract Holder**	**Shelley Ajax**
WSBA #	**36227**	**Effective Dates**	**06/01/21 - 12/31/22**
Caseload Cap	**Not applicable**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Shelley Ajax, Attorney at Law**		

THIS AGREEMENT is entered into by and between **Shelley Ajax,** attorney at law, Washington State Bar Association **# 36227** ("Attorney"), dba Shelley Ajax, Attorney at Law and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court (the "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 who are respondents in proceedings brought under the Uniform Guardianship Act ("UGA") Chapter 11.130, RCW and filed in, or pending in, Benton County Superior Court, when the said UGA proceedings involve the custody or guardianship of the indigent respondents' minor child or children ("UGA Cases").

B. Attorney is engaged in the private practice of law, has direct experience in an area of law that has provided him or her with the training and experience necessary to represent respondents in UGA Cases, and desires to contract with the County to provide legal representation to indigent respondents in UGA Cases..

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 **06/01/21** and shall continue thereafter through and including **12/31/22**, 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 **5861 W. Clearwater Ave, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 783-3330** and **(509) 783-3334** respectively; and Attorney's current office/work e-mail address is **shelley@ajaxlawfirm.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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 Superior Court Administrator ("Superior Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to certain indigent persons who are respondents in actions brought pursuant to Washington's Uniform Guardianship Act, Chapter 11.130, RCW, 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 in an area of law that has provided Attorney with the experience necessary to provide adequate representation in the type of cases contemplated by this Agreement; 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. 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, hearings, 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.

e. Attorney acknowledges and recognizes that while the Washington State Standards for Indigent Defense ("SID") as promulgated by the Washington State Supreme Court does not appear to encompass or control UGA Cases, it is possible that the Superior Court may choose to expand the SID to do so in the future. In the event that SID are expanded to encompass UGA Cases, Attorney agrees to comply with any such standards, including reporting requirements, as stated therein.

f. 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. **RESERVED.**

5. **CONTRACT DUTIES.** During the contract term, Attorney will be eligible to receive appointments by the Benton County Superior Court for UGA Cases on the terms and conditions set out herein. For any such appointments, Attorney shall retain the ability to accept or decline, in Attorney's sole discretion, provided that Attorney agrees to respond to notices of proposed appointment in a timely fashion (within 48 business hours unless circumstances warrant a further delay) with notice of acceptance or declination, understanding the time-sensitive nature of UGA Cases.

6. **CONTINUED REPRESENTATION.**

Once Attorney is appointed a UGA Case pursuant to this Agreement, then Attorney's continued representation responsibilities, even beyond the expiration or termination of this Agreement, shall be a matter to be determined in the discretion of the Benton County Superior Court.

Should Benton County Superior Court determine that Attorney's appointment to any case or cases shall continue beyond the expiration or termination of this Agreement, then Attorney shall continue to be eligible for compensation pursuant to the terms of this Agreement notwithstanding such expiration or termination.

Should Benton County Superior Court determine that Attorney's appointment to cases outstanding at time of expiration or termination of this Agreement is to end contemporaneously with such expiration or termination, then Attorney's eligibility for compensation shall similarly end, and Attorney shall reasonably cooperate with substitute counsel in transferring records, discovery, and client property to substitute counsel, so as to ensure continuity of representation.

7. **NUMBER OF APPOINTMENTS.**

There is no contractual limitation on the number of appointments that Attorney may choose to accept through this Agreement.

8. **RESERVED**

9. **CLIENT ELIGIBILITY.** Attorney may assume that all clients appointed pursuant to this Agreement are eligible for public defense services and Attorney shall have no obligation to make any further inquiry as to eligibility, or to report any indication of ineligibility to either Benton County, Benton County's Office of Public Defense ("OPD"), or the Court.

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 OPD and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County Superior 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 resolution alternatives, and the preparation for and appearance on behalf of the client in all stages of proceedings for appointed UGA Cases in Benton County Superior Court.

12. **COMPENSATION.** Attorney shall be compensated at the rate of **$175/hr,** billed in 1/10th hr increments, up to an initial maximum compensation of $1,750 (10 hrs) per case. If, in any given case, Attorney reaches the maximum compensation level and still believes that additional work is necessary, then Attorney shall request authorization to exceed the maximum compensation level, by using the administrative process for doing

so set out by the Benton County OPD, and any denial of such a request, by the OPD, shall be subject to review by Benton County Superior Court.

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

a) For cases that are completed within 60 days of appointment, Attorney should submit an invoice for payment, including a Claim for Compensation form as required by Benton County OPD, upon completion.

b) For cases that extend beyond 60 days, Attorney may make reasonable periodic billings.

c) All billings must be made electronically and submitted for payment to the following email address: **OPDClaims@co.benton.wa.us**.

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 Benton County OPD's administrative process for such expense pre-approval, authority for approving and managing such expenses having been delegated by Benton County Superior Court to the Benton County OPD, by local court rule or memorandum.

(ii) In order for Attorney to be reimbursed for any expenses pursuant to this subsection, Attorney shall complete and sign a Claim for Compensation in such form as is designated by the Benton County OPD, and attach such supplementary materials as may be required. All Claims for Compensation must be submitted electronically to the email address: OPDClaims@co.benton.wa.us and shall be submitted to OPD 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 OPD.

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 OPD: Attn: Office Manager, Benton County OPD, 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 OPD, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and 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 Superior 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 Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate,

Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. **TERMINATION.**

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

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County 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 Attorney shall not be assigned any additional cases pursuant to this Agreement.

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 Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, 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 Superior 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 this subsection, 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. Other attorneys in Attorney's law firm shall be permitted to assist Attorney with aspects of representation on individual cases appointed pursuant to this Agreement, including client contact, investigation, discovery review, court appearances, and negotiations with opposing counsel as needed, provided, however, that Attorney shall continue at all times to personally and professionally responsible for all work done on cases, and representation provided to clients on, cases appointed through this Agreement.

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. **RESERVED**

22. **RESERVED**

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 OPD
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.

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 (Jun 1, 2021 17:00 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Jun 1, 2021

Shelley Ajax
Shelley Ajax (Jun 1, 2021 16:52 PDT)

Shelley Ajax, WSBA # 36227

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	07/20/21
Subject:	Award of public defense contract to S. Ajax, J. Azure, A. Dahlhauser, M. Alexander
Presenter:	Tiffany Deaton; Eric Hsu
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 court appointed counsel in Benton County Superior Court on Uniform Guardianship Act cases due to a law change in 2021 ("Services").

Because of this new legal obligation, OPD is needing to award one or more additional contracts to provide Services.

The following attorneys are qualified to provide Services and interested in contracting with Benton County to do so. The proposed contracts and resolutions effectuate a contract with the attorneys for the provision of such Services on the terms contained therein, for the period from 06/01/21 to 12/31/22 at the rate of $175 per Hour (up to a maximum fee of $1,750 per case, subject to additional compensation as approved for demonstrated need):

- Shelley Ajax
- Jennifer Azure
- Allyson Dahlhauser
- Michelle Alexander

Other qualified attorneys have also agreed to provide these services under contract with Benton County. However, their contracts are pending their signature and will be presented to the Board for signing at a future Board Meeting on the Consent Agenda.

Fiscal Impact

Appointments of this new case type are estimated to cost Benton County over $100,000 per year. For more information, please refer to Board presentation by Benton County Superior Court (since these contracts will be funded out of a line item from Superior Court Administration).

Recommendation

Execute contract with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander for court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolutions as presented.

Suggested Motion

Move to approve contracts with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander to provide court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases (will be part of a group of contracts to be presented for signing).

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY JENNIFER AZURE TO PROVIDE COURT APPOINTED COUNSEL SERVICES IN BENTON COUNTY SUPERIOR COURT FOR UNIFORM GUARDIANSHIP ACT CASES

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Superior Court for Uniform Guardianship Act cases because of a change in the law in 2021 ("Services"); and

WHEREAS, because of this change in the law, it is necessary for County to award professional services contracts at this time to provide Services; and

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

WHEREAS, a proposed professional services contract with attorney Jennifer Azure for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services contract with attorney Jennifer Azure, to provide court appointed counsel in Benton County Superior Court for Uniform Guardianship Act cases, for the time period from 06/01/21 to 12/31/22 for compensation not to exceed $175 per Hour, 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, Jennifer Azure
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2122JMA001-UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2122JMA001-UGA**	**Contract Holder**	**Jennifer Azure**
WSBA #	**30494**	**Effective Dates**	**06/01/21 - 12/31/22**
Caseload Cap	**Not applicable**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Azure Law Office, PLLC**		

THIS AGREEMENT is entered into by and between **Jennifer Azure,** attorney at law, Washington State Bar Association **# 30494** ("Attorney"), dba Azure Law Office, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court (the "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 who are respondents in proceedings brought under the Uniform Guardianship Act ("UGA") Chapter 11.130, RCW and filed in, or pending in, Benton County Superior Court, when the said UGA proceedings involve the custody or guardianship of the indigent respondents' minor child or children ("UGA Cases").

B. Attorney is engaged in the private practice of law, has direct experience in an area of law that has provided him or her with the training and experience necessary to represent respondents in UGA Cases, and desires to contract with the County to provide legal representation to indigent respondents in UGA Cases..

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 **06/01/21** and shall continue thereafter through and including **12/31/22**, 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 **7135 W Hood Pl, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **509-491-3941** and **n/a** respectively; and Attorney's current office/work e-mail address is **jennifer@azurelawoffice.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 Superior Court Administrator ("Superior Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to certain indigent persons who are respondents in actions brought pursuant to Washington's Uniform Guardianship Act, Chapter 11.130, RCW, 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 in an area of law that has provided Attorney with the experience necessary to provide adequate representation in the type of cases contemplated by this Agreement; 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. 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, hearings, 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.

e. Attorney acknowledges and recognizes that while the Washington State Standards for Indigent Defense ("SID") as promulgated by the Washington State Supreme Court does not appear to encompass or control UGA Cases, it is possible that the Superior Court may choose to expand the SID to do so in the future. In the event that SID are expanded to encompass UGA Cases, Attorney agrees to comply with any such standards, including reporting requirements, as stated therein.

f. 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. **RESERVED.**

5. **CONTRACT DUTIES.** During the contract term, Attorney will be eligible to receive appointments by the Benton County Superior Court for UGA Cases on the terms and conditions set out herein. For any such appointments, Attorney shall retain the ability to accept or decline, in Attorney's sole discretion, provided that Attorney agrees to respond to notices of proposed appointment in a timely fashion (within 48 business hours unless circumstances warrant a further delay) with notice of acceptance or declination, understanding the time-sensitive nature of UGA Cases.

6. **CONTINUED REPRESENTATION.**

Once Attorney is appointed a UGA Case pursuant to this Agreement, then Attorney's continued representation responsibilities, even beyond the expiration or termination of this Agreement, shall be a matter to be determined in the discretion of the Benton County Superior Court.

Should Benton County Superior Court determine that Attorney's appointment to any case or cases shall continue beyond the expiration or termination of this Agreement, then Attorney shall continue to be eligible for compensation pursuant to the terms of this Agreement notwithstanding such expiration or termination.

