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, August 10, 2021
Benton County Courthouse, Prosser, WA

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- **August 3, 2021**

Review Agenda

Consent Agenda

Auditor
a. Surplus & Disposition of Personal Property

Commissioners
b. Line Item Transfer, Fund No. 0000-101, Dept. 115 to 123
c. Line Item Transfer, Fund No. 0000-101, Dept. 115 to 123
d. Line Item Transfer, Fund No. 0503-101, Dept. 000

Human Services
e. Agreement w/Goodwill Industries of the Columbia, Inc. for Employment Services
f. Agreement w/Sharon Adolphsen for Parent Coalition Support

Juvenile
g. Agreement w/Kennewick School District for Detention Alternative School Program

Office of Public Defense

h. Superior Court Public Defense Services Contract w/Katherine Sierra-Kelly for Uniform Guardianship Act Cases
i. Superior Court Public Defense Services Contract w/Eric Scott for Uniform Guardianship Act Cases
j. Superior Court Public Defense Services Contract w/Asa Lamusga for Uniform Guardian
k. Renewal of the Subscription w/LinkedIn for On-Line Training
l. Superior Court Public Defense Services Contract w/Shelley Ajax for Caseload & Compensation Modification
m. Amended District Court Public Defense Contract w/Jared Hanson for Change In Status

Public Works

n. Request to Proceed w/Bid Process for 2021 Crack Seal

Purchasing

o. Purchase of Backup Storage Space From CompuNet, Inc.
p. Contract w/Frontier Fence, Inc. for Gate Replacement Project @ the Jail
q. Contract w/Express Services for Temporary Landscape Staff

Superior Court

r. Trial Court Improvement Fund Expenditure Request

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

Public Hearing

6-Year Road Program ~ D D'Hondt

Other Business

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, August 3, 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: Deputy County Administrator Matt Rasmussen; Robert Heard, IT Manager; Clerk Josie Delvin; Eric Hsu, OPD Manager; DPA Ryan Brown; Assessor Bill Spencer; Robert Blain, Operations & Capital Programs.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of July 27, 2021 were approved.

Agenda Review

The following items were added to Other Business:

- Office of Public Defense – Staffing Request
- Benton County Airplane – Surplus/Rental Option
- 38th Avenue Project Update
- Out of State Employees

Consent Agenda

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

Auditor

a. Canvassing Board Delegation of Authority
b. Line Item Transfer, Fund No. 0000-101, Dept. 102

Commissioners

c. Line Item Transfer Fund No. 0305-101, Dept. 000
d. Letter of Support for Columbia Basin Collaborative Utility Representative

Corrections

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

Human Services

f. First Amended Agreement w/Housing Authority of City of Kennewick; Rescinding Resolution 2020-082
g. Agreement w/Entrust Community Services for Employment Services
h. Contract w/Debra Chapman as Transition Specialist
i. Amended Contract w/WA State Dept of Commerce, Local Government Division for Community Development Block Grant

Information Technology

j. Addition Services Addendum w/PageFreezer Software Inc. for Archiving Services
k. Purchase of Seven Cisco DX80s From Golden Gate Networks for Corrections Dept.
l. Purchase of Eight Monitors From CDW Government LLC for Auditor's Office
m. Statement of Work from CDW Government LLC for Network Security Assessments
n. Lease Agreement w/Ricoh for Three Copiers for Corrections Dept; Rescinding Resolution 2021-290

Juvenile

o. Contract w/Comprehensive Healthcare for Outpatient Treatment Services

Public Safety

p. Line Item Transfer, Fund No. 0148-101, Dept. 115

Public Works

q. Authorization to Proceed With Advertisement & Bid Process for 2021 Pavement Marking

Purchasing

r. Accepting Work by D & D Tri Rivers Excavating for Evans Road Culvert Replacement Project
s. Purchase of One Rotary Broom Attachment From Alamo Industrial for ER&R

Public Comment

None.

Prosser Economic Development Association Update

Neal Ripplinger, Executive Director for PEDA, provided a Powerpoint presentation and updated the Board as follows:

- Business retention, recruitment, and expansion in the Prosser area
- Final results of the community assessment (tourism study) through USDA grant
- Wayfinding banners for Tour Prosser – with a goal of driving traffic from Exit 80 into downtown
- Prosser Leadership 2020/2021 class graduation and community project
- TBEX North America, the largest networking event for travel bloggers, will visit Tri-Cities with an optional stop in Prosser in October 2021

Other Business

Office of Public Defense – Staffing Request

Eric Hsu, OPD Manager, requested the Board authorize an additional staff attorney instead of a contract position and transfer funds from the contract line item to a line item to support the staff attorney. He said they were having difficulty filling the contract attorney slots and this would allow flexibility to assign them to different cases, if needed.

MOTION: Commissioner Small moved to approve the Line Item Transfer, Public Safety Tax Fund, 0148-101, Dept. 136 to allow for a transfer from a contract attorney to a staff attorney. Commissioner McKay seconded and upon vote, the motion carried

Aircraft – Surplus and Rental

Mr. Rasmussen said he contacted two aircraft rental companies and they both indicated they would be willing to accommodate Benton County on a 24-hour availability, if needed.

Additionally, if the Board still wanted to consider the surplus process for the Benton County airplane, they would need to have a public hearing based on the value of the aircraft.

Chairman Delvin said that Civil Air Patrol (part of the Air Force) did a presentation and they had five planes available for use in Benton County, if the need arose. He said he was going to bring that information to Emergency Dispatch to let them know it was available as an option.

Mr. Rasmussen discussed the ongoing maintenance costs of the Benton County owned airplane, including insurance ($8,000/year), hangar costs, and maintenance. They would be saving money that could be dedicated to a contract for rental, and proceeds of the sale could go back to the Investigative Fund.

The Board agreed to move forward with the surplus process.

38th Avenue Project Update

Mr. Rasmussen said they had a joint project with the City of West Richland to upgrade 38th Avenue. Benton County contributed $330,000, in addition to supporting their request for federal funding, and the final bookkeeping on the project indicated there was $90,000 left unspent. However, the interlocal agreement did not consider what would happen if there was money left over.

Mr. Rasmussen said there was an additional project available to upgrade a bike path in the County on the SR 224/Van Giesen project, which would benefit Benton County to have those bike paths extend out to the wineries. He asked if the Board was agreeable to transferring the leftover funds to that project and the Board agreed to have Mr. Rasmussen move forward with using those funds for that project.

Out of State Employees

Chairman Delvin said it was his understanding the Assessor made an offer of employment to someone to work from Missouri. He expressed concern about potential tax withholding, a required state business license, L & I requirements, and other potential liabilities. He suggested the Board might want to look at a hiring moratorium to require positions be approved by the Board before offers of employment were made.

Assessor Bill Spencer said this was a former employee and even though it was an entry level position, it required some skill and they had not been able to find anyone that could skillfully do that job for what they were willing to pay.

Commissioner Small said the County had paid for relocation costs for employees in the past, but not entry level positions. He suggested if the Assessor needed to have this position be reviewed or evaluated regarding pay, then he should bring that to the Board for its consideration. He expressed concern about hiring an employee that did not plan to live in Benton County or even Washington State.

Mr. Spencer said they were behind in the segregations department, but since COVID, working remotely had been a viable option, and this person has the proper qualifications.

Commissioner McKay said he understood the issue with keeping qualified employees, and it might be different if this person lived in Washington. However, he strongly encouraged him to find someone in the State of Washington.

The Board agreed it would be open minded to looking at proposals for the position regarding salary. Ms. Wingfield (via/videoconference) indicated that most of the Assessor's positions were covered by collective bargaining agreements and would need to be negotiated.

Mr. MacPherson said the County would need to obtain a business registration from the State of Missouri and wanted to know if the Board was willing to do that.

The Board indicated it was not willing to obtain a business registration from the State of Missouri.

The Board briefly recessed, reconvening at 9:48 a.m.

Executive Session – Potential Litigation

The Board went into executive session at 9:48 a.m. for up to 30 minutes with PA Andy Miller (via/WebEx). Also present were Eric Johnson, WSAC, (via/WebEx), Paul Lawrence (via/WebEx), Jerrod MacPherson, Matt Rasmussen, Cami McKenzie, Ryan Brown, and Eri Hsu.

The Board came out at 10:20 a.m. No decisions were made in executive session.

Other Business - Continued

EFSEC Letter

Commissioner McKay asked if the Board had received a response to the EFSEC letter and Mr. MacPherson said they had not.

Letter to Kennewick School District Board

Commissioner McKay said he received several phone calls about the mask requirement in schools and wanted to know if the Board was willing to send a letter to the Kennewick School District Board about masks being optional.

Chairman Delvin said he was agreeable to looking at it and Commissioner McKay said he would research the matter. Commissioner Small requested he bring back the issue in two weeks when Commissioner Delvin was present.

Accounts Payable

Check Date: 07/30/2021

Warrants #: 219968-220098
Total all funds: $2,554,479.93

EFT's #: 1862-1886
Transfers #: 07302101-07302103
Total all funds: $193,219.99

Resolutions

2021-573: Line Item Transfer, Fund No. 0000-101, Dept. 102
2021-574: Line Item Transfer Fund No. 0305-101, Dept. 000
2021-575: Line Item Transfer, Fund No. 0000-101, Dept. 120
2021-576: First Amended Agreement w/Housing Authority of City of Kennewick
2021-577: Agreement w/Entrust Community Services for Employment Services
2021-578: Contract w/Debra Chapman as Transition Specialist
2021-579: Amended Contract w/WA State Dept of Commerce, Local Government Division for Community Development Block Grant
2021-580: Addendum w/PageFreezer Software Inc. for Archiving Services
2021-581: Purchase of Seven Cisco DX80s From Golden Gate Networks for Corrections Dept.
2021-582: Purchase of Eight Monitors From CDW Government LLC for Auditor's Office
2021-583: Statement of Work from CDW Government LLC for Network Security Assessments
2021-584: Lease Agreement w/Ricoh for Three Copiers for Corrections Dept.
2021-585: Contract w/Comprehensive Healthcare for Outpatient Treatment Services
2021-586: Line Item Transfer, Fund No. 0148-101, Dept. 115

2021-587: Authorization to Proceed With Advertisement & Bid Process for 2021 Pavement Marking
2021-588: Accepting Work by D & D Tri Rivers Excavating for Evans Road Culvert Replacement Project
2021-589: Purchase of One Rotary Broom Attachment From Alamo Industrial for ER&R
2021-590: Line Item Transfer - Public Safety Tax Fund Number 0148101, Dept. 136

There being no further business before the Board, the meeting adjourned at approximately 10:24 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Declaration of Surplus Property
Presenter:	Personal Property Manager/Benton County Auditor
Prepared By:	Deidra Beck
Reviewed By:	Lorene Roe

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

Summary / Background Information

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

Fiscal Impact

Amount: **None**

Fund: **N/A**

Recommendation

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

Suggested Motion

Approve as part of the consent agenda.

D. Beck
L. Roe

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

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

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

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

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

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

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

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

Dated this _____day of _____, 2021.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____

Clerk of the Board

D. Beck
L. Roe

SURPLUS

AUDITOR

- 2 padded office chairs (1 black, 1 gray)
  - Poor condition
  - Tag # N/A

ER&R

- 2005 Chevrolet Impala
  - VIN #2G1WF52K559288740
  - Plate # C7960C
  - VEH# C05-02
- 2012 Dodge Charger
  - VIN #2C3CDXAT0CH172410
  - Plate # C8684C
  - VEH# C12-11
- 2010 Ford Escape
  - VIN# 1FMCU9DG9AKC44180
  - Plate # 92926C
  - VEH# 1089

D. Beck
L. Roe

DESTROY

AUDITOR

- (1) Drop Safe—coded key entry
  - Manual key-lost

D. Beck
L. Roe

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 123

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental to Superior Court

Dept Nbr: 115 to Department Number 123

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 123

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
511.600	4931	Fenced Item Contingency	$18,000	512.210	3507	Non-Replacement Computers	$18,000
TOTAL			$18,000	TOTAL			$18,000

Explanation:

To appropriate funding for Superior Court Department 123. Superior Court received a Grant from AOC for replacement computers. The revenue has been received from AOC, but Superior Court did not budget the expenditure for the Grant.