Should Benton County Superior Court determine that Attorney's appointment to cases outstanding at time of expiration or termination of this Agreement is to end contemporaneously with such expiration or termination, then Attorney's eligibility for compensation shall similarly end, and Attorney shall reasonably cooperate with substitute counsel in transferring records, discovery, and client property to substitute counsel, so as to ensure continuity of representation.

7. **NUMBER OF APPOINTMENTS.**

There is no contractual limitation on the number of appointments that Attorney may choose to accept through this Agreement.

8. **RESERVED**

9. **CLIENT ELIGIBILITY.** Attorney may assume that all clients appointed pursuant to this Agreement are eligible for public defense services and Attorney shall have no obligation to make any further inquiry as to eligibility, or to report any indication of ineligibility to either Benton County, Benton County's Office of Public Defense ("OPD"), or the Court.

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 OPD and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County Superior 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 resolution alternatives, and the preparation for and appearance on behalf of the client in all stages of proceedings for appointed UGA Cases in Benton County Superior Court.

12. **COMPENSATION.** Attorney shall be compensated at the rate of **$175/hr,** billed in 1/10th hr increments, up to an initial maximum compensation of $1,750 (10 hrs) per case. If, in any given case, Attorney reaches the maximum compensation level and still believes that additional work is necessary, then Attorney shall request authorization to exceed the maximum compensation level, by using the administrative process for doing

so set out by the Benton County OPD, and any denial of such a request, by the OPD, shall be subject to review by Benton County Superior Court.

All compensation shall be payable to: Azure Law Office, PLLC *since Attorney is a(n) principal with that firm.*

a) For cases that are completed within 60 days of appointment, Attorney should submit an invoice for payment, including a Claim for Compensation form as required by Benton County OPD, upon completion.

b) For cases that extend beyond 60 days, Attorney may make reasonable periodic billings.

c) All billings must be made electronically and submitted for payment to the following email address: **OPDClaims@co.benton.wa.us**.

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 Benton County OPD's administrative process for such expense pre-approval, authority for approving and managing such expenses having been delegated by Benton County Superior Court to the Benton County OPD, by local court rule or memorandum.

(ii) In order for Attorney to be reimbursed for any expenses pursuant to this subsection, Attorney shall complete and sign a Claim for Compensation in such form as is designated by the Benton County OPD, and attach such supplementary materials as may be required. All Claims for Compensation must be submitted electronically to the email address: OPDClaims@co.benton.wa.us and shall be submitted to OPD 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 OPD.

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 OPD: Attn: Office Manager, Benton County OPD, 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 OPD, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and 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 Superior 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 Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate,

Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. **TERMINATION.**

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

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County 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 Attorney shall not be assigned any additional cases pursuant to this Agreement.

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 Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, 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 Superior 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 this subsection, 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. Other attorneys in Attorney's law firm shall be permitted to assist Attorney with aspects of representation on individual cases appointed pursuant to this Agreement, including client contact, investigation, discovery review, court appearances, and negotiations with opposing counsel as needed, provided, however, that Attorney shall continue at all times to personally and professionally responsible for all work done on cases, and representation provided to clients on, cases appointed through this Agreement.

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. **RESERVED**

22. **RESERVED**

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 OPD
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.

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 (Jun 10, 2021 16:09 PDT)

Eric Hsu
Public Defense Manager

ATTORNEY

Date Jun 10, 2021

Jennifer Azure

Jennifer Azure, WSBA # 30494

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	07/20/21
Subject:	Award of public defense contract to S. Ajax, J. Azure, A. Dahlhauser, M. Alexander
Presenter:	Tiffany Deaton; Eric Hsu
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 court appointed counsel in Benton County Superior Court on Uniform Guardianship Act cases due to a law change in 2021 ("Services").

Because of this new legal obligation, OPD is needing to award one or more additional contracts to provide Services.

The following attorneys are qualified to provide Services and interested in contracting with Benton County to do so. The proposed contracts and resolutions effectuate a contract with the attorneys for the provision of such Services on the terms contained therein, for the period from 05/19/21 to 12/31/22 at the rate of $175 per Hour (up to a maximum fee of $1,750 per case, subject to additional compensation as approved for demonstrated need):

- Shelley Ajax
- Jennifer Azure
- Allyson Dahlhauser
- Michelle Alexander

Other qualified attorneys have also agreed to provide these services under contract with Benton County. However, their contracts are pending their signature and will be presented to the Board for signing at a future Board Meeting on the Consent Agenda.

Fiscal Impact

Appointments of this new case type are estimated to cost Benton County over $100,000 per year. For more information, please refer to Board presentation by Benton County Superior Court (since these contracts will be funded out of a line item from Superior Court Administration).

Recommendation

Execute contract with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander for court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolutions as presented.

Suggested Motion

Move to approve contracts with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander to provide court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases (will be part of a group of contracts to be presented for signing).

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY ALLYSON DAHLHAUSER TO PROVIDE COURT APPOINTED COUNSEL SERVICES IN BENTON COUNTY SUPERIOR COURT FOR UNIFORM GUARDIANSHIP ACT CASES

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Superior Court for Uniform Guardianship Act cases because of a change in the law in 2021 ("Services"); and

WHEREAS, because of this change in the law, it is necessary for County to award professional services contracts at this time to provide Services; and

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

WHEREAS, a proposed professional services contract with attorney Allyson Dahlhauser for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services contract with attorney Allyson Dahlhauser, to provide court appointed counsel in Benton County Superior Court for Uniform Guardianship Act cases, for the time period from 05/19/21 to 12/31/22 for compensation not to exceed $175 per Hour, 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, Allyson Dahlhauser
Copy – Auditor, S Godinez

E. Hsu

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2122AGM-01UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2122AGM-01UGA**	**Contract Holder**	**Allyson Dahlhauser**
WSBA #	**44196**	**Effective Dates**	**05/19/21 - 12/31/22**
Caseload Cap	**n/a**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Kuffel, Hultgrenn, Klashke, Shea, & Ellerd LLP**		
Contract Slot	**UGA-1**		

THIS AGREEMENT is entered into by and between **Allyson Dahlhauser,** attorney at law, Washington State Bar Association **# 44196** ("Attorney"), dba Kuffel, Hultgrenn, Klashke, Shea, & Ellerd LLP and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court (the "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 who are respondents in proceedings brought under the Uniform Guardianship Act ("UGA") Chapter 11.130, RCW and filed in, or pending in, Benton County Superior Court, when the said UGA proceedings involve the custody or guardianship of the indigent respondents' minor child or children ("UGA Cases").

B. Attorney is engaged in the private practice of law, has direct experience in an area of law that has provided him or her with the training and experience necessary to represent respondents in UGA Cases, and desires to contract with the County to provide legal representation to indigent respondents in UGA Cases..

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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **05/19/21** and shall continue thereafter through and including **12/31/22**, 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 **1915 Sun Willows, Blvd, Suite A, Pasco, WA 99301.** Attorney's current local office telephone and fax numbers are **509-545-8531** and **509-545-3019** respectively; and Attorney's current office/work e-mail address is **adahlhauser@khkslaw.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 Superior Court Administrator ("Superior Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to certain indigent persons who are respondents in actions brought pursuant to Washington's Uniform Guardianship Act, Chapter 11.130, RCW, 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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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 in an area of law that has provided Attorney with the experience necessary to provide adequate representation in the type of cases contemplated by this Agreement; 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. 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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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, hearings, 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.

e. Attorney acknowledges and recognizes that while the Washington State Standards for Indigent Defense ("SID") as promulgated by the Washington State Supreme Court does not appear to encompass or control UGA Cases, it is possible that the Superior Court may choose to expand the SID to do so in the future. In the event that SID are expanded to encompass UGA Cases, Attorney agrees to comply with any such standards, including reporting requirements, as stated therein.

f. 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. **RESERVED.**

5. **CONTRACT DUTIES.** During the contract term, Attorney will be eligible to receive appointments by the Benton County Superior Court for UGA Cases on the terms and conditions set out herein. For any such appointments, Attorney shall retain the ability to accept or decline, in Attorney's sole discretion, provided that Attorney agrees to respond to notices of proposed appointment in a timely fashion (within 48 business hours unless circumstances warrant a further delay) with notice of acceptance or declination, understanding the time-sensitive nature of UGA Cases.

6. **CONTINUED REPRESENTATION.**

Once Attorney is appointed a UGA Case pursuant to this Agreement, then Attorney's continued representation responsibilities, even beyond the expiration or termination of this Agreement, shall be a matter to be determined in the discretion of the Benton County Superior Court.

Should Benton County Superior Court determine that Attorney's appointment to any case or cases shall continue beyond the expiration or termination of this Agreement, then Attorney shall continue to be eligible for compensation pursuant to the terms of this Agreement notwithstanding such expiration or termination.

Should Benton County Superior Court determine that Attorney's appointment to cases outstanding at time of expiration or termination of this Agreement is to end contemporaneously with such expiration or termination, then Attorney's eligibility for compensation shall similarly end, and Attorney shall reasonably cooperate with substitute

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

counsel in transferring records, discovery, and client property to substitute counsel, so as to ensure continuity of representation.

7. **NUMBER OF APPOINTMENTS.**

There is no contractual limitation on the number of appointments that Attorney may choose to accept through this Agreement.

8. **RESERVED**

9. **CLIENT ELIGIBILITY.** Attorney may assume that all clients appointed pursuant to this Agreement are eligible for public defense services and Attorney shall have no obligation to make any further inquiry as to eligibility, or to report any indication of ineligibility to either Benton County, Benton County's Office of Public Defense ("OPD"), or the Court.

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 OPD and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County Superior 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 resolution alternatives, and the preparation for and appearance on behalf of the client in all stages of proceedings for appointed UGA Cases in Benton County Superior Court.

12. **COMPENSATION.** Attorney shall be compensated at the rate of **$175/hr,** billed in 1/10th hr increments, up to an initial maximum compensation of $1,750 (10 hrs) per case. If, in any given case, Attorney reaches the maximum compensation level and still believes that additional work is necessary, then Attorney shall request authorization to exceed the maximum compensation level, by using the administrative process for doing so set out by the Benton County OPD, and any denial of such a request, by the OPD, shall be subject to review by Benton County Superior Court.

All compensation shall be payable to: Kuffel, Hultgrenn, Klashke, Shea, & Ellerd LLP *since Attorney is a(n) principal with that firm.*

a) For cases that are completed within 60 days of appointment, Attorney should submit an invoice for payment, including a Claim for Compensation form as required by Benton County OPD, upon completion.

b) For cases that extend beyond 60 days, Attorney may make reasonable periodic billings.

c) All billings must be made electronically and submitted for payment to the following email address: **OPDClaims@co.benton.wa.us.**

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 Benton County OPD's administrative process for such expense pre-approval, authority for approving and managing such expenses having been delegated by Benton County Superior Court to the Benton County OPD, by local court rule or memorandum.

(ii) In order for Attorney to be reimbursed for any expenses pursuant to this subsection, Attorney shall complete and sign a Claim for

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

Compensation in such form as is designated by the Benton County OPD, and attach such supplementary materials as may be required. All Claims for Compensation must be submitted electronically to the email address: OPDClaims@co.benton.wa.us and shall be submitted to OPD 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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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.