Prepared by: Linda Ivey

Date: 02-Aug-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 123

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental to Superior Court

Dept Nbr: 115 to Department Number 123

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 123

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
511.600	4931	Fenced Item Contingency	$190,500	512.210	4102	Contract Services	$190,500
TOTAL			$190,500	TOTAL			$190,500

Explanation:

To appropriate funding in Superior Court, Department 123, for expenses associated with the Uniform Guardianship Act contracts as presented to the BOCC at the 7/20/2021 Board Presentation. Benton County contracts anticipated expenses for 2021-2022 are $190,500. Franklin County anticipated contract expenses for 2021-2022 are $66,000 and Franklin County is paying the Franklin County contracts directly out of their own budget.

Prepared by: Linda Ivey

Date: 27-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 WORKMEN'S COMPENSATION FUND NUMBER 0503101, DEPARTMENT NUMBER 000

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

Per Budget Resolutio 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: Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

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

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
517.670	3101	Supplies	$110	517.670	3503	Computer Software	$110
TOTAL			$110	TOTAL			$110

Explanation:

Per Budget Resolution 2020-900, a line item transfer to 3503 Computer Software, requires BOCC approval, as the software was not included in the current budget.

Prepared by: Linda Ivey | Date: 30-Jul-2021

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Execute Agreement 2021-DD-GW-00 with Goodwill Industries of the Columbia
Presenter:	
Prepared By:	Mari Clark, Program Specialist
Reviewed By:	Kyle Sullivan, DHS Manager

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

Type of Agenda Item:

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

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

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

Summary / Background Information

The purpose of this Agreement #2021-DD-GW-00 is to provide employment services to individuals with developmental/intellectual disabilities.

Fiscal Impact

Amount: Fee-for-Service

Fund: Funding for the services described in this Amendment is provided by Developmental Disabilities Administration. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

Recommendation

- Sign the Resolution to accept the Agreement #2021-DD-GW-00
- Execute the proposed Agreement #2021-DD-GW-00 by signing all the copies where indicated

Suggested Motion

Consent Agenda

RESOLUTION

Benton County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING GRANT AGREEMENT #2021-DD-GW-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND GOODWILL INDUSTRIES OF THE COLUMBIA, INC.

WHEREAS, Benton County Department of Human Services has contracted with Goodwill Industries of the Columbia Inc. to provide employment services to individuals with developmental disabilities; and

WHEREAS, Benton County Department of Human Services would like to re-contract with Goodwill Industries of the Columbia Inc. for a term commencing on July 1, 2021 and expiring on September 30, 2021; and **NOW, THEREFORE**

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

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign on behalf of Benton County, Agreement #2021-DD-GW-00 with Goodwill Industries of the Columbia Inc. to provide employment services to individuals with developmental disabilities for a consideration amount of Fee-For-Service; and

BE IT FURTHER RESOLVED, the term of the attached Agreement commences on July 1, 2021 and shall expire on September 30, 2021.

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

_____
Chair

_____
Member

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

Attest: _____
Clerk of the Board

cc: Human Services; Benton County Commissioners

M. Clark

Benton County
DEPARTMENT OF HUMAN SERVICES
Agreement #2021-DD-GW-00

This Agreement is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, by and for the **Benton County Department of Human Services**, with its principal offices at 7102 West Okanogan Place, Suite 201, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties") and **Goodwill Industries of the Columbia Inc.** , a Washington State Not-For-Profit Corporation, with its principal offices at 815 N. Kellogg, Ste. A, Kennewick, WA 99336 (hereinafter "Contractor").

Counties Contact Information:
Kyle Sullivan, Administrator
Department of Human Services
7102 W. Okanogan Pl., Ste. 201
Kennewick, WA 99336
Phone: 509.783.5284 / Fax 509.783.5981
E-Mail: Kyle.sullivan@co.benton.wa.us

Contractor Contact Information:
Ken Gosney, Executive Director
Goodwill Industries of the Columbia Inc.
815 N. Kellogg, Ste. A
Kennewick, WA 99336
Phone: 509.735.7238 / Fax: 509.783.8266
E-Mail: kgosney@goodwillotc.org

Is the Contractor a subrecipient for purposes of this Agreement ..... No
CFDA Number (Federal Block Grant Funding)..... N/A

Agreement Start Date ..... July 1, 2021
Agreement End Date (unless terminated sooner as set forth herein this Agreement) ..... September 30, 2021
The Contractor shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the end date.

Consideration ..... Fee-For-Service

Attachments incorporated into this Agreement

Exhibit "A" – Data Security Requirements
Exhibit "B" – Fee-For-Service Schedule
Exhibit "C" – Additional Hour Request Form
Exhibit "D"- Change/Termination/Withdrawal Form
Exhibit "E" – Travel Policy
Exhibit "F" – Individual Service Review Form CI
Exhibit "G" – Individual Service Review Form
Exhibit "H" – Proposal Request Form

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

For the Contractor:

K Gosney Title: CEO Date: 7/20/2021

For Benton County:

Benton County Commissioners | Date | Attest: Clerk of the Board

Approved as to Content

Department of Human Services

Approved as to Form

Benton County Prosecutor's Office

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1. GENERAL TERMS AND CONDITIONS

a. **Definitions:**

(1) **CFR** means the Code of Federal Regulations. All references in this Agreement and any Program Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation. The CFR may be accessed at http://www.gpoaccess.gov/cfr/index.html.

(2) **Counties Representative** means any County employee who has been delegated with contract-signing authority by the Counties Human Services Administrator or his/her designee.

(3) **Debarment** means an action taken by a federal official to exclude a person or business entity from participating in transactions involving certain federal funds.

(4) **DSHS** means the Washington State Department of Social and Health Services.

(5) **Family or Families** means individuals, of any age, living together in the same household and related by blood, marriage, adoption or as a result of sharing legal custody of a minor child [WAC 388-825-020].

(6) **General Terms and Conditions** means the contractual provisions contained within this Agreement, which govern the contractual relationship between the Counties and the Contractor, under the Program Agreements subsidiary to and incorporating therein by reference this Agreement.

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

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

(9) **Personal Information** means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

(10) **Program Agreement** or County Program Agreement means a written agreement between the Counties and the Contractor containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by the Counties.

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

(12) **Shall** means compliance is mandatory.

(13) **Single Audit** means an audit that will encompass the entirety of the financial operations of the Contractor and which meets the requirements prescribed by Federal Office of Management and Budget (OMB) guidelines.

(14) **Subcontract** means a separate contract between the Counties and an individual or entity (Subcontractor) to perform all or a portion of the duties and obligations that the Counties shall perform pursuant to any Program Agreement.

(15) **Subcontractor** means any person, partnership, corporation, association or organization, not in the employment of the Contractor, who has a subcontract

agreement directly with the contractor or a subsequent tier subcontract agreement with an intermediate subcontractor.

(16) **Subrecipient** means any person or government department, agency, or establishment that receives federal financial assistance through DSHS, or other State agency, to carry out a program for which they are accountable through an agreement, a contract, subcontract, or an award.

(17) **USC** means United States Code. All references in this Agreement and any Program Agreement to USC chapters or sections shall include any successor, amended, or replacement statute. The USC may be accessed at http://www.gpoaccess.gov/uscode/.

(18) **Use as it relates to HIPAA compliance** means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

(19) **Vulnerable Adult** means a person:

(a) Sixty (60) years of age or older who has the functional, mental, or physical inability to care for himself or herself; or is found incapacitated under Chapter 11.88 RCW; or

(b) Who has a developmental disability as defined under RCW 71A.10.020; or

(c) Admitted to licensed facilities, including boarding homes, nursing homes, adult family homes, residential habilitation centers, or any other facility licensed by DSHS; or

(d) Receiving services from home health, hospice or home care agencies licensed or required to be licensed under Chapter 70.127 RCW; or

(e) Receiving services from an individual provider (RCW 74.34.020).

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

b. **Amendments and Changes in Work:**

(1) In the event of any errors or omissions by the Contractor in the performance of any work required under this Agreement, the Contractor shall make any and all necessary corrections without additional compensation. All work submitted by the Contractor shall be certified by the Contractor and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the Counties.

(2) No amendment or modification shall be made to this Agreement unless set forth in a written contract amendment signed by authorized representatives of both parties. Work under a contract amendment shall not proceed until the contract amendment is duly executed by the Counties.

c. **Assignment, Delegation and Subcontracting:**

(1) The Contractor shall perform the terms of this Agreement using only its bona fide employees or agents, and the obligations and duties of the Contractor under this Agreement shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the Counties' authorized representatives.

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

d. **Audit Requirement:**

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

(2) If the Contractor is not subject to an OMB Circular A-133 audit, the Contractor shall provide to the Counties a CPA audit or CPA review within 180 days of the subcontractor's fiscal year end. The scope of the audit or review shall include the entire operation and related legal entity, be in accordance with Generally Accepted Accounting Principles (GAAP), and include a management letter that addresses any audit findings.

(3) The Contractor shall take whatever corrective action is required by the Counties to mitigate risk or resolve outstanding audit findings.

e. **Choice of Law, Jurisdiction and Venue:**

(1) This Agreement 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 Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

(2) Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton or Franklin County, Washington.

f. **Compliance with Laws:** The Contractor shall comply with all applicable federal, state, and local laws, rules and regulations in performing this Agreement.

g. **Compliance with HIPAA:** At all times during the term of this Agreement, the Contractor shall implement policies and procedures to safeguard and maintain protected health information in accordance with the requirements of state and federal law, and particularly the provisions of the Health Insurance Portability and Accountability Act.

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

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

j. **Entire Agreement:** The parties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

k. **Hold Harmless and Indemnification:**

(1) The Contractor shall hold harmless, indemnify and defend the Counties, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the

Contractor's acts, errors or omissions in the performance of this Agreement. PROVIDED, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Counties, their officers, officials, employees or agents.

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

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

I. **Independent Contractor:**

(1) The Contractor's services shall be furnished by the Contractor as an independent contractor and not as an agent, employee or servant of the Counties. The Contractor specifically has the right to direct and control the Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Agreement.

(2) The Contractor acknowledges that the entire compensation for this Agreement is set forth in the Consideration and Payment Provision Section of this Agreement, and neither the Contractor nor its employees are entitled to any Counties benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to the Counties' employees.

(3) 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 or deem to be or act or purport to act as an employee, agent, or representative of the Counties.

(4) The Contractor shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Agreement.

(5) The Contractor agrees to immediately remove any of its employees or agents from their assignment to perform services under this Agreement upon receipt of a written request to do so from the Counties' contract representative or designee.

m. **Insurance:**

(1) **Professional Legal Liability**: Prior to the start of work under this Agreement, the Contractor, if he, she or it is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor's profession and shall be written subject to limits of not less than one million dollars ($1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy limit, it shall be at least two times the incident, loss or person limit.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the Contractor's services defined in this Agreement. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Agreement or within the scope of the Contractor's services as defined by this Agreement including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Agreement. The policy shall state that coverage is claims made, and state the retroactive date. Contractor is also required to buy claims made professional liability insurance for a period of 36 months after completion of this Agreement, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy. Contractor shall annually provide Counties with proof of all such insurance.

(2) **Workers Compensation:** Contractor shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Agreement, 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 Agreement. Except as prohibited by law, Contractor waives all rights of subrogation against the Counties for recovery of damages to the extent they are covered by workers compensation, employer's liability, commercial liability or commercial umbrella liability insurance.

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

Certain work or services under this Agreement may require insurance coverage for long shore or harbor works other than seaman as provided in the Long Shore and Harbor Workers Compensation Act [33 U.S.C. Section 901 et seq.]. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Certain work or services under this Agreement may require insurance coverage for seamen injured during employment resulting from the negligence of the owner, master or fellow crew members as provided in 46 U.S.C. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain coverage.

(3) **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Agreement, Contractor shall maintain Commercial General Liability coverage (policy form CG0001 or equivalent) for wrongful death, bodily injury, personal injury and property damage, subject to limits of not less than one million dollars ($1,000,000) per occurrence. The general aggregate limit shall apply separately to this Agreement and be no less than two million dollars ($2,000,000).

The general commercial liability policy will contain an endorsement naming the County, both Benton and Franklin County, as additional insureds (CG2010) and an endorsement that specifically states that Contractor's general liability policy shall be primary, and not contributory, with any other insurance maintained by the County.

The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Agreement and does not exclude liability pursuant to the indemnification requirement under the Hold Harmless and Indemnification section of this Agreement. Specialized forms specific to the industry of the Contractor will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

If Contractor has any employees, Contractor also shall maintain employer's liability insurance with limits of not less than one million dollars ($1,000,000) each incident for bodily injury by accident or one million dollars ($1,000,000) each employee for bodily injury by disease.