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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 OPD.

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 OPD: Attn: Office Manager, Benton County OPD, 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 OPD, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and 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 Superior 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 Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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

17. **TERMINATION.**

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

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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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 Attorney shall not be assigned any additional cases pursuant to this Agreement.

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 Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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 Superior 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 this subsection, 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. Other attorneys in Attorney's law firm shall be permitted to assist Attorney with aspects of representation on individual cases appointed pursuant to this Agreement, including client contact, investigation, discovery review, court appearances, and negotiations with opposing counsel as needed, provided, however, that Attorney shall continue at all times to personally and professionally responsible for all work done on cases, and representation provided to clients on, cases appointed through this Agreement.

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. **RESERVED**

22. **RESERVED**

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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

(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 OPD
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.Benton.wa.us

DocuSign Envelope ID: 2BE36DF2-21AD-47ED-B964-08E5985BEB3F

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.

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

DocuSigned by:
Eric Hsu
F80F380177B9473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/6/2021

DocuSigned by:
04DBD495CC364E4...

Allyson Dahlhauser, WSBA 44196

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	07/20/21
Subject:	Award of public defense contract to S. Ajax, J. Azure, A. Dahlhauser, M. Alexander
Presenter:	Tiffany Deaton; Eric Hsu
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 court appointed counsel in Benton County Superior Court on Uniform Guardianship Act cases due to a law change in 2021 ("Services").

Because of this new legal obligation, OPD is needing to award one or more additional contracts to provide Services.

The following attorneys are qualified to provide Services and interested in contracting with Benton County to do so. The proposed contracts and resolutions effectuate a contract with the attorneys for the provision of such Services on the terms contained therein, for the period from 05/28/21 to 12/31/22 at the rate of $175 per Hour (up to a maximum fee of $1,750 per case, subject to additional compensation as approved for demonstrated need):

- Shelley Ajax
- Jennifer Azure
- Allyson Dahlhauser
- Michelle Alexander

Other qualified attorneys have also agreed to provide these services under contract with Benton County. However, their contracts are pending their signature and will be presented to the Board for signing at a future Board Meeting on the Consent Agenda.

Fiscal Impact

Appointments of this new case type are estimated to cost Benton County over $100,000 per year. For more information, please refer to Board presentation by Benton County Superior Court (since these contracts will be funded out of a line item from Superior Court Administration).

Recommendation

Execute contract with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander for court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolutions as presented.

Suggested Motion

Move to approve contracts with attorneys Shelley Ajax, Jennifer Azure, Allyson Dahlhauser and Michelle Alexander to provide court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases (will be part of a group of contracts to be presented for signing).

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY MICHELLE ALEXANDER TO PROVIDE COURT APPOINTED COUNSEL SERVICES IN BENTON COUNTY SUPERIOR COURT FOR UNIFORM GUARDIANSHIP ACT CASES

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Superior Court for Uniform Guardianship Act cases because of a change in the law in 2021 ("Services"); and

WHEREAS, because of this change in the law, it is necessary for County to award professional services contracts at this time to provide Services; and

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

WHEREAS, a proposed professional services contract with attorney Michelle Alexander for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services contract with attorney Michelle Alexander, to provide court appointed counsel in Benton County Superior Court for Uniform Guardianship Act cases, for the time period from 05/28/21 to 12/31/22 for compensation not to exceed $175 per Hour, 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, Michelle Alexander
Copy – Auditor, S Godinez

E. Hsu

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2122MMA001-UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2122MMA001-UGA**	**Contract Holder**	**Michelle Alexander**
WSBA #	**29291**	**Effective Dates**	**05/28/21 - 12/31/22**
Caseload Cap	**Not applicable**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Michelle Alexander, Attorney at Law**		
Contract Slot	**UGA-8**		

THIS AGREEMENT is entered into by and between **Michelle Alexander,** attorney at law, Washington State Bar Association **# 29291** ("Attorney"), dba Michelle Alexander, Attornty at Law and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court (the "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 who are respondents in proceedings brought under the Uniform Guardianship Act ("UGA") Chapter 11.130, RCW and filed in, or pending in, Benton County Superior Court, when the said UGA proceedings involve the custody or guardianship of the indigent respondents' minor child or children ("UGA Cases").

B. Attorney is engaged in the private practice of law, has direct experience in an area of law that has provided him or her with the training and experience necessary to represent respondents in UGA Cases, and desires to contract with the County to provide legal representation to indigent respondents in UGA Cases..

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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **05/28/21** and shall continue thereafter through and including **12/31/22**, 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 **7135 W Hood Pl, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **509-204-3119** and **509-581-0282** respectively; and Attorney's current office/work e-mail address is **mdralexander@gmail.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such 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 Superior Court Administrator ("Superior Court Administrator").

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to certain indigent persons who are respondents in actions brought pursuant to Washington's Uniform Guardianship Act, Chapter 11.130, RCW, 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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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 in an area of law that has provided Attorney with the experience necessary to provide adequate representation in the type of cases contemplated by this Agreement; 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. 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, hearings, 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.

e. Attorney acknowledges and recognizes that while the Washington State Standards for Indigent Defense ("SID") as promulgated by the Washington State Supreme Court does not appear to encompass or control UGA Cases, it is possible that the Superior Court may choose to expand the SID to do so in the future. In the event that SID are expanded to encompass UGA Cases, Attorney agrees to comply with any such standards, including reporting requirements, as stated therein.

f. 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. **RESERVED.**

5. **CONTRACT DUTIES.** During the contract term, Attorney will be eligible to receive appointments by the Benton County Superior Court for UGA Cases on the terms and conditions set out herein. For any such appointments, Attorney shall retain the ability to accept or decline, in Attorney's sole discretion, provided that Attorney agrees to respond to notices of proposed appointment in a timely fashion (within 48 business hours unless circumstances warrant a further delay) with notice of acceptance or declination, understanding the time-sensitive nature of UGA Cases.

6. **CONTINUED REPRESENTATION.**

Once Attorney is appointed a UGA Case pursuant to this Agreement, then Attorney's continued representation responsibilities, even beyond the expiration or termination of this Agreement, shall be a matter to be determined in the discretion of the Benton County Superior Court.

Should Benton County Superior Court determine that Attorney's appointment to any case or cases shall continue beyond the expiration or termination of this Agreement, then Attorney shall continue to be eligible for compensation pursuant to the terms of this Agreement notwithstanding such expiration or termination.

Should Benton County Superior Court determine that Attorney's appointment to cases outstanding at time of expiration or termination of this Agreement is to end contemporaneously with such expiration or termination, then Attorney's eligibility for compensation shall similarly end, and Attorney shall reasonably cooperate with substitute

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

counsel in transferring records, discovery, and client property to substitute counsel, so as to ensure continuity of representation.

7. **NUMBER OF APPOINTMENTS.**

There is no contractual limitation on the number of appointments that Attorney may choose to accept through this Agreement.

8. **RESERVED**

9. **CLIENT ELIGIBILITY.** Attorney may assume that all clients appointed pursuant to this Agreement are eligible for public defense services and Attorney shall have no obligation to make any further inquiry as to eligibility, or to report any indication of ineligibility to either Benton County, Benton County's Office of Public Defense ("OPD"), or the Court.

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 OPD and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County Superior 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 resolution alternatives, and the preparation for and appearance on behalf of the client in all stages of proceedings for appointed UGA Cases in Benton County Superior Court.

12. **COMPENSATION.** Attorney shall be compensated at the rate of **$175/hr,** billed in 1/10th hr increments, up to an initial maximum compensation of $1,750 (10 hrs) per case. If, in any given case, Attorney reaches the maximum compensation level and still believes that additional work is necessary, then Attorney shall request authorization to exceed the maximum compensation level, by using the administrative process for doing so set out by the Benton County OPD, and any denial of such a request, by the OPD, shall be subject to review by Benton County Superior Court.

All compensation shall be payable to: Michelle Alexander, Attornty at Law *since Attorney is a(n) principal with that firm.*

a) For cases that are completed within 60 days of appointment, Attorney should submit an invoice for payment, including a Claim for Compensation form as required by Benton County OPD, upon completion.

b) For cases that extend beyond 60 days, Attorney may make reasonable periodic billings.

c) All billings must be made electronically and submitted for payment to the following email address: **OPDClaims@co.benton.wa.us.**

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 Benton County OPD's administrative process for such expense pre-approval, authority for approving and managing such expenses having been delegated by Benton County Superior Court to the Benton County OPD, by local court rule or memorandum.

(ii) In order for Attorney to be reimbursed for any expenses pursuant to this subsection, Attorney shall complete and sign a Claim for

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

Compensation in such form as is designated by the Benton County OPD, and attach such supplementary materials as may be required. All Claims for Compensation must be submitted electronically to the email address: OPDClaims@co.benton.wa.us and shall be submitted to OPD 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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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.

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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 OPD.

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 OPD: Attn: Office Manager, Benton County OPD, 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 OPD, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and 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 Superior 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 Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

17. **TERMINATION.**

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

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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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 Attorney shall not be assigned any additional cases pursuant to this Agreement.

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 Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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 Superior 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 this subsection, 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. Other attorneys in Attorney's law firm shall be permitted to assist Attorney with aspects of representation on individual cases appointed pursuant to this Agreement, including client contact, investigation, discovery review, court appearances, and negotiations with opposing counsel as needed, provided, however, that Attorney shall continue at all times to personally and professionally responsible for all work done on cases, and representation provided to clients on, cases appointed through this Agreement.

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. **RESERVED**

22. **RESERVED**

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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

(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 OPD
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.Benton.wa.us

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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.

SIGNATURES APPEAR ON FOLLOWING PAGE

DocuSign Envelope ID: 3CFC73C5-A4FA-4D9F-9041-D0FE586DBD00

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

DocuSigned by:
Eric Hsu
F80F08847780478...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/6/2021

DocuSigned by:
Michelle Alexander
6AB2696F4E65452...

Michelle Alexander, WSBA # 29291

Suggested motion if all portion of the re-org are being approved:

I move to approve the following resolutions as presented:

- The Public Works organization chart
- The Fleet Manager job description
- The Fleet Manager as a grade 19 on the Benton County non-bargaining salary scheduled effective July 1, 2021
- The transfer of funds within ER&R
- The Engineering Associate III job description
- The Assistant County Engineer job description
- Financial Analyst II job description
- The Financial Analyst II as a grade 16 on the Benton County non-bargaining salary scheduled
- The transfer of funds within Central Services

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Public Works Department Organizational Chart
Presenter:	Doug D'Hondt/Matt Rasmussen
Prepared By:	Doug D'Hondt/Matt Rasmussen
Reviewed By:	Matt Rasmussen

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

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

Summary / Background Information

Recent staff changes have provided an opportunity to make adjustments to the organizational chart at the Public Works Department.

During the budget development process the Public Works Administrator/County Engineer position was left in the budget, but unfilled, as the incumbent was on a one year trial as the Deputy County Administrator. It now appears that the position will no longer be needed so the County Engineer, in conjunction with the Commissioners Office would like to reappropriate the funding for that position.