(4) **Automobile Liability**: This section is required if services involve the use of vehicles by Contractor or the transportation of Counties' employees or third parties. The Contractor shall maintain business automobile liability insurance with a limit of not less than one million dollars ($1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". The Contractor waives all rights against the Counties for the recovery of damages to the extent they are covered by business auto liability.

(5) **Other Insurance Provisions**:

(a) The Contractor's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the Counties, their elected and appointed officers, officials, employees and agents.

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

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Counties, their officers, officials, employees or agents.

(d) 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.

(e) 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.

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

(g) 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 Agreement, except for professional liability insurance described above shall be written on an Occurrence Policy form. Professional liability insurance on a Claims Made form shall have a retroactive date prior to or coincident with the effective date of this Agreement.

(6) **Verification of Coverage and Acceptability of Insurers**: All insurance required under this Agreement shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class 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 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.

(a) The Contractor shall furnish the Counties with properly executed and unaltered Accord form certificates of insurance and, if requested, a signed policy endorsement(s) which shall clearly evidence all required insurance prior to commencing work under this Agreement. The certificates will, at a minimum, list limits of liability and coverage. For any professional liability insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance policies, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. The Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced written notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.

(b) The Contractor shall furnish the Counties with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties as an additional insured.

(c) Certificates of insurance shall show the certificate holders as "Benton County" and "Franklin County" and include "c/o" the Counties' contract representative. The address of the certificate holder shall be shown as the current address of the Counties' contract representative.

(d) If the Contractor or any subcontractor or sub-subcontractor has any employees, Contractor shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that the Contractor is currently paying workers compensation.

(e) All written notices under this Section and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following addresses:

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

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

(g) If the Contractor is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to the Counties. If requested by the Counties, Contractor must describe its financial condition and the self-insured funding mechanism.

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

o. **Non-Waiver of Rights:** The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Agreement 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 Agreement at a later time. All waivers of any provision(s) of this Agreement shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

p. **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 the contract representatives section of this Agreement. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately, if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

q. **Order of Precedence:** In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

(1) Applicable federal, state and local law, regulations, rules, and ordinances;

(2) Specific Terms and Conditions of this Agreement;

(3) General Terms and Conditions of this Agreement;

(4) Other terms and conditions of this Agreement.

r. **Ownership of Materials/Works Produced:**

(1) All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by 17 USC§ 101 and shall be owned by the Counties. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The Counties agrees that if they use any materials prepared by the Contractor for purposes other than those intended by this Agreement, they do so at their sole risk and agree to hold the Contractor harmless therefrom to the extent such use is not agreed to in writing by the Contractor.

(2) An electronic copy of all word processing documents shall be submitted to the Counties upon request or at the end of the job using the word processing program and version specified by the Counties.

s. **Patent / Copyright Infringement:** The Contractor shall hold harmless, indemnify and defend the Counties, their officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the Counties, where such action is based

on the claim that information supplied by the Contractor or subcontractor infringes any patent or copyright. The Contractor shall be notified promptly in writing by the Counties of any notice of such claim.

t. **Prohibition of Political Activities:** No funds, material, property or contracted services provided under the terms of this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

u. **Public Records Act:** The Contractor hereby acknowledges that the Counties are governmental entities, and as such are subject to the requirements of the Public Records Act, RCW 42.56 et seq. Accordingly, the Contractor understands that to the extent a proper request is made, the Counties may be required by virtue of that Act to disclose any records actually in their possession or deemed by judicial determination to be in their possession, which may include records provided to the Counties by the Contractor that the Contractor might regard as confidential or proprietary. To the extent that the Contractor provides any records to the Counties that it regards as confidential or proprietary, it 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 the Counties' release of records covered under the Public Records Act. The Counties agree to take all reasonable steps to notify the Contractor in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by the Contractor as confidential or proprietary, so that the Contractor may seek a judicial order of protection if necessary.

v. **Records Maintenance and Inspection:**

(1) **Records Maintenance:** The Contractor shall keep all records required by this Agreement for (6) years, unless otherwise stated herein, after termination of this Agreement. The Contractor shall maintain records in their original form that are sufficient to:

(a) document the performance of all acts required by law, regulation, or this Agreement;
(b) substantiate the Contractor's statement of its organization's structure, tax status, capabilities, and performance;
(c) demonstrate accounting procedures and practices which sufficiently and properly document the Contractor's billings to the Counties and all expenditures made by the Contractor to perform as required by this Agreement;
(d) ascertain that personnel policies, procedures and practices are in compliance with this Agreement; and
(e) ascertain that all taxes and insurance required by State and Federal law and this Agreement were paid by the Contractor.

(2) **Right of Inspection:** The Counties may, at reasonable times, inspect the books and records of the Contractor relating to the performance of this Agreement. Authorized persons shall have the right to examine the Contractor's performance and financial records and perform other activities to determine the Contractor's compliance with the terms of this Agreement. The Counties shall give the Contractor reasonable notice of monitoring, auditing, observation and other visits by its officers and employees to the Contractor's place(s) of business.

(3) **Notice of Inspections:** The Contactor shall verbally notify the Counties immediately of any inspections, audits, accreditation, or program reviews of services by any individual, agency, or governmental unit, and to promptly provide the Counties with copies of any written reports of such inspections, audits, accreditation or program reviews.

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

x. **Reduction or Suspension of Services:** The Contractor shall provide the Counties with prompt notification of any discontinuance or suspension of or significant reduction in any category of services provided by this Agreement or any change in location of the provision of such services. Said changes shall only be made in accordance with the provisions of the Agreement.

y. **Relationship of the Parties**: The Department of Human Services shall be the representative of the Counties with full authority for administering and overseeing the performance of this Agreement. Except as expressly provided within Section 1.14.6 and 1.14.6.5 above, whenever, in this Agreement, provision is made for the Contractor to contact or give notice to the Counties or provide them with documents, reports, voucher claims, or any other information, or for the Counties to give notice to the Contractor to review, inspect, observe, or audit this Contractor's contracted services, facilities, programs, or records, the term "Counties" shall mean the Department of Human Services. The parties shall notify in writing any change to contract contact information.

z. **Severability:**

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

(2) If it should appear that any provision of this Agreement 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.

aa. **Successors and Assigns:** The Counties, 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 Agreement and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Agreement.

bb. **Survivability:** All Agreement terms, which by their context are clearly intended to survive the termination and/or expiration of this Agreement, shall so survive. These terms include, but are not limited to, indemnification provisions; extended reporting period requirements for professional liability insurance; inspection and keeping of records and books; litigation hold notice; Public Records Act and confidentiality.

cc. **Termination:**

(1) The Counties may terminate this Agreement in whole or in part whenever the Counties determine, in their sole discretion, that such termination is in the best interests of the Counties. The Counties may terminate this Agreement upon giving ten (10) days written notice by certified mail to the Contractor. In that event, the Counties shall pay the Contractor for all costs incurred by the Contractor in performing the Agreement up to the date of such notice. Payment shall be made in accordance with the Consideration and Payment Provisions Section of this Agreement.

(2) In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Agreement, the Counties may summarily terminate this Agreement notwithstanding any other termination provision of this Agreement. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by the Counties to the Contractor. After the effective date, no charges incurred under this Agreement shall be allowed.

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

(4) The Contractor may terminate this Agreement, in whole or in part, by giving thirty (30) days written notice to the Counties' contract representative. In the event of termination, the Counties shall pay the Contractor for services provided up until the termination date. Nothing in this section shall limit the rights of the Counties pursuant to this Agreement or by law.

(5) In the event of termination of this Agreement for any reason, the Contractor shall submit to the Counties within seven (7) calendar days of the notice of termination a Transition Plan to assist the Counties with the transfer of individuals served to ensure continuation of services.

dd. **Treatment of Individuals Served Property:** Unless otherwise provided in this Agreement, the Contractor shall ensure that any adult individual receiving services from the Contractor under this Agreement has unrestricted access to the individual's personal property. The Contractor shall not interfere with any adult individual's ownership, possession, or use of the individual's property. The Contractor shall provide individuals under age eighteen (18) with reasonable access to their personal property that is appropriate to the individual's age, development, and needs. Upon termination or completion of this Agreement, the Contractor shall immediately release to the individual and/or the individual's guardian or custodian all of the individual's personal property. This section does not prohibit the Counties from implementing such lawful and reasonable policies, procedures and practices as the Counties deem necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting individual's access to, or possession of use of, lawful or unlawful weapons and drugs).

ee. **Treatment of Property:** Title to all property purchased or furnished by the Counties for use by the Contractor during the term of this Agreement shall remain titled to the Counties. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by the Counties under this Agreement shall pass to and vest in the Counties. The Contractor shall protect, maintain, and insure all Counties' property in its possession against loss or damage and shall return the Counties' property to the Counties upon Agreement termination or expiration.

2. **Specific Terms and Conditions:** The words and phrases listed below, as used in this Program Agreement, shall each have the following definitions:

   a. "**Acuity Level**" means the level of an individual's abilities and needs as determined through the DDA assessment.

   b. "**AWA**" means ALTSA Web Access also referred to as the CMIS.

   c. "**Additional Consumer Services**" refers to indirect client service types as follow:

      (1) "**Community Information and Education**": Activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.

      (2) "**Training**": To increase the job-related skills and knowledge of staff, providers, volunteers, or interning students in the provision of services to people with developmental disabilities. Also, to enhance program related skills of board or advisory board members.

      (3) "**Other Activities**": Reserved for special projects and demonstrations categorized into the following types:

         (a) "**Infrastructure Projects**": Projects in support of clients (services not easily tracked back to a specific working age client) or that directly benefit a client(s) but the client is not of working age. Examples include planning services like benefits planning and generic job development. E.g. "Project Search."

         (b) "**Start-Up Projects**": Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.

         (c) "**Partnership Projects**": Collaborative partnerships with school districts, employment providers, DVR, families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21).

   d. "**BARS**" means DDA Budget and Accounting Reporting System.

   e. "**Client**" means a person with a developmental disability as defined in Chapter 388-823 WAC who is currently eligible and active with Developmental Disabilities Administration.

   f. "**County**" means the county or counties entering into this Program Agreement.

   g. "**Consumer Support**" refers to direct Client service types as follows:

      (1) "Community Inclusion" or "CI": services are individualized services provided in typical integrated and community settings. Services will promote individualized skill development, independent living and community integrations for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion. These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Employment or Group Supported Employment) for working age individuals who have received nine months of employment support.

      (2) "Child Development Services" or "CDS": Birth to three services are designed to meet the developmental needs of each eligible child and the needs of the family related to

enhancing the child's development. Services may include specialized instruction, speech-language pathology, occupational therapy, physical therapy, assistive technology, and vision services. Services are provided in natural environments to the maximum extent appropriate.

(3) "Individual Supported employment" or "IE": services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities, and promote career development. These are individualized services necessary to help persons with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job.

(4) "Individualized Technical Assistance" or "ITA": services are a part of an individual's pathway to individual employment. This service provides assessment and consultation to the employment provider to identify and address existing barriers to employment. This is in addition to supports received through supported employment services for individuals who have not yet achieved their employment goal.

(5) "Group Supported Employment" or "GSE": services are a part of an individual's pathway to integrated jobs in typical community employment. These services are intended to be short term and offer ongoing supervised employment for groups of no more than eight (8) workers with disabilities in the same setting. The service outcome is sustained paid employment leading to further career development in integrated employment at or above minimum wage. Examples include enclaves, mobile crews, and other business models employing small groups of workers with disabilities in integrated employment in community settings.

h. "**CRM**" means the DDA Case Resource Manager.

i. "**CSA**" means County Service Authorization.

j. "**DD**" means developmental disabilities.

k. "**DDA**" means the Developmental Disabilities Administration within DSHS.

l. "**DDA Region**" means the DDA Regional office.

m. "**DVR**" means the Division of Vocational Rehabilitation.

n. "**HCBS**" means the Medicaid Home and Community Based Services.

o. "**ISP**" means the Individual Support Plan, a document that authorizes and identifies the DDA paid services to meet a client's assessed needs.

p. "**PASRR**" means Preadmission Screening and Resident Review.

q. "**PCSP**" means Person Centered Service Plan, a document that authorizes and identifies the DDA paid services to meet a Client's assessed needs. Formerly referred to as the Individual Support Plan.

r. "**Quality Assurance**" means an adherence to all Program Agreement requirements, including DDD Policy 6.13, *Employment/Day Program Provider Qualifications*, County Guidelines and the Criteria for Evaluation, as well as a focus on reasonable expected levels of performance, quality, and practice.

s. "**Quality Improvement**" means a focus on activities to improve performance above minimum standards and reasonably expected levels of performance, quality and practice.

t. "**Service Provider**" is a qualified client service vendor who is contracted to provide Employment and Day Program services.

u. "**Subcontractor**" is the service provider contracted by the County to provide services.

3. **Purpose:** This Program Agreement is entered into between the Counties and the Contractor in accordance with Chapter 71A.14 RCW. Its purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disabilities.

4. **Client Eligibility:** Client eligibility and service referral are the responsibility of the DDA pursuant to Chapter 388-823 WAC (Eligibility) and Chapter 388-825 WAC (Service Rules). Only persons referred by the DDA shall be eligible for direct client services under this Agreement. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. Direct client services provided without authorization are not reimbursable under this Program Agreement.

5. **Credentials and Minimum Requirements:**

   a. **Qualified Service Providers:** The Contractor shall meet qualifications as outlined in DDA Policy 6.13 (Program Provider Qualifications) which is incorporated herein by reference.

   b. **Sufficient Policies and Procedures for Agency:** The Contractor shall maintain adequate internal control systems. The Contractor shall maintain written policy procedural manual/handbook for information systems, personnel, accounting/finance, and implementation of programs in sufficient detail such that operations can continue should staffing change or absences occur.

   c. **Fiscal Responsibility:** The Contractor must demonstrate the ability to safeguard public funds including maintaining books, records, documents and other materials relevant to the provision of goods and services.

   d. **Home and Community Based Waiver Services Assignment of Medicaid Billing Rights:** The Contractor shall agree to assign to the Counties its Medicaid billing rights for services to DDA clients eligible under Title XIX programs in this Agreement. Written documentation shall be available to DSHS on request.

   e. **Background / Criminal History Check:** A background criminal history clearance is required every three (3) years for all employees, subcontractors, and/or volunteers who may have unsupervised access to vulnerable DSHS clients, in accordance with RCW 43.43.830-845, RCW 74.15.030, and Chapter 388 WAC. If the entity reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in Chapter 74.34 RCW, then the Counties shall deny payment for any subsequent services rendered by the disqualified individual provider. The DSHS Background Check Central Unit (BCCU) must be utilized to obtain background clearance.

   f. **Reporting Abuse and Neglect:** The Contractor and staff are mandated reporters under RCW 74.34.020(13), and must comply with reporting requirements described in RCW 74.34.035, .040, and Chapter 26.44 RCW. If the Counties are notified by DSHS that the Contractor staff member is cited or on the registry for a substantiated finding, then that associated staff will be prohibited from providing services under this Agreement.

      The Contractor is required, per DDA Policy 5.13 (Protection from Abuse: Mandatory Reporting), to promptly report to Counties and DDA if:

      (1) If they have reasonable cause to believe that abandonment, abuse, financial exploitation or neglect (as defined in RCW 74.34.020) of a person who has a developmental disability (as defined in RCW 71A.10.020) has occurred.

      (2) If they have reason to suspect that sexual or physical assault of such a person has occurred, they shall also immediately report to the appropriate law enforcement agency.

   g. Contractors are specifically authorized to have data storage on portable devices or media in accordance with the Data Security Requirements.

h. Contractors who provide Child Development Services (birth to three early intervention services), must provide those services under the regulations implementing the Individuals with Disabilities Education Act (IDEA), Part C, and Washington State's Early Support for Infant and Toddler Federally Approved Plan.

6. **Statement of Work:** 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 below. Working collaboratively and sharing information as needed for service coordination, the parties shall provide DD services within the counties as set forth below:

a. The Contractor shall comply with the following referenced documents found at DDA Internet site https://www.dshs.wa.gove/dda/county-best-practices under "County Best Practices":

(1) DDA Policy 4.11, County Services for Working Age Adults;

(2) Chapter WAC 388-850, chapter 388-828 WAC, WAC 388-845-0001, 0030, 0210, 0215, 0220, 0600-0610, 1030-1040, 1400-1410, 2100, 2110;

(3) Criteria for Evaluation;

(4) DDA Guiding Values;

(5) County Guide to Achieve DDA's Guiding Values;

(6) DDA Guidelines for Community assessments within Employment and Vocational Programs; and

(7) Disability Rights Washington (formerly Washington Protection and Advocacy System) Access Agreement.

b. The Contractor will provide consumer support services that include the following program outcomes:

(1) Monthly Community Inclusion service support hours will be based on the Client's CI service level per WAC 388-828-9310 for all Clients who began receiving CI services July 1, 2011 and forward.

(a) To ensure health and safety, promote positive image and relationships in the community, increase competence and individualized skill-building, and achieve other expected benefits of CI, services will occur individually or in a group of no more than two (2) or three (3) individuals with similar interests and needs.

(b) CI services will focus on activities that are typically experienced by the general public. Support to participate in segregated activities and/or specialized activities will not be reimbursed.

(c) A client receiving CI services will not receive employment support simultaneously.

(d) A Client receiving CI services may at any time choose to leave Community Inclusion to pursue work and receive employment support.

(2) Clients in an employment program will be supported to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828.

(3) The Client's DDA PCSP is the driver for service. The AWA CSA and the hours will not exceed the Client's DDA PCSP. Service changes will not occur until the client has received proper notification from DDA.

(4) All clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, County, guardian and others as appropriate.

(5) Semi-annual progress reports that describe the outcomes of activities will be provided by the Contractor to the client, CRM, County, guardian and others as appropriate.

(6) Contractor shall submit the "DDA Additional Hours Request" form to request additional hours. The form shall be submitted to the CRM and County. The request must be made before the hours are provided to qualify for reimbursement.

(7) Contractor shall submit the "Change/Termination/Withdrawal" form to communicate a reduction in hours, service change, termination of service, or withdrawal from service. Form shall be submitted to CRM and County by the last day of the week, the changes were made.

(8) Provider will document each activity related to service of the client in the form of progress notes. These notes shall be kept in the client's file and made available for review by the County and/or DDA. Progress notes must include at minimum the following:

(a) The date of the activity;

(b) A brief description of activity, including how the activity relates to the individual's goals in the Employment/Community Inclusion Plan;

(c) The amount of time the interaction took, recorded in quarter hour increments;

(d) Name of the person entering the progress note and any staff involved in the activities being recorded.

(9) All clients will be contacted by their service provider according to Client need and at least once per month.

(10) If Clients in Individual Employment or Group Supported Employment, have not obtained paid employment at minimum wage or better within six (6) months, the Contractor will assure the following steps are taken:

(a) Review the progress toward employment goals;

(b) Provide evidence of consultation with the Client/guardian; and

(c) Develop additional strategies with the Client/guardian, county staff, employment support staff, case manager, and others identified by the Client. Strategies may include providing technical assistance, changing to a new provider, and/or providing additional resources as needed to support the individual's pursuit of employment. The additional strategies and review will be documented for each Client and kept in the Client's file.

(d) Contractor will use the Individual Service Review Exhibit G "Individual Service Review" form for documentation.

(11) If after twelve (12) months the Client remains unemployed, an additional review will be conducted. The provider will address steps outlined in the previous six-month progress report in the next six-month progress report. The Client may request to participate in Community Inclusion activities, or the Client may choose to remain in an employment program. When requesting to participate in CI, the Client shall communicate directly

with his or her DDA Case Manager. The DDA Case Manager is responsible for authorizing CI services.

(12) For Individual Employment where the Contractor is also the Client's employer, long term funding will remain available to the service provider employer for six-months after the employee DDA Client's date of hire. At the end of the six-month period, if the DDA Client continues to need support on the job, another provider who is not he employer of record must provide the support unless the County or DDA issues prior written approval for the service provider to continue to provide long-term supports if needed. If the county or DDA approves the continuation of long-term supports where the service provider is also the Client's employer, the county or DDA will regularly monitor these positions to assure fading efforts occur when appropriate and any potential conflict of interest is addressed.

(13) Individual Employment staff hours must be attributed to the Individual Employment an Billable Activity Phase(s).

(14) For Group Supported Employment (GSE), Clients must have paid work. The total number of direct service staff hours provided to the group should be equal to or greater than the group's collective amount of individual support monthly base hours. If the direct service staff hours are less than the collective amount, then the provider will be reimbursed only for the number of hours staff actually provided. The collective group's individual hours should be the minimum staff hours delivered to support the group.

(a) A GSE client must be on-site/at work at least their base individual hours as a minimum per month. If a client is not on-site/at work for all of their base hours, the county should verify that the provider delivered the collective group's individual hours to the group (what was the number of staff hours provided to the group during the month? If it was less than the collective group's total the provider can only bill for the staff hours that were provided).

(b) A GSE agency may not bill for a GSE client who does not receive services during an entire service month.

(c) A GSE agency must have a record of which staff is supporting which clients on any given day.

(d) A GSE agency must have supportive documentation that provides clear evidence of support helping with specific activities as identified in the client plan to move a client on their pathway towards their employment goal(s).

(e) Running a GSE service is a part of the business operation and not billable to individuals (contract procurement, contract maintenance, or administration function associated with GSE).

(f) Individual time in the community working towards the individual employment goal, separate from the group time, must include phase information (refer to Employment Phases and Billable Activities – see Phases – to 4 for element/activity description).

(15) Employment and day services must adhere to the Home and Community Based settings (HCBS) requirements of 42CFR 441 520(a)(1), including that:

(a) The setting is integrated in the greater community and supports individuals to have full access to the greater community;

(b) Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

(c) The setting provides opportunities to seek employment and work in competitive integrated settings; and

(d) The setting facilitates individual choice regarding services and supports, and who provides them.

(16) Quality Assurance and Service Evaluation: The Contractor shall develop and have available an evaluation system to review services. The evaluation system must have both a Quality Assurance and Quality Improvement component, and both must include objective measures. The objective measures at a minimum will include performance indicators, by acuity, that include the number of new jobs; job loss and reasons for job loss; the percentage employed earning minimum wage or better; and the average number of hours worked. The County's service evaluation system shall serve as the method by which current providers demonstrate that they continue to be qualified providers. A copy of such evaluation system shall be provided upon request.

(17) The County shall evaluate and review services at least one on-site visit to the Contractor during the contract time period. The County will maintain written documentation of the evaluations, recommendations and corrective action plans for the Contractor.

(a) Provisional Status: If the Contractor receives a corrective action plan for not delivering services in accordance with this Agreement, the County reserves the right to place the Contractor on a provisional status, which means:

- No new referrals will be issued for services to the Contractor until the Contractor is in compliance with providing services in accordance to this Agreement
- DDA will be informed of the provisional status of the Contractor is in compliance with providing services in accordance to this Agreement
- Once the Contractor is in compliance with the corrective action plan, the provisional status will be removed, DDA will be informed and the Contractor will be able to resume receiving new referrals

(18) The Contractor shall participate in regularly quarterly meetings with the County and DDA to remain updated and current on all requirements and information.

7. Consideration

a. The County shall pay the Contractor for the services outlined in the Statement or Work section of this Agreement provided to eligible clients on a "fee-for-service" basis at the prevailing rates approved by DDA. A detailed description of the compensation (rates) to be paid by the Counties is set forth in Exhibit "" Fee-For-Service Schedule.

b. The Employment Phases & Billable Activates document defines the individual Client services that DDA reimburses. The document can be located on the DSHS DDA County Best Practices website at https://www.dshs.wa.gov/dda/county-best-practices.

c. The Community Inclusion Phases & Billable Activates document defines the individual Client services that DDA reimburses. The document can be located on the DSHS DDA County Best Practices website at https://www.dshs.wa.gov/dda/county-best-practices.

d. A claim for each individual that is made must indicate the number of service units delivered to each individual. Units are defined as:

(1) An "Hour" is at least fifty (50) minutes of direct service. Partial hour must be recorded in quarter hour increments.

(2) A "Month" represents a minimum of at least fifty (50) minutes of direct service for CDS reimbursement.

e. Funds will follow currently authorized clients if they move and/or choose a different qualified provider.

f. Travel time will be documented from the Contractor's office, previous service site, or other "starting location" which provides the greatest efficiency in time. Whichever starting location is "least" should be documented.

(1) Travel time will be documented for direct support staff only.

(2) Staff time and travel time to the annual DDA PCSP is reportable under the client's primary service phase.

(3) Transportation of clients, other than during the service are not allowed. An example would be picking up a client at home and taking them to the office to job search or taking a client home after services have ended.