Over the past one and a half years we have been evaluating the management of the department utilizing just the County Engineer. It has become apparent that additional assistance is needed for high level administrative work and general supervision of department staff. Previously the Department had an Assistant County Engineer under the Public Works Administrator/County Engineer. Staff believes it makes sense to restore that position using the appropriation from the now vacant Public Works Administrator position.

Recently an Engineering Technician III with the Department was able to successfully pass their Engineer in Training certification exam. This achievement, combined with the employees education and experience, warrants promotion to a higher level position. Since there is no higher position currently vacant staff proposes to create a new Engineering Associate III position in the department to allow for this promotion. The employees current position of Engineering Technician III position will be eliminated.

This month the Chief Financial Officer for the Public Works Department announced their intent to vacate their position. This presents an opportunity to continue work to consolidate certain services in the County when it makes sense to do so. The purchasing group is the most recent example of this effort. In this instance staff would like to begin to consolidate financial services for departments under the Commissioners. Since there are already management level staff in the finance and budget department, in order to fill the needs of the Public Works Department we only need to add additional

support staff. To that end the Chief Financial Officer and the Accounting Support Specialist (currently vacant) in the Public Works Department will be eliminated. The funding for those positions will be used to pay an assessment for two new finance positions that will be created in the Central Services Department.

Fiscal Impact

Removal of the Public Works Administrator/County Engineer position results in a savings of $146,388 annually. Adding the Assistant County Engineer position and changing the Engineering Technician III position to an Engineering Associate III position results in an increase of $106,272 annually. The net change is a savings of $40,116 annually. All funds are within the County Road Fund.

Eliminating the Chief Financial Officer and Accounting Support Specialist positions in the Public Works Department result in a reduction of $160,000 annually. The assessment to be paid by the Public Works Department for financial services is approximately $140,000 resulting in a savings of approximately $20,000 annually in the Road Fund.

Recommendation

Staff recommends that the Board approve the revised organizational chart for the Public Works Department by:

Eliminating the Public Works Administrator position (Managers Grade 13)

Adding the Assistant County Engineer position (Managers Grade 9)

Eliminating an Engineering Technician III position (Non-Bargaining Grade 15)

Adding an Engineering Associate III position (Non-Bargaining Grade 17)

Eliminating the Chief Financial Officer position (Non-Bargaining Grade 21)

Eliminating the Accounting Support Specialist position (Courthouse Grade 11)

Suggested Motion

I move to approve the Public Works organizational chart as presented.

RESOLUTION

IN THE MATTER OF APPROVING THE UPDATED BENTON COUNTY PUBLIC WORKS DEPARTMENT ORGANIZATIONAL CHART

WHEREAS, pursuant to recent structural revisions to the Public Works Department several changes to positions in the Department are necessary; and,

WHEREAS, a revised Benton County Public Works Department organizational chart has been prepared reflecting these changes; **NOW THEREFORE,**

BE IT RESOLVED that the revised Public Works Department Organizational Chart, attached, be hereby approved; and,

BE IT FURTHER RESOLVED that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and,

BE IT FURTHER RESOLVED that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status; and,

BE IT FURTHER RESOLVED that, the Public Works Administrator position is eliminated from the Public Works Department; and

BE IT FURTHER RESOLVED that, the Assistant County Engineer position is established at a Grade 9, Managers Salary Schedule employee; and

BE IT FURTHER RESOLVED that an Engineering Associate III position is established in the Public Works Department at a Grade 17, non-bargaining employee; and

BE IT FURTHER RESOLVED that an Engineering Technician III position is eliminated from the Public Works Department; and

BE IT FURTHER RESOLVED that the promotion for the existing Engineering Technician III to Engineering Associate III shall be effective July 1, 2021; and

BE IT FURTHER RESOLVED that the Chief Financial Officer position is eliminated from the Public Works Department; and

BE IT FURTHER RESOLVED that the Accounting Support Specialist position is eliminated from the Public Works Department.

Dated this 20th day of July 2021.

_____

Chairman of the Board

_____

Chairman Pro-Tem

_____

Member

Constituting the Board of County Commissioners
of Benton County, Washington

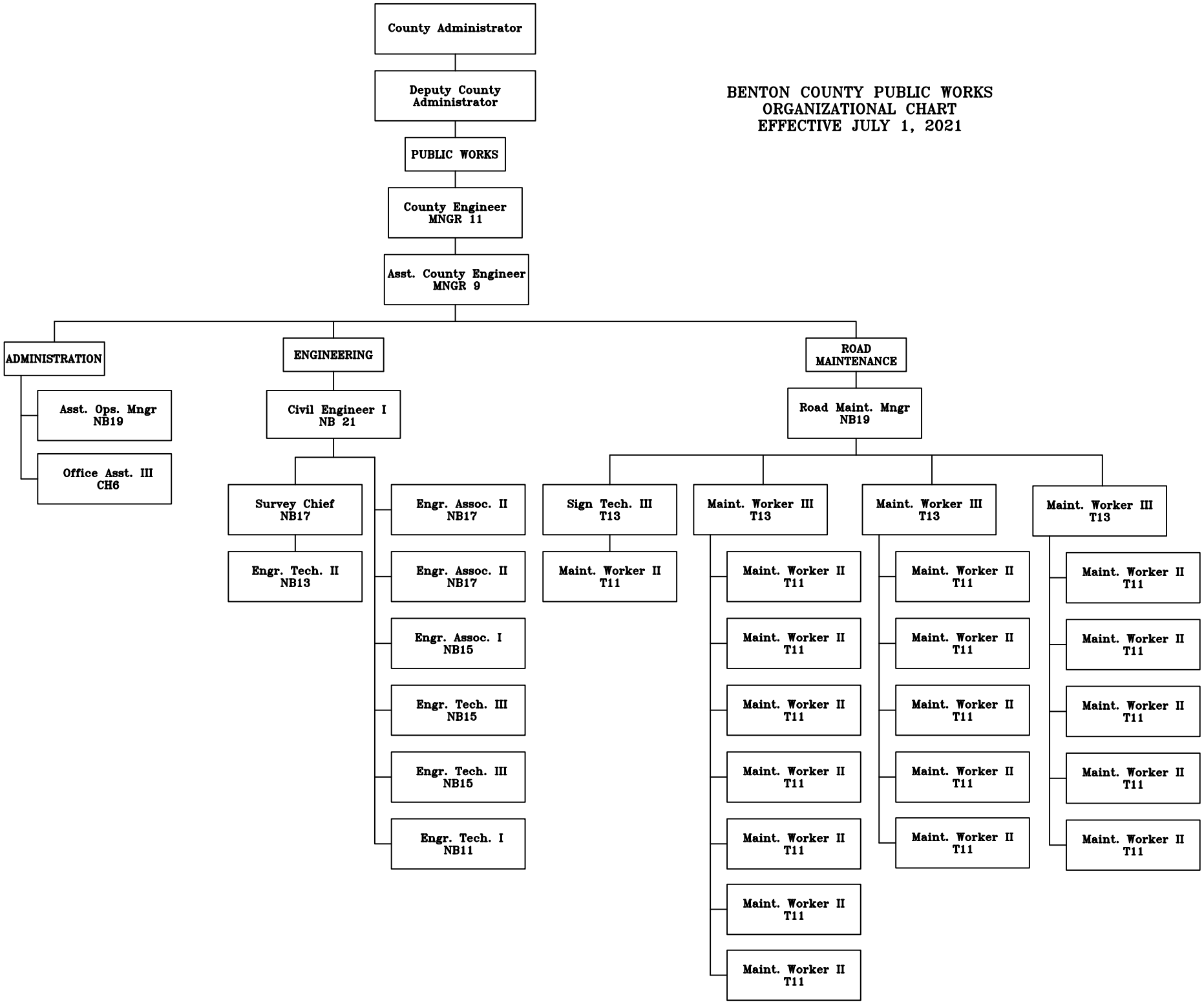
Attest: _____

Clerk of the Board

Original: Public Works

D. D'Hondt

BENTON COUNTY PUBLIC WORKS
ORGANIZATIONAL CHART
EFFECTIVE JULY 1, 2021



COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	7/20/2021
Subject:	Establish the Fleet Manager job description
Presenter:	R. Blain 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

With the additional financial responsibilities, it is recommended to create a Fleet Manager.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish a Fleet Manager job description.

Suggested Motion

I move to approve the Fleet Manager job description as presented.

cc: HR, Auditor, ER&R

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING A FLEET MANAGER CLASSIFICATION DESCRIPTION.

WHEREAS, additional financial responsibilities will be placed within ER&R to assist in the creation and monitoring of their budget; and

WHEREAS, the Human Resources Manager worked with the Director of Operations and Capital Assets to create a classification description for a Fleet Manager; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the recommended Fleet Manager classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, ER&R

Prepared by: L Wingfield

TITLE: Fleet Manager

DEPARTMENT: ER&R

REPORTS TO: Director of Operations & Capital Assets

SUPERVISES: Inventory Clerk and Mechanics I, II, III

FLSA: Exempt

SUMMARY:

Plans, organizes, schedules, supervises and monitors all servicing, repair, and maintenance activities of County vehicles, equipment, and radio system to assure that vehicles and equipment are well maintained and operating efficiently and effectively. Completes equipment review for usage and need; schedules replacement, upgrades, rotations, and vehicle/equipment retirement.

EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Coordinates, schedules and oversees all vehicle and equipment servicing, repair and upkeep activities to assure that work is performed efficiently and according to appropriate guidelines, procedures and regulations. Prioritizes and coordinates work with other departments, staff, and contractors to ensure timely completion of work projects.

Assigns, supervises and evaluates the work of assigned staff; advises, assists and trains subordinates as necessary; initiates and implements disciplinary actions; conducts performance appraisal of subordinates; participates in the selection of new employees and makes recommendations regarding the transfer and termination of subordinate employees. Participates in labor negotiations.

Develops, recommends and implements approved policies and procedures to assure effective and safe functioning of assigned activities and compliance with departmental standards and legal requirements.

Develops and writes specifications for vehicle and equipment purchases, obtains quotes, and recommends awarding of purchase agreement. Inspects all purchased vehicles and equipment for compliance with specifications and determines acceptance or nonacceptance of same.

Assists in the planning and development of the equipment maintenance annual budget, work schedules and staffing needs, determining when to replace vehicles and equipment, identifying additional equipment purchase needs and necessary building improvements. Monitors assigned operations for compliance with approved budget.

Oversees the purchasing and inventory of supplies, materials, tools, vehicles and equipment for the department and assures purchases are made in accordance with department and county policies and procedures.

Supervises the operation of the County's two-way radio system, performing necessary repairs and servicing to assure its continued and efficient operation.

Oversees the diagnosis of mechanical, electrical, computerized and hydraulic problems in vehicles and equipment in order to identify necessary repairs, overhauls, and modifications, assuring work is carried out in the most cost effective and timely manner in accordance with department guidelines and standards.

Supervises response to all County vehicle and equipment accident and emergency repair calls, going out to site as necessary.

Supervises the coordination of providing or arranging for contractors to provide specialized maintenance and repair services as necessary; coordinates work with county staff, monitors work for contract compliance, and assures requested work is completed in an efficient and timely manner.

Inspects work in progress, and upon completion, reviews buildings, equipment, tools, and other areas of responsibility to assure high quality of work and standards of safety are being met and to identify deficiencies and safety hazards; recommends projects and repairs to remedy situation.