(4) County approved travel expenses for Additional Consumer Services, will be reimbursed according to the Travel Policy Exhibit E.

g. The following Additional Consumer Support Services are billable:

h. Administrative tasks and activities cannot be billed to the client's support hours. Administrative tasks and activities include:

(1) Preparing monthly billing

(2) Administrative review of client services

(3) Quality control of client services by Managers/Supervisors

(4) Managers/Supervisors time spent in training of new support staff.

(5) Training:

(a) Staff Training: Costs incurred for planned, structured activities for the purpose of providing, or improving, or enhancing job-related knowledge and skills of staff, providers, volunteers, or interning students in the provision of developmental disabilities services.

(6) Community Information and Education: to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activites.

(7) Other Activities:

(a) Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. Project Search.

(b) Star-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.

(c) Partnership projects: Collaborative partnerships with school districts, employment providers, DVR, families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21).

8. Billing and Payment

a. The Contractor shall submit written claims for reimbursements earned on the appropriate forms provided by the Counties. The Counties will pay the Contractor with County warrants within thirty (30) days following the approval of the receipt of claims for

payment. All initial claims for reimbursement must be received by the Counties within ten (10) days following the last day of the month which the service is provided.

b. Right to Withhold Payment: The Counties expressly reserve the right to withhold payment in whole or in part when:

(1) Contractor fails to submit claims for reimbursement within ten (10) days following the last day of the month and billing has been processed, the Contractor will not receive payment until the next billing cycle;

(2) Contractor fails to submit documentation required by the Agreement sufficient to substantiate claims for payments;

(3) Contractor fails to maintain its reporting obligations under this Agreement;

(4) Claims for payment are inconsistent with the terms and conditions of this Agreement;

(5) Contractor doesn't comply with this Agreement; or

(6) Contractor is accused of or commits a violation of any local, state, or federal law.

c. Duplicative Funding:

(1) Clients will be assisted in accessing DVR services per the DDA/DVR MOU. Client services shall not be reimbursed under this Agreement when the same services are paid for under the Rehabilitation Act of 1973 by DVR, Public Law 94-142 or any other source of public or private funding.

(2) The Contractor shall not charge or accept additional remuneration from any client, relative, friend, payee, guardian, or attorney of the client, or any other person for services provided under this Agreement, other than those specifically authorized by this Agreement.

(3) In the event the contractor charges or accepts prohibited remuneration, the County shall have the right to assert a claim against the Contractor on behalf of the client, for double the amount charged. Any violation of this provision shall b e deemed a material breach of this Agreement.

d. Recovery of Fees: If the Contractor bills and is paid fees for services that the County later finds were (a) not delivered or (b) not delivered in accordance with applicable standards, the County shall recover the fees for those services and the Contractor shall fully cooperate during the recovery.

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

9. **Single State Medicaid Agency – Health Care Authority (HCA):** HCA, as the single state Medicaid Agency, has administrative authority for Title XIX coverage per 42 CFR 431.10. DSHS is the operating agency for the Home and Community Based Waivers for services for people with developmental disabilities. The Contractor only has responsibility for services covered in this agreement.

10. **DSHS/DRW Access Agreement:** The DRW February 27, 2001 Access Agreement with DDA is incorporated by reference. The Contractor assures that its staff have reviewed the Access Agreement. The agreement covers DRW's access to individuals with developmental disabilities,

Clients, programs and records, outreach activities, authority to investigate allegations of abuse and neglect, and other miscellaneous matters and is binding for all providers of DDA contracted services.

Data Security Requirements

1. **Definitions.** The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:
a. "Authorized User(s)" means an individual or individuals with an authorized business requirement to access DSHS Confidential Information.

b. "Hardened Password" means a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as an asterisk, ampersand or exclamation point.

c. "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 DSHS Information Security Policy and Standards Manual. Reference material related to these requirements can be found here: https://www.dshs.wa.gov/fsa/central-contract-services/keeping-dshs-client-information-private-and-secure, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.

4. **Administrative Controls.** The Contractor must have the following controls in place:
a. A documented security policy governing the secure use of its computer network

3. **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.** 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.** 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.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in the

above paragraph. Destruction of the Data as outlined in Section 5. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the Secure Area.

c. **Optical discs (CDs or DVDs) in local workstation optical disc drives.** Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secured Area. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only Authorized Users have the key, combination or mechanism required to access the contents of the container. Workstations which access DSHS 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 DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secured 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 of 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.** Any paper records must be protected by storing the records in a Secure Area which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.

f. **Remote Access.** Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.

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

(1) Except where otherwise specified herein, DSHS 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;

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

(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 20 minutes;

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

(i) Keeping them in locked storage when not in use,

(ii) Using check-in/check-out procedures when they are shared, and

(iii) Taking frequent inventories

(2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

h. **Data stored for backup purposes.**

(1) DSHS Confidential Information may be stored on portable media as part of a Contractor's existing, documented backup process for business continuity or disaster recover 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 DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements in Section 5. Data Disposition.

(2) DSHS 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 DSHS Confidential Information still exists upon it, the data will be destroyed at the time in accordance with the disposition requirements in Section 5. Data Disposition.

4. **Cloud Storage.** DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the contractor has control of the environment in which the Date is stored. For this reason:

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

(1) Contractor has written procedures in place governing use of the Cloud storage and Contractor attest to the County and keep a copy of that attestation for your record in writing that all such procedures will be uniformly followed;

(2) The Data will be Encrypted while within the contractor network;

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

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

(5) Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor;

(6) The Data will not be downloaded to non-authorized systems, meaning systems that are not on the contractor network;

(7) The Data will not be downloaded to non-authorized systems, meaning systems that are not on the contractor network;

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

b. Data will not be stored on an Enterprise Cloud storage solution unless either:
(1) The Cloud storage provider is treated as any other Sub-Contractor and agrees in writing to all of the requirements within this exhibit; or,

(2) The Cloud storage solution used is HIPAA compliant;

(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.

3. **System Protection** To prevent compromise of systems which contain DSHS Data or through which that Data passes:
a. Systems containing DSHS Data must have all security patches or hotfixes applied within 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 DSHS Data shall have an Anti-Malware application, if available, installed.

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

4. **Data Segregation**
a. DSHS category 4 data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS 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.

b. DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS data. And/or

c. DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or

d. DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

e. DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.

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

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

5. **Data Disposition**. When the contracted work has been completed or when no longer needed, except as noted in Section 3. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

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

6. **Notification of Compromise or Potential Compromise.** The compromise or potential compromise of DSHS shared Data must be reported to the County Representative verbally within twenty-four (24) hours of the occurrence and followed by written documentation within

five working days unless otherwise requested. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7. **Data shared with Subcontractors.** If DSHS Data provided under this Contract is to be shared, must include the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract.

By signing below, your agency is agreeing they are in full compliance with the listed Data Security Requirements.

Agency: _____ Date: _____

Authorized Signature: _____

Benton and Franklin Counties
Department of Human Services
FEE FOR SERVICES SCHEDULE
July 1, 2021 – September 30, 2021

1. **Clients Authorized for Services:**

Service Description	Rate Per Unit		Unit Rate
.61 Child Development Services	$100.00		Month
.62 Group Supported Employment	Group Site Training	$72.00	Hour
	Community Integrated Individual Activity	$72.00	
.64 Individual Employment	Community Integrated Individual Activity	$84.00	Hour
.67 Community Access	$39.00		Hour

2. **Clients Authorized for Medicaid Funds:** Reimbursement shall be at the rates set forth above up to the maximum limit established by DDA and authorized by the Counties.

3. **Service Unit Definitions:**

   Reimbursement of client services: A claim for each individual is made on the CMIS system by indicating the number of service units delivered to each individual listed and the fee per unit. A unit is defined as:

   a. An "Hour" is at least fifty (50) minutes of direct service. Partial hour to the quarter may be recorded; or
   b. A "Day" is at least four hours of direct service and will only be used in connection with Adult Day Care (ADC) reimbursement.
   c. A "Month" represents a minimum of 1 service visit which is at least fifty (50) minutes of direct service for Child Development Services (CDS) reimbursement.

Developmental Disabilities Administration **Exhibit C**

ADDITIONAL HOUR REQUEST FORM

Client Name *(remember to encrypt email)*: _____ Client ADSA ID #: _____ Date: _____

Case Manager Name: _____

Agency, staff name, and phone number: _____

Proposed start date of additional hours: _____

Proposed end date of additional hours: _____

Service: ☐ IE ☐ GSE ☐ PVS

Reason for requesting hours: (check all boxes that apply)

WAC 388-828-9360 – requesting short term hours		**WAC 388-828-9350 – requesting add on hours**	
	Beginning a new job		Work schedule
	Change in job or job duties		Number of jobs
	Current employment is at risk		Appropriateness of job match
	Need ITA		Natural supports available
			Health limitation
	Add-on hours for GSE or PVS		Behavioral or physical needs
	Individual job development/search		Other factors detailed in employment plan

Location/Name of employer: _____

Is the provider the employer of record? Y or N: _____

Start date of employment: _____

End date of employment *(if applicable)*: _____

Typical Work Schedule: _____

Typical Monthly Wages: _____

Current monthly hours authorized in CSA: _____

Total monthly hours being requested: _____

Have alternative funding sources (such as DVR) been explored to fund the services requested on this form? Yes: ☐ No: ☐

If "No", please explain: _____

Description of additional supports needed: _____

Description and numerical break down of how support hours will be spent: _____

Description of fade plan to decrease hours of support hours: _____

Note: Attach the most current Agency Employment Plan with this form.

Exhibit "D"

Benton & Franklin Counties DHS
Change-Withdrawal-Termination Form

This form is to be filled out when there is a change in service, when a client withdraws' from services, or when the agency or DDA terminates the service for an individual. Completed forms shall be submitted through the secure portal to DHS Counties Coordinator at mari.clark@co.benton.wa.us by the last day of the month the changes were made.

Date: Click here to enter text.

Client Name:Click here to enter text. Client ADSA ID #: Click here to enter text.

DDA CRM Name: Click here to enter text.

Agency: Click here to enter text.

Agency Staff Member: Click here to enter text.

Agency Contact Number: Click here to enter text.

Notification:
☐Change of Service ☐ Withdrawal from Service ☐ Termination of Service
☐ Change is Scheduled

Effective date of Change/Withdrawal/Termination: Click here to enter text.

Current Service: ☐IE ☐ GSE ☐ CI ☐ CDC

Service Changing to: ☐ IE ☐ GSE ☐ CI ☐ School District ☐ None

Reason for the Change/Withdrawal/Termination: Click here to enter text.

Description of additional supports needed if changing services: Click here to enter text.

Additional Comments: Click here to enter text.

Distributed to: ☐DDA CRM ☐County Representative ☐Client's file.

Revised July 2018

Exhibit "E"

Travel Policy

TRANSPORTATION:
Reasonable necessary parking and toll costs shall be approved with submitted receipts.

Only reasonable necessary taxi, Uber, Lyft or public transportation costs are to be approved.

The mode of transportation shall be by the most economical and safest mode available, and the route most direct or advantageous to the Counties.

The Contractor shall carpool to and from trainings that occur out of Benton and Franklin Counties when such option is available.

Unless less expensive fares are unavailable, the cost of coach class fare for a given mode of travel shall be utilized.

Rental cars are not allowed unless prior permission is granted from the Counties.

MEAL EXPENSES:
"Exclusion Zone" shall mean the area inside the boundaries of Benton and Franklin Counties.

No meal expenses within the "exclusion zone" for the contractor, including meals associated with community functions shall be approved unless a grant or contract approved by signature from the Board of County Commissioners is in place that includes language for the provision of meals or snacks.

A detailed dining receipt for each individual attending a training/conference is required for all approved meal expenses and must list at a minimum: the name of the establishment, date, itemized description of the meal and associated tax and tip(no more than 15%), along with the total amount expanded. No alcohol shall be allowed as an acceptable item on a receipt and will not be paid for by the county.

The approved rate for meal expenses shall be no more than the allowed rate accessible at http://ofm.wa.gov or provided by the Counties.

For meals included in a registration fare, airfare, lodging (e.g. continental breakfast) or other Counties' expense, the Contractor shall not be eligible for the per diem for that particular meal, whether or not the Contractor actually consumes the provided meal or not.

If only a summary receipt is provided, the Counties will reimburse no more than the following amounts per meal:

Breakfast:	$5.50
Lunch:	$7.00
Dinner	$10.50

If no receipt of any kind can be provided, there will not be any reimbursement for the meal.