Supervises the preparation of daily, monthly, and annual summary reports, or prepares same, and maintains records of assigned operations.

Works with necessary department and County staff for the resolution of inquiries, complaints or requests for information regarding area of assignment from other departments and the general public, providing information within scope of knowledge and authority, or refers to appropriate individual.

Develops and implements a safety plan and program.

Performs other duties as assigned.

WORKING CONDITIONS:

Work is primarily performed in an office environment with frequent interactions in the mechanics shop. May be exposed to moving equipment and chemical fumes when in the shop area and varying weather conditions when working outside. Some travel may be required.

KNOWLEDGE, SKILLS, AND ABILITIES:

Thorough knowledge of the principles and methods of vehicle and heavy equipment repair and maintenance.

Thorough knowledge of gas and diesel engines, transmissions, hydraulics and related shop techniques.

Thorough knowledge of purchasing and inventory control practices and procedures.

Thorough knowledge of variety of supplies, materials, parts and equipment specific to the area of assignment and ability to effectively write and analyze bid specifications and quotes.

Knowledge of supervisory principles and practices.

Knowledge of computerized and specialized mechanical systems.

Knowledge of the hazards and safety precautions of the mechanical trade and ability to identify and remedy hazards.

Skill in the operation of equipment and tools used in testing and repair of vehicles and heavy equipment.

Ability to prioritize, schedule, organize and supervise assigned operations to assure timely and cost-effective completion.

Ability to set work priorities and direct, guide, motivate and evaluate the work of subordinates.

Ability to accurately diagnose and perform overhauls and repairs of major and minor mechanical and electrical defects in vehicles and heavy equipment.

Ability to prepare and maintain accurate written reports and records.

Ability to physically perform assigned duties.

Ability to establish and maintain effective working relationships with other employees, vendors, contractors, and the general public.

Ability to communicate effectively, both orally and in writing.

EDUCATION AND EXPERIENCE:

High school diploma, or G.E.D., specialized training in vehicle and heavy equipment mechanical repair and maintenance and six years of progressively responsible experience in vehicle and/or heavy equipment mechanical maintenance, including two years of supervisory or lead responsibilities; or any combination of education and experience which would provide the applicant with the desired skills, knowledge and ability required to perform the job.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

Valid Washington State Driver's License with combination endorsement.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	7/20/2021
Subject:	Fleet Manager salary placement
Presenter:	R. Blain 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

With the additional financial responsibilities, it is recommended to change the current non-bargaining grade 17 Fleet Superintendent to a non-bargaining grade 19, Fleet Manager.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to create a non-bargaining grade 19 Fleet Manager.

Suggested Motion

I move to approve the Fleet Manager as a grade 19 on the Benton County Non-Bargaining salary scheduled effective July 1, 2021.

cc: HR, Auditor, ER&R

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING THE SALARY GRADE FOR THE FLEET MANAGER.

WHEREAS, additional financial responsibilities will be placed within ER&R to assist in the creation and monitoring of their budget; and

WHEREAS, it is recommended that the Fleet Manager be placed as a grade 19 on the Benton County Non-Bargaining salary schedule; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the placement of the Fleet Manager position on the Benton County Non-Bargaining salary schedule at a grade 19 effective July 1, 2021; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, ER&R

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 EQUIPMENT RENTAL & REVOLVING FUND NUMBER 0501101, DEPARTMENT NUMBER 650

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File

Prepared by: L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: ER&R Dept Nbr: 650

Fund Name: Equipment Rental & Revolving Fund Nbr: 0501101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
548.690	1080	Fleet Superintendent	$166,648
TOTAL			$166,648

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
548.690	1080	Fleet Manager	$166,648
TOTAL			$166,648

Explanation:

Change the Fleet Superintendent, non-bargaining grade 17 to a Fleet Manager, non-bargaining grade 19.

Prepared by: L. Wingfield Date: 11-Jul-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	7/20/2021
Subject:	Establish a Engineering Associate III job description
Presenter:	D. D'Hondt 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

In connection with the Public Works re-organization, there is a need to establish an Engineering Associate III classification description.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish an Engineering Associate III job description.

Suggested Motion

I move to approve the Engineering Associate III job description as presented.

cc: HR, Auditor, Public Works

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING AN ENGINEERING ASSOCIATE III CLASSIFICATION DESCRIPTION.

WHEREAS, the Human Resources Manager worked with the County Engineer to create a classification description for an Engineering Associate III; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the recommended Engineering Associate III classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, Public Works

Prepared by: L Wingfield

TITLE: Engineering Associate III

DEPARTMENT: Public Works

REPORTS TO: Civil Engineer

FLSA: Exempt

SUMMARY:

Plans, organizes, and manages the design and construction of County roads, bridges, and other engineering improvements and maintenance projects which require application of professional engineering principles, standards and practices.

DISTINGUISHING FEATURES:

Positions in the Engineering Associate III classification are distinguished from the other Engineering Associate classifications by the increased technical knowledge required to perform advanced drafting, inspection, or surveying assignments, and the responsibility for coordinating and supervising staff.

EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Prepares plans, specifications and estimates for road and bridge construction and maintenance projects. Creates shop drawings and performs calculations to provide information to contractors in order to comply with contract documents. Prepares records and reports. Tracks project activities and costs.

Prepares right of way plans, legal descriptions and purchase offer letters for right of way acquisition.

Manages contracts for road and bridge construction and major maintenance projects. Prepares change orders for approval. Prepares weekly statements and monthly pay estimates. Monitors progress to ensure schedule and budget are adhered to. Assures compliance with contract documents.

Oversees construction inspection on County roads to assure compliance with County standards and regulations.

Oversees preparation of studies and preliminary field surveys in preparation for design and construction of public works improvements such as roadways and bridges.

Assists in periodic bridge structure condition inspections. Prepares appropriate inspection and documentation reports. Prepares load rating calculations from inspection data.

Oversees the preparation of standard plans and specifications used by outside agencies and private parties in constructing or maintaining facilities that are currently or proposed to be within the County right of way.

Reviews land development applications to insure compliance with county regulations and design standards. Schedules or performs site inspections and reviews technical requirements of project. Recommends the approval or denial of projects and prepares supporting documentation for hearings or meetings.

Resolves problems or complaints regarding public right of way and private property boundaries; works with the public and private agencies as necessary.

Responds to inquiries from the general public, utilities, contractors, and other agencies regarding projects; resolves problems and complaints and provides assistance. Assists the public in matters affecting their property.

Reviews, approves, issues, and administers permits and franchise agreements for the County. Develops and presents information for public hearings on franchise agreements.

Oversees the preparation of reports for and processes vacations of County right of way.

Oversees the preparation and review of legal information regarding proposed annexation of land by corporate cities.

Represents the Public Work's Department at a variety of private and public meetings and hearings; prepares maps, exhibits, drawings, charts and graphs as required.

Develops and maintains records and correspondence files regarding assigned projects.

Provides supervision, direction and assistance to engineering technicians and lower tier engineering associates.

Performs other related duties as assigned.

WORKING CONDITIONS:

Work is performed in an office with field trips to make site visits, attend meetings, or coordinate work activities.

KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of principles, practices, and techniques of civil engineering and road construction.

Knowledge of drafting practices as related to road construction and public works projects.

Knowledge of engineering construction terms, methods, and practices.

Knowledge of surveying techniques, calculations, and practices.

Knowledge of federal, state, and County laws, rules, and regulations.

Knowledge of the principles and practices of planning, organizing, and supervising.

Skill in the operation of equipment and tools used drafting, surveying, and material testing.

Ability to take accurate measurements and use algebraic formulas, trigonometry tables, and statistical mathematics to accomplish assigned duties.

Ability to perform, plan, coordinate and supervise construction inspection, surveying, drafting, materials testing and other technical engineering assignments.

Ability to interpret and communicate engineering plans and specifications.

Ability to prepare engineering plans, specifications and estimates.

Ability to inspect and appraise the condition of public works structures.

Ability to set work priorities and direct, guide, and evaluate the work of project staff and contractors.

Ability to analyze and identify problem areas and develop solutions.

Ability to understand and execute oral and written instructions and keep accurate records.

Ability to plan, schedule and coordinate work assignments

Ability to communicate effectively, both orally and in writing

Ability to establish and maintain effective working relationships with other employees, other agencies, and the general public

EDUCATION AND EXPERIENCE:

Bachelor's degree in civil engineering or related field and five years progressively responsible experience in civil engineering or public works along with two years of supervisory experience; or any combination of education and experience which would provide the applicant with the desired skills, knowledge and ability required to perform the job.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

Valid Washington State Driver's License

Certification as an Engineer in Training

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	7/20/2021
Subject:	Establish an Assistant County Engineer job description
Presenter:	D. D'Hondt 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

In connection with the Public Works re-organization, there is a need to establish an Assistant County Engineer classification description.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish an Assistant County Engineer job description.

Suggested Motion

I move to approve the Assistant County Engineer job description as presented.

cc: HR, Auditor, Public Works

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING AN ASSISTANT COUNTY ENGINEER CLASSIFICATION DESCRIPTION.

WHEREAS, the Human Resources Manager worked with the County Engineer to create a classification description for an Assistant County Engineer; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the recommended Assistant County Engineer classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, Public Works

Prepared by: L Wingfield

TITLE: Assistant County Engineer

DEPARTMENT: Public Works

REPORTS TO: County Engineer

SUPERVISES: Road Maintenance Manager, Engineering Associates, Engineering Technicians and office support staff

SUMMARY:

Assist in the management of the Public Works Department by overseeing administration and disbursement of funding for road and infrastructure construction. Act as the County Engineer at their request or in their absence; makes presentations regarding programs to the Board of Commissioners and the general public as needed. Resolve inquiries, complaints, problems or emergencies affecting the availability or quality of assigned services. Assists the County Engineer with high level administrative tasks and supervision of employees including but not limited to setting goals for subordinate employees and monitoring progress by preparing regular performance evaluations. Performs long and short range planning for department operations.

EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Participate with the County Engineer in development of plans and policies including standards of good practice; determining equipment needs and developing operating procedures.

Manage assigned programs to achieve goals with budgeted funds and available personnel; plan and organize workloads and staff assignments, monitor progress and make changes as needed to meet department goals and demands.

Provide managerial leadership and select, assign, supervise, and evaluate the work of assigned staff; advise, assist and train subordinates as necessary. Oversee or conduct performance evaluations; initiate and implement disciplinary actions as warranted. Provide training and motivation to make full use of individual capabilities.

Assist the County Engineer in the design and construction of County road and bridge projects in accordance with department programs outlined by the Director; review plans, specifications, and costestimates.

Assist in the management of the day to day operations for the road maintenance program; monitor operationsand make changes in priorities and schedules as needed. Assist the Road Maintenance Manager with the maintenance budget, justify budget requests and monitoroperating expenses to meet budget objectives.

Assist with contract management of professional outside consulting services for thedesign of the capital construction program.

Manage budgeting and expense accounting for the Department, with attention to expenditures under federal and state funded projects to include: STP, C.R.A.B. and other

grant based funding sources. Work with the financial team in cost accounting for labor and materials in road maintenance and construction projects.

Develop, recommend, and implement policy and procedure to assure efficient and effective operations in compliance with department goals and objectives. Analyze and recommend improvements to existing facilities, equipment, and operating systems.

Performs other related duties as assigned.

WORKING CONDITIONS:

Work is performed in an office and/or field environment

KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of legal requirements, regulations and laws applicable to assigned programs.

Knowledge of modern principles and practices of management and supervision.

Knowledge of program planning and evaluation and budget development. Ability to monitor work schedules and evaluate the work of subordinates.

Ability to establish and maintain an effective working relationship with other employees and the general public.

Ability to operate standard office equipment and related software such as computer, word processor, calculator, photocopier, basic office equipment, and Microsoft Office.

Ability to communicate effectively, both orally and in writing, with all levels of government individuals and groups regarding complex or sensitive issues or regulations.

Ability to handle delicate and confidential situations involving employees and members of the public.

Ability to work on several projects or issues simultaneously.

Ability to work independently or in a team environment as needed. Ability to attend to details while keeping big-picture goals in mind. Ability to prepare and present at a public hearing.

EDUCATION AND WORK EXPERIENCE:

Bachelor's Degree in Civil Engineering, Construction Management, Business Administration or related field and a minimum of three (3) years supervisory experience. Experience in design and construction of road, bridge,and drainage systems is desirable but not required.

Any combination of education and experience, which would provide the applicant with the desired skills, knowledge and ability required to perform the job, may be substituted for the degree.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

Valid Washington State Driver's License.

Registration as a Professional Engineer in the State of Washington is desirable but not required.

Revised:
July 2021

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	7/20/2021
Subject:	Establish the Financial Analyst II job description
Presenter:	D. Calhoun 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

In connection with the re-organization of the financial department within Roads and to start consolidating services, it is recommended to create a Financial Analyst II.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish a Financial Analyst II job description.

Suggested Motion

I move to approve the Financial Analyst II job description as presented.

cc: HR, Auditor

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING A FINANCIAL ANALYST II CLASSIFICATION DESCRIPTION.

WHEREAS, the Human Resources Manager worked with County Administration to create a classification description for a Financial Analyst II; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the recommended Financial Analyst II classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor

Prepared by: L Wingfield

TITLE: Finance Analyst II

DEPARTMENT: Various

REPORTS TO: Various

FLSA: Exempt

SUMMARY:

Responsible for performing budgetary and financial analyses in operations and productivity, and recommending improvements in program efficiency and effectiveness within general county policies and goals. Researches special projects as assigned and prepares detailed budget and financial analyses often including variable situations requiring analytical, interpretative, and constructive thinking. Performs professional finance work, in accounting activities such as general receipting revenues, processing payroll, processing payment vouchers, and billing other entities for County services.

EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Assists in the preparation of the preliminary biennium budgets; assists Department in the development of revenue and expenditure budgets; monitors expenses and revenue changes to make necessary modifications.

Review and analyze budget and financial monthly/quarterly reports related to performance metrics and budget vs. actual status; provide subsequent recommendations or action plans and check fund balance cash status.

Prepare, assist in financial work in areas of payroll processing,cash receipting, payment vouchering and annual operating transfers.

Process, analyze and/or monitor billings to outside entities for Benton County services.

Assist in preparation of financial reports and presentations and/or others as assigned.

Research special projects as assigned and prepare detailed financial analyses, e.g., financial impacts related to grant applications, contracts, facilities expansion projects, etc.

Performs other related duties as assigned.

WORKING CONDITIONS:

Work is primarily performed in an office environment, but travel may be required to attend meetings. Occasional physical effort may be required to lift items weighing up to 50 lbs.

KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of federal and state laws regarding governmental accounting procedures.

Knowledge of generally accepted accounting principles.

Knowledge of State of Washington's budgeting, accounting and reporting system or a chart of accounts system.

Knowledge of principles and practices of fiscal management, including budget preparation, expenditure control, and record keeping.

Ability to monitor fiscal and program accountability and analyze data.

Ability to perform comparative analysis of fiscal and operational performance data.

Ability to isolate and analyze significant trends and practices from detailed records.

Ability to communicate effectively, both orally and in writing. Make oral and written recommendations. Skilled in professional document preparation

Excellent interpersonal skills in order to establish and maintain effective positive working relations with colleagues, department managers, elected officials, supervisory and administrative staff, employees, vendors, and the public. Effectively work in a demanding and political environment.

Multi-tasking abilities in order to function in a busy environment with demands from multiple sources and simultaneous deadlines.

Exercise good judgement and discretion on sensitive and confidential matters.

Perform the essential job functions independently as well as able to work well in a team environment.

EDUCATION AND WORK EXPERIENCE:

Bachelor's degree in Finance, Accounting, Public or Business Administration, Finance, or any related field and two years of progressively responsible governmental accounting experience or private sector experience; or any combination of education and experience which would provide the applicant with the desired skills, knowledge and ability required to perform the job is preferred.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

Valid Washington State Driver's License.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	7/20/2021
Subject:	Financial Analyst II salary placement
Presenter:	D. Calhoun 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

In connection with the re-organization of the financial department within Roads and to start consolidating services, it is recommended to establish the Financial Analyst II as a non-bargaining grade 16.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to create a non-bargaining grade 16 Financial Analyst II.

Suggested Motion

I move to approve the Financial Analyst II as a grade 16 on the Benton County Non-Bargaining salary scheduled.

cc: HR, Auditor

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING THE SALARY GRADE FOR THE FINANCIAL ANALYST II.

WHEREAS, it is recommended that the Financial Analyst II be placed as a grade 16 on the Benton County Non-Bargaining salary schedule; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the placement of the Financial Analyst II position on the Benton County Non-Bargaining salary schedule at a grade 16; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor

Prepared by: L Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CENTRAL SERVICES FUND NUMBER 0502101, DEPARTMENT NUMBER 000

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File

Prepared by: L. Wingfield

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: No Department Dept Nbr: 000

Fund Name: Central Services Fund Nbr: 0502101

TRANSFER FROM: Dept 000 TRANSFER TO: Dept 520

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
518.810	1689	Central Svs Supervisor	$84,000	TBD	1694	Accounting Support Specialist	$84,000
518.810	1695	Central Svs Supervisor	$84,000	TBD	1696	Financial Analyst II	$84,000
518.810	2102	Social Security	$12,852	TBD	2102	Social Security	$12,852
518.810	2103	Medical Insurance	$19,390	TBD	2103	Medical Insurance	$19,390
518.810	2104	Retirement	$21,790	TBD	2104	Retirement	$21,790
518.810	2119	Paid Family Leave Act	$246	TBD	2119	Paid Family Leave Act	$246
TOTAL			$222,278	TOTAL			$222,278

Explanation:

In connection with the July 2021 Public Works re-organization, creating Accounting Support Specialist, Courthouse grade 11, & Financial Analyst II, non-bargaining grade 16. Creation of new department 520 - Financial Services. Auditor's Office is working with the SOA to determine correct base sub.

Prepared by: L. Wingfield Date: 11-Jul-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

Finance Presentation

January 1, 2021 – June 30, 2021

Current Expense

Finance Presentation

January 1, 2021 – June 30, 2021

Public Safety Tax

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	July 20, 2021
Subject:	Sheriff Replacement Fund
Presenter:	Matt Rasmussen and Undersheriff John Clary
Prepared By:	Matt Rasmussen
Reviewed By:	Jerrod MacPherson

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

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

Summary / Background Information

The Sheriff Replacement Fund was established in 2018 (Resolution 2018-648). The fund is intended to provide a way to pay for expected replacement of items purchased by the Sheriff's Office by paying a set amount each year rather than having to come up with large amounts of capital when the items are due for replacement. The fund includes items such as duty pistols, rifles, protective gear, and the Sheriff's boats. The fund does not include regular cars/trucks as those are managed by the ER&R fund. The fund was updated in 2019 (Resolution 2019-771) to revise the list of items in the fund and update the funding amount. There was no update to the fund in 2020.

At the end of the 2020 budget cycle, the Sheriff's Office sent an updated list of items that they would like added to the fund. This included the SWAT armored vehicle, the various ATV's and UTV's used by the Sheriff's Office, a drone and the Sheriff's aircraft. The majority of these vehicles were originally purchased with special funds such as the Public Safety Sales Tax or the Sheriff Investigative Fund. Adding them to the replacement fund would put the cost for replacement into current expense.

The Sheriff's Office has provided a letter (attached) that explains the need, uses and suggested replacement schedule for each of the pieces of equipment requested to be added to the fund. Administration does not disagree with the suggested replacement schedules. Administration disagrees with adding all these pieces of equipment to the replacement fund when they were originally purchased using non-current expense monies. Administration has included a summary indicating where we suggest funding come from when these pieces of equipment are due to be replaced.

The Sheriff contends that the replacement fund is replenished using unspent monies from the previous budget; however, this is not the case. All unspent monies from the previous budget are distributed pursuant to the budget policy. Money for the replacement fund is included in the Sheriff's biennial budget under current expense. Any increase to the replacement fund is a direct impact on the current expense budget. In their letter, the Sheriff also claims to have returned roughly $1.6 million to current expense at the end of the last budget cycle. Administration staff reviewed the budget lines that were underspent within the Sheriff's budget. We found that a significant portion of those monies are in special funds that do not actually return to current expense but rather remain in the special funds for the sole use by the Sheriff's Office. Two of those funds are the Sheriff Replacement Fund and the Sheriff Investigative Fund. The Replacement Fund should regularly be underspent to allow the cash

balance to build up to make major purchases when they are due. The Investigative Fund is one of the funds we are recommending be used to replace equipment originally purchased with money from that fund. The majority of the remaining turned back funds is from wages and benefits from unfilled positions.

On reviewing the equipment requested to be added to the replacement fund, staff noted that the aircraft has seen a significant decrease in usage over the past several years. Last year, it was flown less than 12 hours and has averaged roughly 11 hours per year over the last 10 years. The Sheriff's Office no longer has a licensed commercial pilot on staff and relies on volunteers to fly the aircraft when it is used. Administration believes that the need for the aircraft could be satisfied by utilizing a rented plane with the same volunteer pilots and have a similar response time to coordinating the volunteer and prepping our own aircraft for flight. Local aircraft rental providers have indicated that in most cases they could have a plan ready to fly in less than 30 minutes from being notified it is needed. Renting an aircraft would mean the County would no longer be required to carry insurance for the plane, would no longer be subject to costs to hanger it, and would no longer be responsible for maintenance, repairs or upgrades.

Fiscal Impact

The increase to current expense would be approximately $90,000 annually if all the equipment listed was added to the replacement fund.

The cost of the airplane averages between $10,000 and $12,000 per biennium regardless of use. The cost is primarily for insurance and hanger fees. This does not include fuel, major maintenance, overhaul or upgrade costs. The cost to rent an aircraft ranges between $100 and $200 per hour. Based on current usage that equates to $1,000 to $2,000 annually.

Recommendation

Staff recommends that the Board not add the requested items to the replacement fund at this time. These items should be replaced with money from the same fund from which they were originally purchased.

Staff also recommends that the County declare the aircraft surplus and dispose of it through sale at auction. Staff believes that the value of having the aircraft is outweighed by the cost and risk in its continued operation.