On either "day travel" or first or last days of overnight travel outside of the exclusion zone, approved eligibility is based on the following times unless otherwise pre-approved by the County authorizing staff:

Breakfast: departure prior to 6:30 AM qualifies the traveler for breakfast
Lunch: during the traveler's lunch period
Dinner: arrival after 6:30 PM qualifies the traveler for dinner

Times listed outside the above section may be approved by the County authorizing staff if supported by a proper cost analysis. Such proper cost analysis should include the following factors:

Traveler's logistics
Distance to and from the event
Relevant medical conditions (if applicable)

LODGING:
In the event the Contractor does not make use of a reserved hotel room, or fails to appear for a conference, training, etc., the Contractor shall be responsible for all costs, except under documented exigent circumstances (e.g. severe illness, death in the family, hazardous weather conditions). The Counties shall be entitled to recoup such costs in any legal manner.

The maximum allowed lodging rate shall be in accordance with the reimbursement guidelines accessible at http://ofm.wa.gov or provided by the Counties.

If lodging at the hotel which is hosting the conference is above the per diem, you may submit a cost analysis for approval, showing the cost of staying at the conference location and the cost to stay somewhere else with travel costs included. Approval before the conference is required for reimbursement.

"Day Travel" shall mean travel to locations outside of the "exclusion zone" when the contractor does not stay in lodging away from their home for one or more nights.

"Exclusion Zone" shall mean the area inside the boundaries of Benton and Franklin Counties.

Exhibit "F"

Benton & Franklin Counties Department of Human Services

Individual Service Review for Community Inclusion Services

This form will be used for the semi-annual review documentation for on the outcomes of the activities that have been provided, as well as new strategies developed. Submit completed form to DHS Counties Coordinator at mari.clark@co.benton.wa.us via the secure portal.

Date of Review: Click here to enter a date. Service: ☐ Community Inclusion

Review Period: ☐ 6 months ☐ 12 months

Name: Click here to enter text. Agency: Click here to enter text. Date: Click here to enter a date.

Attendees: Click here to enter text.

Review of Goals: Click here to enter text.

Actions Taken: Click here to enter text.

Likes/Strengths: Click here to enter text.

Challenges: Click here to enter text.

Support Team Contributions: Click here to enter text.

Future Strategy (TA, New Provider, Additional resources, etc.): Click here to enter text.

Comments: Click here to enter text.

Copies submitted to: ☐ Counties ☐ Client File ☐ Client/Family if requested

Revised 5.29.18

Exhibit "G"

Benton & Franklin Counties Department of Human Services Individual Service Review for Group Supported Services and Individual Employment Services

This form will be used to document activity outcomes and new strategies developed, for clients who have not obtained paid employment at minimum wage or better in GSE or IE services. This form shall be used for semi-annual, six-month, and twelve-month reporting. Submit completed form to DHS Counties Coordinator at mari.clark@co.benton.wa.us via the secure portal.

Date of Review: Click here to enter a date. Service: ☐ ISE ☐ GSE

Review Period: ☐ 6months ☐ 12 months

Name: Click here to enter text. Agency: Click here to enter text. Date: Click here to enter a date.

Date Last Employed: Click here to enter text. Attendees: Click here to enter text.

Review of Goals: Click here to enter text.

Actions Taken: Click here to enter text.

Likes/Strengths: Click here to enter text.

Challenges: Click here to enter text.

Support Team Contributions: Click here to enter text.

Future Strategy (TA, New Provider, Additional resources, etc.): Click here to enter text.

Comments: Click here to enter text.

Copies submitted to: ☐ Counties ☐ Client File ☐ Client/Family if requested

Revised July 2018

Exhibit "H"

Benton & Franklin Counties DHS

Additional Consumer Support Proposal

To request Additional Consumer Support Funds, please fill out this form in its entirety and email it to the DHS Counties Coordinator at mari.clark@co.benton.wa.us. All approved proposals will be reimbursed at the amounts specified in the award letter. All approved reimbursements must be indicated on the line item on the voucher, corresponding to the activity and be supported by appropriate documentation.

Date of Proposal: Click here to enter a date.

Agency: Click here to enter text.

Agency Contact Name: Click here to enter text.

Agency Contact Phone & Email: Click here to enter text.

The funds will be used for:

- ☐ Staff Training (586.31)
- ☐ Board Training (586.32)
- ☐ Community Information Activities (568.40)
- ☐ Start-Up Projects & Infrastructure

Date of Training/Activity/Start-Up: Click here to enter a date.

Total Proposed Dollar Amount (cost needs to be broken down (i.e. registration, lodging, meals, salaries, supplies, etc.)): Click here to enter text.

Summary of the Training/Activities/Start-Up Project (Please include details of number of staff, purpose of activity, location of activity, how the activity will support the DD/ID community in Benton & Franklin Counties):
Click here to enter text.

For County Use

☐ Approved ☐ Denied ☐ Revised Approval

Date Approved & Award Letter Sent: Click here to enter a date.

Dollar Amount Approved: Click here to enter text.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Execute PSA-2021/22-Adolphsen-00 between Sharon Adolphsen and Benton County Department of Human Services
Presenter:	
Prepared By:	Mari Clark, Program Specialist
Reviewed By:	Kyle Sullivan, DHS Manager

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Benton County Department of Human Services would like to enter into Professional Service Agreement #PSA-2021/22-ADOLPHSEN-00 with Sharon Adolphsen to provide support to the local Parent Coalition, a group formed to raise community awareness of the needs of individuals with developmental disabilities for the 2021-2022 year.

Fiscal Impact

Amount: $0.00

Fund: Funding for the services described in this Agreement is provided by Developmental Disabilities Administration. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

Recommendation

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

Suggested Motion

Consent Agenda

BENTON COUNTY RESOLUTION

Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTION OF PROFESSIONAL SERVICE AGREEMENT #PSA-PSA-2021/22-ADOLPHSEN-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND SHARON ADOLPHSEN

WHEREAS, this Professional Service Agreement serves to provide support to the local Parent Coalition, a group formed to raise community awareness of the needs of individuals with developmental disabilities; and

WHEREAS, consideration for this Professional Service Agreement is $32,770.00; and

WHEREAS, this Professional Service Agreement shall be effective July 1, 2021 through June 30, 2022; NOW THEREFORE,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed Professional Service Agreement #PSA-2021/22-Adolphsen-00 between Benton County Department of Human Services and Sharon Adolphsen; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be and hereby is, authorized to sign, on behalf of Benton County, Professional Service Agreement # PSA-2021/22-Adolphsen-00 for a consideration of $32,770.00

BE IT FURTHER RESOLVED, that the agreement shall be effective July 1, 2021 through June 30, 2022.

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

_____
Chairman

_____
Member

_____
Member

Attest: _____
Clerk of the Board
Constituting the Board of County Commissioners
of Benton County, Washington

cc: Benton County Commissioners, Human Services

Horton

Benton County
DEPARTMENT OF HUMAN SERVICES
Professional Services Agreement #PSA-2021/22-Adolphsen-00

This Agreement is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, by and for the Benton County Department of Human Services, with its principal offices at 7102 West Okanogan Place, Suite 201, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties") and Sharon Adolphsen, an individual, residing at PO BOX 4575, West Richland, WA 99353(hereinafter "Contractor").

Counties Contact Information
Kyle Sullivan, Manager
Department of Human Services
7102 W. Okanogan Pl, Suite 201
Kennewick, WA 99336
Phone: 509.783.5284
Fax: 509.783.5981
Email: kyle.sullivan@co.benton.wa.us

Contractor Contact Information
Sharon Adolphsen, Coordinator
Parent Coalition
PO BOX 4575
West Richland, WA 99353
Phone: 509.967.0971
Email: keithnsharon@frontier.com

Agreement Start Date.....July 1, 2021
Agreement End Date.....June 30, 2022

Consideration $32,770.00

Exhibits incorporated into this Agreement
Exhibit "A" – Budget Worksheet
Exhibit "B" – Parent Coalition Services Invoice
Exhibit "C" – Travel Policy
Exhibit "D" – Documentation Detail

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

For the Contractor

Sharon Adolphsen 6/29/2021

Sharon Adolphsen, Coordinator Date

For Benton County:

Benton County Commissioners Date

Attest: Clerk of the Board

Approved as to Content:

Department of Human Services

Approved as to Form:

Benton County Prosecutor's Office

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

1. **Purpose**: This Agreement serves to provide support to the local Parent Coalition, a group formed to provide the parents, families and caregivers of people with disabilities support, information and education surrounding services provided to those individuals.

2. **Agreement Documents**: This Agreement consists of the terms and conditions described herein

3. **Duration of Agreement**: The term of this Agreement shall commence on July 1, 2021 and shall expire on June 30, 2022, unless terminated sooner as set forth herein. The Contractor shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than expiration date.

4. **Services Provided**: The Contractor shall facilitate and support a Parent Coalition group which will serve to raise community awareness about the capacities and needs of individuals with developmental disabilities, serve as a resource to explain how the developmental disability service system works, and provide advocacy, education, and organization to parents, family members, guardians and other care providers, thus enabling them to become effectively involved in the delivery of services for individuals with developmental disabilities in Benton and Franklin Counties.

   4.1. Administrative Support: In regards to administrative support of the Parent Coalition the Contractor shall:

   4.1.1. Provide administrative support, such as office space, phone access, supplies, mailing and copying systems, support for grant applications, and other needs of the Parent Coalition to carry out their functions.

   4.1.2. Be a parent or family member of an individual with developmental disabilities and who has lived with and has been a primary caregiver of the person.

   4.1.3. Develop and maintain a data-base including contact information for interested families and issues and concerns they have expressed. The Parent Coalition Coordinator will communicate with the County regarding the current issues that are of interest or concern to the Coalition members.

   4.1.4. Distribute relevant information from federal, state, and local policy makers, government agencies, and other relevant entities to families of persons with developmental disabilities on issues that might affect them.

   4.1.5. Ensure that the Counties receive copies of all relevant correspondence and mailings issued by the Parent Coalition.

   4.1.6. Provide written material concerning the purpose and function of the Parent Coalition to be distributed and available for reference.

   4.1.7. Meet regularly with the County to advise on issues and concerns that have been expressed by the parents, families, guardians and caregivers of Benton and Franklin Counties concerning services for people with developmental disabilities.

4.2. **Advocacy:** In providing advocacy for the parents, families, guardians and caregivers of people with developmental disabilities in Benton and Franklin Counties the Contractor shall:

4.2.1. Assure the Parent Coalition's autonomy as a separately functioning entity in its efforts to support families and give the Coalition an independent voice in the community and public policy arena.

4.2.2. Assure the activities performed by the Coalition will advocate for the community as a whole and will not promote any individual program or agency or personal opinion.

4.2.3. Coordinate the creation and maintenance of an advisory board whose role is to provide guidance and oversight regarding the activities and operation of the Coalition. The committee will assist in devising strategies for meeting and evaluating outcomes of the project.

4.2.3.1. Members of the advisory board shall not be in contract with the Counties and/or receive financial compensation from the Counties in regards to services for people with developmental disabilities.

4.2.4. Coordinate and execute a legislative education forum once per year in which local law makers and elected officials have the opportunity to hear from parents, families, guardians and care givers of people with disabilities concerning services that they receive.

4.2.5. Assure the parent/family point of view will be represented at public forums, County Board meetings, legislative hearings, other policy formation settings and in local community organizations.

4.2.6. Provide leadership and work as a liaison for parents with community groups, policy makers, and stake holders.

4.2.7. Participate the statewide Parent Coalition and serve as the spokesperson for the parents and families of Benton and Franklin Counties.

4.2.8. Participate the statewide Community Advocacy Coalition as the representative from the Parent Coalition and participate in the activities of this group.

4.2.9. Meet as needed with legislators during legislative session to serve as an educational resource concerning any pending or current legislative activity. The function of these meetings will be to provide the legislators with any relevant information and to ensure that the views of the parents, families, guardians and care providers of people with disabilities are represented to the appropriate elected officials.

4.2.10. Participate any meetings held by service providers of people with developmental disabilities in which those agencies will be providing parents, family members, guardians and care providers with information concerning services and ensuring that those affecting by any changes are aware of and understand the changes that are being discussed, if invited.

4.2.11. Coordinate no less than one (1) annual advocacy training session for parents, family members, guardians, care providers. These training sessions should focus

on empowering those in attendance to advocate for the needs of those that they support as well as services as a whole.

4.3. **Education**: In providing education and information to the community at large as well specifically to parents, family members, guardians and care providers of people with developmental disabilities the Contractor shall:

4.3.1. Provide outreach and education to local community organizations regarding developmental disabilities issues, emphasizing the need for inclusion of individuals with disabilities in all aspects of community life. Ensure that outreach and community efforts include diverse cultural communities.