The Sheriff's Office disagrees with both recommendations as stipulated in their attached letter.

Suggested Motion

Staff is seeking input from the Board on how these requests should be handled. After receiving input, staff will prepare an update to the replacement fund item list to bring before the Board at a future meeting.

Sheriffs Replacement Fund Recommendations
Benton County Administration

Bearcat #1

Vehicle Number: 11-13

Purchase year: 2011

Current Hours/Miles: 12,843 mi

Cost to replace: $350,000

Requested Replacement Year: 2026

Estimated Annual Replacement Cost: $70,000 (If we start collecting 2023)

- Purchased with grant funds
- No replacement funds collected to date or in current budget
- One of two, primarily used for SWAT

As this was a one-time grant it is not likely we can get the same funding again. Potential that some funding could be gained from other agencies participating in regional SWAT. Sheriff appears to recommend refurbishment at an annual cost of $40,000.

Bearcat #2

Vehicle Number: 20-16

Purchase Year: 2020

Current Hours/Miles: 408 mi

Cost to Replace: $375,000

Requested Replacement Year: 2035

Estimated Annual Replacement Cost: $31,000 (If we Start Collecting 2023)

- Purchased with Public Safety Sales Tax Funds (PST)
- No replacement funds in current budget
- One of two, primarily used for SWAT

Do not recommend adding to current replacement fund or ER&R fund. Only replace if Public Safety Sales Tax funds are available at end of life or find another non-current expense funding source. Sheriff appears to recommend refurbishment at an annual cost of $40,000.

ATV #1

Vehicle Number: 02-09

Purchase Year: 2002

Current Hours/Miles: 887 mi 6/19

Cost to Replace: N/A

Requested Replacement Year: N/A

Estimated Annual Replacement Cost: N/A

- One of Four
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Do not recommend adding to current replacement fund or ER&R fund. Sheriff has indicated this unit will be phased out and not replaced.

ATV #2

Vehicle Number: 02-13

Purchase Year: 2002

Current Hours/Miles: 1088 mi (as of 6/19)

Cost to Replace: N/A

Requested Replacement Year: N/A

Estimated Annual Replacement Cost: N/A

- One of Four
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Do not recommend adding to current replacement fund or ER&R fund. Sheriff has indicated this unit will be phased out and not replaced.

ATV #3

Vehicle Number: 18-11

Purchase Year: 2019

Current Hours/Miles: unknown

Cost to Replace: $12,000

Requested Replacement Year: 2031

Estimated Annual Replacement Cost: $2,000 (Start Collecting 2023)

- One of Four
- Originally purchased with Current Expense funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

This was current expense funded, possibly with unspent funds within the sheriff budget. Since the sheriff has proposed to phase out the two older ATV the cost to replace these units should come from the Sheriffs Investigative Fund since they are replacing the older ATV's.

ATV #4

Vehicle Number: 18-12

Purchase Year: 2019

Current Hours/Miles: unknown

Cost to Replace: $12,000

Requested Replacement Year: 2031

Estimated Annual Replacement Cost: $2,000 (Start Collecting 2023)

- One of Four
- Originally purchased with Current Expense funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

This was current expense funded, possibly with unspent funds within the sheriff budget. Since the sheriff has proposed to phase out the two older ATV the cost to replace these units should come from the Sheriffs Investigative Fund since they are replacing the older ATV's.

UTV #1

Vehicle Number: 15-13

Purchase Year: 2015

Current Hours/Miles: 625 mi

Cost to Replace: $47,000

Requested Replacement Year: 2025

Estimated Annual Replacement Cost: $4,700

- One of Two
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Do not recommend adding to current replacement fund or ER&R fund. Replace using original purchasing source (sheriffs investigative fund).

UTV #2

Vehicle Number: Not assigned

Purchase Year: 2019

Current Hours/Miles: 248 mi

Cost to Replace: $50,000

Requested Replacement Year: 2029

Estimated Annual Replacement Cost: $5,000

- One of Two
- Originally purchased with Public Safety Sales Tax Funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Do not recommend adding to current replacement fund or ER&R fund. Only replace if Public Safety Sales Tax funds are available at end of life or find another non-current expense funding source.

Drone

Purchase Year: 2019

Cost to Replace: $30,000

Requested Replacement Year: 2027

Estimated Annual Replacement Cost: $6,000 (If we start collecting 2023)

- Originally purchased with Current Expense funds
- No Replacement funds have been collected to date
- No funds for replacement allocated in 2021-2022 budget

This was current expense funded, possibly with unspent funds within the sheriff budget. The technology in this field is changing rapidly and costs for it are decreasing every year. Given the relatively low cost of purchase this item could be replaced as a capital request when it reaches the end of it's life cycle. It could also be added to the Replacement Fund.

K-9 #1

Purchase Year: 2019

Cost to Replace: $7,500

Requested Replacement Year: 2026

Estimated Annual Replacement Cost: $2,500 (Start Collecting 2023)

- One of Two
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Do not recommend adding to current replacement fund. Replace using original purchasing source (sheriffs investigative fund).

K-9 #2

Purchase Year: 2019

Cost to Replace: $7,500

Requested Replacement Year: 2026

Estimated Annual Replacement Cost: $2,500 (Start Collecting 2023)

- One of Two
- Originally purchased with Public Safety Sales Tax funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Do not recommend adding to current replacement fund. Only replace if Public Safety Sales Tax funds are available at retirement or find an alternative non-current expense funding source.

Airplane

The airplane sees limited use, last year only being flown 12 hours, and has averaged under 11 hours a year over the past 10 years. The sheriffs office states typical annual use should be in the 50-100 hour range. The sheriffs office does not have a pilot on staff (though we understand there is one person attempting to get their license) so they currently rely on volunteers to fly the plane. The sheriffs office has indicated the main use of the plane is search and rescue.

The airplane has high ongoing operating costs, including maintenance, insurance and storage, regardless of use. Due to its age significant investments will be coming up to keep it air worthy. Other equipment has been added to the fleet in the past years, including UTV's and a large drone, that are now used to assist in search and rescue functions. With limited use and reduced need a better option would be to rent a plane when one is needed. The Civil Air Patrol could also be called upon when the proposed operation fits within their availability. A retainer type agreement could be reached with one of several rental agencies in the area ensuring availability of a plane as needed. Based on current rental rates, even at the high end of estimated use, the cost to rent would be comparable to the annual insurance and storage costs and would remove the maintenance and capital upgrade costs entirely. Recommend surplusing the airplane and removing it from the fleet.

BENTON COUNTY SHERIFF'S OFFICE

7122 W. OKANOGAN PLACE, BLDG. B
KENNEWICK, WA 99336

(509) 735-6555

www.co.benton.wa.us

SHERIFF JERRY HATCHER

COMMITTED TO OUR COMMUNITY

To: Undersheriff John Clary

From: Commander Jon Law

Re: Vehicle and Equipment Replacement Research

Date: April 01, 2021

In this document you will find a collaboration of research related to vehicles and equipment that we wish to add to the replacement schedule resolution. At your request I have done some research to establish reasonable replacement timelines for each item identified and have provided the justification for each.

It is important to note that when our office worked with the county administration prior to the resolution establishing funding for replacement of vital equipment, that the overall goal and intent of this fund was that it would be funded by our own bi-annual budgetary surplus. Essentially, we would be funding the schedule with our own funds and thus the schedule would have little or no impact to overall county budget. This idea was a collaborative effort between the Sheriff, the County Administrator and the commissioners.

The resolution, 2018-648, which established Fund number 0141-101, states that "a listing of all equipment purchased and assessed shall be administered jointly by the County Commissioners' Office and the Sheriff's Office on a yearly basis, as well as, the county's budget cycle;" The reason that this language was included in the resolution was due to the fact that it was well known at the time the resolution was adopted, that other items would be purchased over time and would need to be considered for addition to the schedule. To my knowledge, the Sheriff's Office and the county commissioners have not formally met to discuss the addition of items to the list since the resolution was adopted on September 18th, 2018. The Sheriff's Office and the Commissioners would benefit from a prompt evaluation and discussion, as the resolution states, regarding which items to add to the schedule. This will allow us to understand how to move forward within our budget to maintain sustainability in the fund as we roll over our own budgetary surplus into the fund for immediate and future additions to the schedule.

Armored Rescue Vehicles

The Benton County Sheriff's Office owns and maintains two armored vehicles that are utilized in high risk events where the threat of an armed encounter is high, and the safety of the public is in jeopardy. These vehicles are vital to public safety and are critical to the safe operation of high-risk events.

Utilizing the industry standard of 25-30 miles per hour of engine idle, establishes a convertible actual mileage associated with a motor. There are various options when a department has decided that their armored vehicle is due for replacement or upgrading. The first is outright replacing and using the current vehicle as trade in. The offsetting credit for trade in is variable and unpredictable. The second option is complete refurbishment of the existing vehicle. This is the option I would suggest in our situation for both platforms. The estimated cost in today's dollars for a refurbishment of a G2 Bearcat, which is shown below as Bearcat #1, is estimated to be between 150-200k. Lenco Armored Vehicle Inc. indicates that the typical Bearcat used in a manner similar to ours, is refurbished by the owning entity at approximately 10-12 years after purchase. We are requesting the proposed refurbishment at 15 years.

The Washington State Office of Fiscal Management maintains a Capital Asset useful life schedule. For vehicles with a GVR of over 10,000 lbs. they establish useful life of between 10-20 years, depending on the purpose and use.

Bearcat #1 -

Vehicle Number: 11-13

Purchase year: 2011

Current Hours/Miles: 12,843 mi

Idle Hours: 696- equal to 17,500 to 21,000 miles

Engine type: Gas

Cost to refurbish: $200,000

Requested Replacement Year: 2026 (15 years from purchase)

Estimated Annual Replacement Cost: $40,000 (If start collecting in 2021)

- Purchased with grant funds
- No replacement funds collected to date or in current budget
- One of two, primarily used for SWAT
- Cost of a refurbish is approximately 150-200k.
    - If we attempt to extend the life of the unit beyond 15 years, it is likely we will need to withdraw funds from the account to address ongoing maintenance costs.

Bearcat #2 -

Vehicle Number: 20-16

Purchase Year: 2020

Current Hours/Miles: 408 mi

Engine type: Diesel

Cost to Refurbish: $200,000

Requested Replacement Year: 2035 (15 years from purchase)

Estimated Annual Replacement Cost: $13,500 (If Start Collecting in 2021)

- Purchased with Public Safety Sales Tax Funds (PST)
- No replacement funds in current budget
- One of two, primarily used for SWAT
- Cost of a refurbish is approximately 150-200k.
    - If we attempt to extend the life of the unit beyond 15 years, it is likely we will need to withdraw funds from the account to address ongoing maintenance costs.

Search and Rescue (SAR)

Search and Rescue is the mandated responsibility of the Sheriff's Office in Benton County per RCW 38.52. As such, the Sheriff's Office maintains various tools and equipment to facilitate the safe and rapid response to a SAR event. SAR events can be rapidly evolving and are often conducted in the worst of conditions and terrain, such as remote areas and in challenging conditions such as heavy snowfall.