4.3.2. Demonstrate efforts to provide outreach to the rural areas of Benton and Franklin Counties.

4.3.3. Distribute relevant information from federal, state, and local policy makers, government agencies, and other relevant entities to families of persons with developmental disabilities on issues that might affect them.

4.3.4. Recruit, train and support Coalition members to become active participants on local boards, commissions, neighborhood associations, school advisory groups, etc., including generic community groups in addition to groups that have a special focus on disability issues.

4.3.5. Provide education to Parent Coalition members on local supports available to meet the needs of their family members with developmental disabilities, provide guidance to families in understanding the developmental disabilities service system and in the use of natural supports in their communities.

4.4. **General Activities**: In all activities concerning the work outlined in this Agreement, the Contractor shall:

4.4.1. Perform the work specified in this Agreement according to standard industry practice.

4.4.2. Complete work in a timely manner and in accordance with the schedule agreed by the parties.

4.4.3. Participate in an annual on-site monitoring of previous years services with the County.

5. **Agreement Representatives**: Each party to this Agreement shall have a contract representative and his or her designee. Each party may change its representative upon providing written notice to the other party. The parties' representatives are identified on the first page of this Agreement as "contact information".

6. **Compensation**:

6.1. County shall reimburse the Contractor by providing compensation for the performance of activities described in the Services Provided provision of this Agreement and in accordance with Exhibit "A". The maximum compensation for services provided shall be as follows:

6.1.1. State Operating Expenses eligible for reimbursement between July 1, 2021 and June 30, 2022 are to be billed on a monthly basis for actual cost incurred. Total shall not exceed $2,470.00 in total.

6.1.2. State Travel Expenses eligible for reimbursement between July 1, 2021 and June 30, 2022 are to be billed on a monthly basis for actual cost incurred. Total shall not exceed $2,280.00 in total.

6.1.3. State Compensation for Coordinator time and effort eligible for reimbursement between July 1, 2021 and June 30, 2022 are to be billed on a monthly basis for actual time spent by Coordinator associated with the performance of the activities described in Services Provided provision of this Agreement. Total not to exceed $20,216.00 in total.

6.1.4. Millage Compensation for Coordinator time and effort and expenses for any service that is related to educating legislators on local issues and services will be billed under millage fund. The total services that will be reimbursed under millage funds will not exceed twenty-five percent of the contract total. Total millage allowed annually will not exceed $7,804.00.

6.2. The Contractor shall, in accordance with the Compensation provisions of this Agreement, submit invoices to the Counties' representative not more than once per month during the progress of the work for partial payment of the work completed to date. The Contractor shall use Exhibit "B" – Parent Coalition Services Invoice when submitting for reimbursement. The Contractor shall submit Exhibit "B" to request reimbursement by the tenth (10^{th}) day of the following month of the month services were provided. The Counties shall pay the Contractor for work completed in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.

6.3. The Contractor shall submit Exhibit "D" Documentation Detail recording the daily detail of the Parent Coalition Services provided with the Parent Coalition Service Invoice to receive reimbursement each month.

6.4. The Contractor shall not be paid for services rendered under this Agreement unless and until they have been performed to the satisfaction of the Counties' representative.

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

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

7. Amendments and Changes in Work:

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

7.2. No amendment or modification shall be made to this Agreement unless set forth in a written contract amendment signed by both parties' authorized representatives. Work

under a contract amendment shall not proceed until the contract amendment is duly executed by the Counties.

8. Hold Harmless and Indemnification:

8.1. The Contractor shall hold harmless, indemnify and defend the Counties, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Agreement. PROVIDED, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Counties, its officers, officials, employees or agents.

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

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

9. Insurance:

9.1. Workers Compensation: Contractor shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Agreement, 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 Agreement. Except as prohibited by law, Contractor waives all rights of subrogation against the Counties for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance.

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

Certain work or services under this Agreement may require insurance coverage for long shore or harbor works other than seaman as provided in the Long Shore and Harbor Workers Compensation Act [33 U.S.C.A. Section 901 et seq.]. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Certain work or services under this Agreement may require insurance coverage for seamen injured during employment resulting from the negligence of the owner, master or fellow crew members as provided in 46 U.S.C.A. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Contractor is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. Contractor is responsible for all civil and criminal liability that may arise from the failure to maintain coverage.

9.2. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Agreement, Contractor shall maintain Commercial General Liability coverage (policy form CG0001 or equivalent) for wrongful death, bodily injury, personal injury and property damage, subject to limits of not less than one million dollars ($1,000,000) per occurrence. The general aggregate limit shall apply separately to this Agreement and be no less than two million dollars ($2,000,000).

The general commercial liability policy will contain an endorsement naming the Counties, both Benton County and Franklin County, as additional insureds (CG2010) and an endorsement that specifically states that Contractor's general liability policy shall be primary, and not contributory, with any other insurance maintained by the Counties.

The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Agreement and does not exclude liability pursuant to the indemnification requirement under the Hold Harmless and Indemnification section of this Agreement. Specialized forms specific to the industry of the Contractor will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

If Contractor has any employees, Contractor also shall maintain employers' liability insurance with limits of not less than one million dollars ($1,000,000) each incident for bodily injury by accident or one million dollars ($1,000,000) each employee for bodily injury by disease.

9.3. **Automobile Liability**: The Contractor shall maintain business automobile liability insurance with a limit of not less than one million dollars ($1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". The Contractor waives all rights against the Counties for the recovery of damages to the extent they are covered by business auto liability.

9.4. **Other Insurance Provisions**:

9.4.1. The Contractor'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.

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

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

9.4.4. 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.

9.4.5. 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.

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

9.4.7. 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 Agreement shall be written on an Occurrence Policy form.

9.5. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Agreement shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class 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 284-15 WAC.

9.5.1. The Contractor shall furnish the Counties with properly executed and unaltered Acord form certificates of insurance and, if requested, a signed policy endorsement(s) which shall clearly evidence all required insurance prior to commencing work under this Agreement. The certificates will, at a minimum, list limits of liability and coverage. For any professional liability insurance, the Contractor agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the Counties by the Contractor. For other insurance policies, Contractor shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the Counties. The Contractor shall also instruct the insurer to give the Counties forty-five (45) days advanced written notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the Counties as an additional insured of cancellation.

9.5.2. The Contractor shall furnish the Counties with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the Counties, both Benton County and Franklin County, as additional insureds.

9.5.3. Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the Counties' contract representative. The address of the certificate holder shall be shown as the current address of the Counties' contract representative.

9.5.4. If the Contractor or any subcontractor or sub-subcontractor has any employees, Contractor shall request the Washington State Department of Labor and Industries, Worker's Compensation Representative, to send written verification to Benton County that the Contractor is currently paying worker's compensation.

9.5.5. All written notices under this Section and notice of cancellation or change of required insurance coverages shall be mailed to the Counties at the following address:

Benton County Risk Manager/Personnel Department
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336
Franklin County Prosecuting Attorney's Office
Attn: Risk Manager
1016 N. 4th Avenue
Pasco, WA 99301

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

9.5.7. If the Contractor is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to the Counties. If requested by the Counties, Contractor must describe its financial condition and the self-insured funding mechanism.

10. Termination:

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

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

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

10.4. The Contractor may terminate this Agreement, in whole or in part, by giving thirty (30) days written notice to the Counties' contract representative. In the event of termination, the Counties shall pay the Contractor for services provided up until the

termination date. Nothing in this section shall limit the rights of the Counties pursuant to this Agreement or by law.

11. Assignment, Delegation and Subcontracting

11.1. The Contractor shall perform the terms of this Agreement using only its bona fide employees or agents, and the obligations and duties of the Contractor under this Agreement shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the Counties' authorized representatives.

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

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

13. Independent Contractor:

13.1. The Contractor's services shall be furnished by the Contractor as an independent contractor and not as an agent, employee or servant of the Counties. The Contractor specifically has the right to direct and control the Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Agreement.

13.2. The Contractor acknowledges that the entire compensation for this Agreement is set forth in the Compensation Section of this Agreement, and neither the Contractor nor its employees are entitled to any Counties' benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to the Counties' employees.

13.3. 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 or deem to be or act or purport to act as an employee, agent, or representative of the Counties.

13.4. The Contractor shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Agreement.

13.5. The Contractor agrees to immediately remove any of its employees or agents from their assignment to perform services under this Agreement upon receipt of a written request to do so from the Counties' contract representative or designee.

14. Compliance with Laws: The Contractor shall comply with all applicable federal, state and local laws, rules and regulations in performing this Agreement.

15. Inspection of Books and Records: The Counties may, at reasonable times, inspect the books and records of the Contractor relating to the performance of this Agreement. The Contractor shall keep all records required by this Agreement for six (6) years after termination of this Agreement for audit purposes.

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

17. **Ownership of Materials/Works Produced**

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

17.2. An electronic copy of all word processing documents shall be submitted to the Counties upon request or at the end of the job using the word processing program and version specified by the Counties.

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

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

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

21. **Choice of Law, Jurisdiction and Venue:**

21.1. This Agreement 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 Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

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

22. **Successors and Assigns**: The Counties, 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 Agreement and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Agreement.

23. **Severability**

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

23.2. If it should appear that any provision of this Agreement 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. **Entire Agreement**: The parties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

25. **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 the Agreement Representatives section of this Agreement. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately, if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

26. **Survivability**: All Agreement terms, which by their context are clearly intended to survive the termination and/or expiration of this Agreement, shall so survive. These terms include, but are not limited to, indemnification provisions; extended reporting period requirements for professional liability insurance; inspection and keeping of records and books; litigation hold notice; Public Records Act and confidentiality.

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

28. **Public Records Act**: The Contractor hereby acknowledges that the Counties is a governmental entity, and as such is subject to the requirements of the Public Records Act, RCW 42.56 et seq. Accordingly, the Contractor understands that to the extent a proper

request is made, the Counties may be required by virtue of that Act to disclose any records actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the Counties by the Contractor that the Contractor might regard as confidential or proprietary. To the extent that the Contractor provides any records to the Counties that it regards as confidential or proprietary, it 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 the Counties' release of records covered under the Public Records Act. The Counties agree to take all reasonable steps to notify the Contractor in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by the Contractor as confidential or proprietary, so that the Contractor may seek a judicial order of protection if necessary.

EXHIBIT "A"

Benton and Franklin Counties Department of Human Services
Budget Worksheet for Agreement #PSA-2021/22-Adolphsen-00
July 1, 2021 – June 30, 2022

Item and Narrative	State Fund	Millage Fund
OPERATING EXPENSES		
Office/Cell Phone	$1,320.00	
PO Box	$150.00	
Printing/Supplies	$1000.00	$500.00
TRAVEL EXPENSES		
To include Statewide Parent Coalition Meeting, Community Advocacy Coalition Meetings and Advocacy Travel.	$1,280.00	$1000.00
Local Travel (mileage)	$1,000.00	
COORDINATOR TIME AND EFFORT		
Wages	$20,216.00	$6,304.00
Total	**$24,966.00**	**$7,804.00**

DEVELOPMENTAL DISABILITIES SERVICES
INVOICE VOUCHER
2021-2022

Agency:	**Sharon Adolphsen**	**Contract #:**	
			#PSA-2021/22-Adolphsen-00
Address:	PO BOX 4575, West Richland, WA 99353	**Service Month:**	
			Month of Service:

Benton County

Budget Code	Service Category	Amount Billed
568.40	Community Information Activities	$ -
*******	Millage Funds	$0.00
	Other:	
	SUBTOTAL (AMOUNT BILLED)	$ -
Prior Month's Adjustments (if any)		
	TOTAL AMOUNT PAID	$ -

Franklin County

Budget Code	Service Category	Amount Billed
568.40	Community Information Activities	$ -
*******	Millage Funds	$0.00
	Other:	
	SUBTOTAL (AMOUNT BILLED)	$ -
Prior Month's Adjustments (if any)		
	TOTAL AMOUNT PAID	$ -

Vendor's Certificate: I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished under the terms of the Agreement with Benton/Franklin Counties, and that all goods furnished and/or services rendered have been provided without discrimination.

Signature: _____

Title: _____ Date: _____

DD Form 264 (7/07)

REMITTANCE SLIP

Agency: _____ 0

Community Information	$	-
Millage Funds		$0.00
Other:	$	-
TOTAL PAYMENT	**$**	-

Exhibit "E"

Travel Policy

TRANSPORTATION:
Reasonable necessary parking and toll costs shall be approved with submitted receipts.

The mode of transportation shall be by the most economical and safest mode available, and the route most direct or advantageous to the Counties.