The vehicles and equipment utilized by BCSO during SAR events are not solely utilized for SAR and complement the safe and effective operation of the Sheriff's Office in other areas. These tools assist in the effective investigation of crimes and provide the citizens of Benton County a number of benefits beyond their primary role as SAR assets.

All-Terrain Vehicles (ATV's)

The Benton County Sheriff's Office owns and maintains four ATV's. Two of these ATV's were purchased in 2002 and two additional ATV's in 2019 to complement the aging and outdated 2002 ATV's. These vehicles are an essential part of our Search and Rescue (SAR) program. As part of our SAR program, deputies train annually on the safe operation of these vehicles and they are maintained in a state of readiness for response to remote areas of Benton County year-round. In addition, they are utilized to assist in other large-scale public events such as the annual boat races on the Columbia river and the fourth of July event in Columbia Park. In order to reduce the overall budgetary impacts, we have evaluated our ATV's and have come to the conclusion that with acquisition of our Utility Task Vehicles (UTV) we can reduce our number of ATV's from four, to two and still maintain effectiveness. This would

leave our response to a SAR event requiring All-Terrain Vehicle's to two ATV's and two UTV's which we believe is sufficient at this time.

Research has been done to determine what other law enforcement agencies are considering the average useful life of an ATV and UTV. The Grant County Sheriff's Office maintains a robust All-Terrain Vehicle program and in speaking to their leadership, they are replacing their vehicles at approximately 8-10 years depending on use and condition. We are requesting that our ATV's be replaced every 12 years, and our UTV's every 10 years.

ATV 1 – (excess or maintain for training purposes only)

Vehicle Number: 02-09

Purchase Year: 2002

Current Hours/Miles: 887 mi (as of 6/2019)

Cost to Replace: $0

Requested Replacement Year: N/A

Estimated Annual Replacement Cost: $0

- One of Four
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

ATV #2 – (excess or maintain for training purposes only)

Vehicle Number: 02-13

Purchase Year: 2002

Current Hours/Miles: 1088 mi (as of 6/19)

Cost to Replace: $0

Requested Replacement Year: N/A

Estimated Annual Replacement Cost: $0

- One of Four
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

ATV #3 –

Vehicle Number: 18-11

Purchase Year: 2019

Current Hours/Miles: Less than 500

Cost to Replace: $12,000 (12 year)

Requested Replacement Year: 2031

Estimated Annual Replacement Cost: $1,200 (Start Collecting 2021)

- Primary response ATV
- Originally purchased with Current Expense funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

ATV #4 –

Vehicle Number: 18-12

Purchase Year: 2019

Current Hours/Miles: Less than 500

Cost to Replace: $12,000 (12 year)

Requested Replacement Year: 2031

Estimated Annual Replacement Cost: $1,200 (Start Collecting 2021)

- Primary response ATV
- Originally purchased with Current Expense funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Utility Task Vehicles (UTV's)

UTV's are four-wheel multi passenger off road vehicles. These vehicles have the capability of transporting persons and equipment to and from SAR and investigatory events. This ability is vital to the success of many operations. While ATV's offer maneuverability and the ability to get into more remote terrain, UTV's accommodate multiple passengers and have the unique ability to transport equipment vital to law enforcement and SAR operations. Our UTV's have the capability to be equipped with snow tracks, which offers BCSO the ability to respond to remote areas where traditional vehicles cannot respond in winter conditions. These vehicles have served the citizens in this capacity and have rescued stranded citizens in the worst weather conditions we experience in our area.

UTV #1 – Can Am Commander 2-Seater

Vehicle Number: 15-13

Purchase Year: 2015

Current Hours/Miles: 625 mi (as of 2019)

Cost to Replace: $47,000

Requested Replacement Year: 2025 (10 years after purchase)

Estimated Annual Replacement Cost: $11,750 (starting in 2021)

- One of Two primary response vehicles for snow rescues
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

UTV #2 – Polaris General 4-Seater

Vehicle Number: 19-15

Purchase Year: 2019

Current Hours/Miles: 248 mi

Cost to Replace: $50,000

Requested Replacement Year: 2029 (10 years after purchase)

Estimated Annual Replacement Cost: $6,250

- One of Two primary response vehicles for snow rescues
- Originally purchased with Public Safety Sales Tax Funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

Unmanned Aerial System (UAS)

Commonly known as a "drone", this platform serves BCSO in multiple capacities. It is primarily a search and rescue asset and has been utilized in remote areas to search for endangered subjects both in daytime and nighttime operations. This platform can be operated during darkness and in extreme wind conditions, where other platforms such as an aircraft is limited or incapable. Not only is this tool highly effective in locating endangered persons, it also serves as an observation platform in high risk events and is used frequently for documenting crime scenes and complementing investigations.

Experts and the manufacturer of the particular drone we maintain advises that the life expectancy of the drone is approximately 1000 flight hours. This life expectancy is impacted by the conditions it operates in and overall care and maintenance. We currently average approximately 10 hours per month of flight time through training and actual field use. This gives the drone a life expectancy of approximately 8 years.

UAS/Drone -

Purchase Year: 2019

Cost to Replace: $30,000

Requested Replacement Year: 2027

Estimated Annual Replacement Cost: $3,750 (If we start collecting 2021)

- Originally purchased with Current Expense funds
- No Replacement funds have been collected to date
- No funds for replacement allocated in 2021-2022 budget

Airplane

The Benton County Sheriff's Office Aviation unit is an instrumental lifesaving and intelligence gathering asset necessary to providing the highest level of public safety to those who live, work, and visit Benton County. The aviation unit is a resource available to our community when requested and approved by the Sheriff or his designee. The unit is comprised of five pilots, three of which are volunteer Sheriff's Posse members, and two are contract pilots who were Sheriff's Office employees before they retired. Usually, a fully commissioned deputy is assigned to fly with our pilots to aid in air-to-ground communications and searching efforts.

The Benton County Sheriff's Aviation Unit is responsible for conducting search and rescue operations, surveillance for intelligence and investigative functions, patrol support, rapid damage assessment, and emergency point-to-point personnel movement.

Search and Rescue: The aviation unit is a powerful asset when conducting search and rescue operations. The aircraft is unhampered by terrain and allows searchers to quickly bypass obstacles and cover large areas saving precious time and resources during search operations. The aviation unit can be used in conjunction with ground resources such as the marine patrol and off-road vehicles. This coordination maximizes search and rescue efforts and minimizes the amount of time it takes to locate a missing or injured person.

Surveillance and Intelligence: The Sheriff's aviation unit has been called upon to assist with developing intelligence for investigations. Information obtained from surveillance flights negates the need to place investigators in danger to obtain the information required for sensitive investigations. Surveillance and intel gathering cannot be contracted out as these investigations are sensitive and highly confidential.

Interagency Support: Area counter drug units at times will request the use of the Sheriff's Aviation unit to follow suspect vehicles and conduct pre-raid scouts on suspects with remote properties. Such operations cannot be accomplished with drones due to the length of such operations. Also, drones cannot fly high enough to avoid detection when loitering in the area of an operation.

Patrol/Damage Assessment: The aviation unit is a necessary and practical resource when assessing natural disasters, commonly fire damage assessment. The Sheriff's Office has also used the aircraft to move staff members from point to point in time-sensitive investigations. Additionally, the Sheriff's Office has been evaluating the aircraft's use for conducting speed enforcement operations in the future.

Aircraft: The Benton County Sheriff's a 1973 Cessna 192P (N722BC). The aircraft was seized, and from what we know, the Sheriff's Office took possession of the plane in 1985. In March of 1995, the plane had its engine replaced with a factory overhauled engine. Since March of 1995, the aircraft has flown roughly 882.2 hours, equating to approximately 33 hours each year.

Associated cost the County Aircraft:

The averages are based on the biennium budgets of 2016, 2018, and 2020 and include items such as fuel, insurance, hangar, inspections, pilot fees, repairs and maintenance, pilot supplies, ramp services.

2016 $11,820.78

2018 $8,955.25

2020 $13,423.99

The Benton County Aviation unit is the only on-call aviation unit in the Tri-Cities. The Sheriff's Office has the responsibility to coordinate and conduct search and rescue operations in Benton County. The Civil Air Patrol can be called to assist with search efforts if requested, but according to Brett Knapp (WA Civil Air Patrol), they don't have aircraft based in the Tri-Cities, and it is a minimum of two hours from the time of request to the time their plane leaves its base in Yakima or Grant Count if they are available. This time delay could be the difference between a rescue and a recovery.

Airplane Engine Overhaul

Purchase Year: 1973

Cost to Replace: $40,000

Requested Overhaul Year: 2031

Estimated Annual Replacement Cost: $4,000 (Start Collecting 2021)

- Only LE aircraft in region
- Originally obtained through a seizure
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget
- Request is for an engine overhaul and it is anticipated to be due in approximately 2031 is based upon current engine hours, anticipated use and condition of the engine.

K9 Replacement

BCSO maintains two law enforcement canines. These K9's serve two distinct purposes. One is a Dual-Purpose patrol and tactical K9 utilized for locating and apprehending suspects and the other is solely for the purpose of detecting narcotics.

The useful life of a K9 is based in part on the age of the dog when obtained from the vendor. This varies slightly but on average, the canine will be on the street performing its tasks at age 2 and will need to be retired and replaced on average at the age of 9 (averaging of 7 years performing its role). When looking at replacement time, it should be done with about 6 month lead time to be able to find a vendor, select the canine, have the canine trained and certified, and be on the street before the current canine needs to be retired. This average effective lifespan on the job is baring any sort of medical issues or the canine being killed or severely injured in the line of duty.

K-9 #1 (Dual-Purpose Patrol) –

Purchase Year: 2019

Cost to Replace: $20,000

Requested Replacement Year: 2026

Estimated Annual Replacement Cost: $4,000 (Start Collecting 2021)

- One of Two
- Originally purchased with sheriff investigative funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

K-9 #2 (Single-Purpose Narcotics)

Purchase Year: 2019

Cost to Replace: $10,000

Requested Replacement Year: 2026

Estimated Annual Replacement Cost: $2,000 (Start Collecting 2021)

- One of Two
- Originally purchased with Public Safety Sales Tax funds
- No replacement funds have been collected to date
- No funds allocated towards replacement in 2021-2022 budget

In summary, the adoption of the controlling resolution addressing the funding for replacement of critical equipment at the Sheriff's Office was designed to create long term stability and avoid large unanticipated request for additional funding. The creation of this resolution was a collaborative effort between the Sheriff, the commissioner staff and the commissioners and its funding was intended to be drawn from excess funds unspent within the Sheriff's Office bi-annual budget cycle.

At the conclusion of the 2019/2020 biennium budget, the Sheriff's Office returned approximately $1.6m to the county. Per the resolution and intent behind the resolution itself we anticipated allocating in collaboration with the commissioners and their staff a portion of these residual funds to fund current and future replacement of critical equipment.

To fund what is proposed above, if started in FY 2021, the county will be allocating approximately 90k per year in additional funding toward stabilizing the replacement of critical public safety equipment. Alone, the 2019/2020 budget surplus returned by the Sheriff's Office could fund these additional requests for well over a decade.

Respectfully,

Commander Jon Law