The Contractor shall carpool to and from trainings that occur out of Benton and Franklin Counties when such option is available.

Unless less expensive fares are unavailable, the cost of coach class fare for a given mode of travel shall be utilized.

Only reasonably necessary taxi or public transportation costs are to be approved.

MEAL EXPENSES:
Exclusion Zone" shall mean the area inside the boundaries of Benton and Franklin Counties.

No meal expenses within the "exclusion zone" for the contractor, including meals associated with community functions shall be approved unless a grant or contract approved by signature from the Board of County Commissioners is in place that includes language for the provision of meals or snacks.

A detailed dining receipt for each individual attending a training/conference is required for all approved meal expenses and must list at a minimum: the name of the establishment, date, itemized description of the meal and associated tax and tip(no more than 15%), along with the total amount expanded. No alcohol shall be allowed as an acceptable item on a receipt and will not be paid for by the county.

The approved rate for meal expenses shall be no more than the allowed rate described on the state travel reimbursement guidelines accessible at http://ofm.wa.gov.

For meals included in a registration fare, airfare, lodging (e.g. continental breakfast) or other Counties' expense, the Contractor shall not be eligible for the per diem for that particular meal, whether or not the Contractor actually consumes the provided meal or not.

Failure to produce detailed receipts but a summary receipt is submitted it will result in approval for actually incurred costs up to the following amounts listed below:

Breakfast:	$5.50
Lunch:	$7.00
Dinner	$10.50

On either "day travel" or first, or last days, of overnight travel outside of the exclusion zone, approved eligibility is based on the following times unless otherwise pre-approved by the County authorizing staff:

Breakfast: departure prior to 6:30 AM qualifies the traveler for breakfast
Lunch: during the traveler's lunch period
Dinner: arrival after 6:30 PM qualifies an individual for dinner

Times listed outside the above section may be approved by the County authorizing staff if supported by a proper cost analysis. Such proper cost analysis should include the following factors:

Traveler's logistics
Distance to and from the event
Relevant medical conditions (if applicable)

LODGING:
In the event the Contractor does not make use of a reserved hotel room, or fails to appear for a conference, training, etc., the Contractor shall be responsible for all costs, except under documented exigent circumstances (e.g. severe illness, death in the family, hazardous weather conditions). The Counties shall be entitled to recoup such costs in any legal manner.

The maximum allowed lodging rate shall be in accordance with the reimbursement guidelines accessible at http://ofm.wa.gov.

If the hotel a conference is hosting is above the per diem, you may submit a cost analysis for approval, showing the cost of staying at the conference location and the cost to stay somewhere else with travel costs included. Approval before the conference is required for reimbursement.

"Day Travel" shall mean travel to locations outside of the "exclusion zone" when the contractor does not stay in lodging away from their home for one or more nights.

"Exclusion Zone" shall mean the area inside the boundaries of Benton and Franklin Counties.

Exhibit "D"

Hours Documentation Detail

Benton & Franklin Counties Parent Coalition

Date	Time	Fund Src	Notes
EXAMPLE NOTES			
11/1/16	2.0	S	Met with Mari for our weekly meetings. We discussed the forum and what we should change or what to keep. Discussed the changes with PV services and upcoming leg issues.
11/2/16	.5	M	Exchanged emails with Senator Brown on legislation issues regarding PV services and the clients right to have a choice in services. Represented the parents and families of Benton & Franklin Counties.
11/5/16	.25	S	Entered billing for the week.
11/10/16	1.0	S	Received emails from parents and distributed emails to parents on the following subjects: (enter subject of emails)
Date	**Time**	**Fund Src**	**Notes**

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 07/27/21 BC 08/10/21
Subject:	BFJJC & KSD Detention Alternative School Program
Presenter:	N/A
Prepared By:	Rosa Garcia
Reviewed By:	Darryl Banks

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

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

Summary / Background Information

Per RCW 13.04.145 a program of education shall be provided for by the several counties and school districts of the state for common school age persons confined in each of the detention facilities staffed and maintained by the several counties of the state under this chapter and chapters 13.16 and 13.20 RCW. The division of duties, authority, and liabilities of the several counties and school districts of the state respecting the educational programs is the same in all respects as set forth in chapter 28A.190 RCW respecting programs of education for state residential school residents. For the purposes of this section, the terms "department of social and health services," "residential school" or "schools," and "superintendent or chief administrator of a residential school" as used in chapter 28A.190 RCW shall be respectively construed to mean "the several counties of the state," "detention facilities," and "the administrator of juvenile court detention services." Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180.

The District, with funding from the Office of Superintendent of Public Instruction (OSPI); provides regular teaching and educational services to youth detained or ordered to a detention alternative school program at the Benton-Franklin Counties Juvenile Justice Center (BFJJC) Detention School Program.

This Agreement sets forth the mutual obligations and rights of the parties with respect to services provided by the District to juvenile offenders in Benton and Franklin Counties pursuant to RCW Ch. 28A.190 and RCW 13.04.145. The term of the Interlocal Agreement is September 1, 2021, through August 31, 2022.

Fiscal Impact

There is no fiscal impact to either county nor the BFJJC.

Recommendation

We recommend that the Boards of County Commissioners of Benton and Franklin Counties sign the Interlocal Agreement between BFJJC and the Kennewick School District.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE INTERLOCAL AGREEMENT BETWEEN THE JUVENILE JUSTICE CENTER AND THE KENNEWICK SCHOOL DISTRICT TO PROVIDE FOR REGULAR TEACHING AND EDUCATIONAL SERVICES TO YOUTH DETAINED OR ORDERED TO A DETENTION ALTERNATIVE SCHOOL PROGRAM AT THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

WHEREAS, Darryl Banks, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the proposed Interlocal Agreement between the Benton-Franklin Counties Juvenile Justice Center and the Kennewick School District be approved as presented; **NOW, THEREFORE**

BE IT RESOLVED, that the Chairs of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners are authorized to sign, on behalf of their respective county, the Interlocal Agreement between the Benton-Franklin Counties Juvenile Justice Center and the Kennewick School District; and

BE IT FURTHER RESOLVED, the term of the attached Interlocal Agreement commences September 1, 2021 and expires on August 31, 2022.

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

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

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

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners, Electronic (2): 1-KSD MOU, 1-BFJJC R. Garcia

Interlocal Agreement Between Benton and Franklin Counties

and

Kennewick School District #17

1. Parties

1.1. This Interagency Agreement (Agreement) is entered by and between Benton and Franklin Counties, political subdivisions of the State of Washington (Counties) on behalf of the Benton/Franklin Counties Superior Court, Juvenile Division/Benton-Franklin Counties Juvenile justice Center (BFJJC) and Kennewick School District #17, a municipal corporation of the State of Washington (District). The parties are located in and exist under the laws of the State of Washington.

2. Purpose and Recitals

2.1. Authority. This Agreement is entered into under the Interlocal Cooperation Act, RCW Ch. 39.34 and, in accordance with RCW 39.32.040, shall be filed with the County Auditor or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source prior to its entry into force.

2.2. Background. RCW 13.04.145 provides, "A program of education shall be provided for by the several counties and school districts of the state for common school age persons confined in each of the detention facilities staffed and maintained by the several counties of the state under this chapter and chapters 13.16 and 13.20 RCW. The division of duties, authority, and liabilities of the several counties and school districts of the state respecting the educational programs is the same in all respects as set forth in RCW 28A.190.030 through 28A.190.060 respecting programs of education for state residential school residents....."

The District, with funding from the Office of Superintendent of Public Instruction (OSPI), provides regular teaching and educational services to youth detained or ordered to a detention alternative school program at the Benton-Franklin counties Juvenile justice Center Detention School Program (Program).

2.3. Purpose. This Agreement sets forth the mutual obligations and rights of the parties with respect to services provided by the District to juvenile offenders in Benton and Franklin Counties pursuant to RCW Ch. 28A.190 and RCW 13.04.145.

3. Responsibilities of the County

3.1. Compliance With Statute. The counties shall comply with all applicable federal, state and local laws, rules and regulations in performing its duties under this Agreement.

3.2. Program Management. The Counties shall support the operation of the Program by providing appropriate staffing of custody officers, space for school operation and administration, telephonic communication equipment, and furnishings.

3.3. Operational Component. The Counties shall develop and implement safety policies for the Program.

3.4. Annual Meeting. The Benton-Franklin Counties Juvenile justice Center Administrator or his/her designee ("Administrator") shall meet with the Superintendent of the District or his/her designee ("Superintendent") at least once yearly to evaluate the educational philosophy, established goals, utilization of personnel, and the effectiveness of the Program. The Administrator and Superintendent may make such changes to the program as they deem necessary, provided that any amendments to this Agreement are in accordance with paragraph 6.11 below.

3.5. Facilities. The Counties will provide the physical plant necessary to adequately house the Program, including basic furniture necessary for Program operation. The Counties will also provide associated maintenance for the facilities.

3.6. Support Services. When the Counties deems it appropriate, it shall provide technical Assistance and social service staff to facilitate the operation of the Program.

4. Responsibilities of the District

4.1. Compliance with Statute. The District shall comply with all applicable federal, state and Local laws, rules and regulations in performing its duties under this Agreement.

4.2. Administration and Implementation. The Superintendent shall administer and implement the educational component of the Program including, but not limited to, development, coordination, and monitoring of curriculum consistent with District standards. The Program shall consist of 180 regular days and 40 summer days for a total of 220 days per year.

4.3. Management. The District shall provide the K-12 Director of Student Services, to coordinate and manage the educational component of the Program.

4.4. Personnel. The District shall hire and employ certified and classified personnel for the Program. The Superintendent shall be responsible for the District personnel. If the Administrator objects to any personnel assignment, the matter should be resolved in accordance with Paragraph 6.4 below. District personnel assigned to the Program shall receive compensation and benefits consistent with established District rates. Certified employees in the Program are required to be or working towards becoming highly qualified in their subject area/areas as per all certified District personnel.

4.5. Subcontractors, Specialists, Volunteers and Interns. The activities of any subcontractors, specialists, volunteers, and interns with the Program shall be coordinated and supervised by the Superintendent. The Superintendent shall be an academic liaison with other District programs and curriculum-related issues as they may contribute to the Program. A Prevention/Intervention (PI) Specialist will be used in the program as determined by the K-12 Director of Student Services.

4.6. Testing and Assessments. The Wide Range Achievement Test (WRAT) is administered to all students in the Program on the first day of attendance or when the previous WRAT given is at least one year old. A different form of the WRAT is administered as a post-test if a student has been in the Program for 90 consecutive days or longer. The MAP tests in reading and math are also administered to a portion of the students.

4.7. Data. Student information and testing scores are managed by a computer program, File Maker. The District computer program, Power School, tracks attendance, classes, and grades. A classified District employee in the Program tracks students once they leave the Program for Title 1 outcomes.

4.8. Budget. The District shall be responsible for preparation and administration of the education budget for the Program. The budget shall be processed through appropriate District and OSPI channels.

4.9. Audit. The District may, at its discretion or at the request of the Administrator, appoint an administrative person to audit or otherwise review the educational component of the Program for compliance with District standards.

4.10. Policies. All District personnel shall comply with the policies adopted by the Board of Directors of the District.

4.11. Meetings. Monthly Site Council Meetings are attended by Benton-Franklin Counties Juvenile Justice Center employees and District personnel to discuss, review and recommend changes to improve the Program. The Superintendent shall meet with the Administrator as described in Paragraph 3.4 above.

4.12. Criminal History Background Check and Acknowledgment of Sexual Misconduct. The District shall comply with the following other provisions for all services provided under this Agreement.

4.12.1. Criminal History Background Check

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

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

4.12.2 Sexual Misconduct

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

4.12.2.2 The District shall ensure that written notification must occur within seven (7) days of a conviction of plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the office of the Juvenile Court Administrator, Benton-Franklin Counties

Juvenile Justice Center, 5606 W. Canal Pl, Suite 106, Kennewick, WA 99336-1388.

4.12.3 Prison Rape Elimination Act (PREA)

4.12.3.1 The District will ensure that District Personnel, subcontractors, volunteers, and others who are acting on behalf of the District who have contact with the juveniles will attend annual PREA training as provided by BFJJC.

5. Program Funding

5.1. Funding. The Program shall be funded from those funds allocated to the District by OSPI. No other District funds shall be required for the Program. However, the Program may make available resources to assist the educational component of the Program. No Counties funds are required for the Program.

5.2. Property. All property purchased with District funds shall be inventoried by and remain the property of the District. All property purchased with Counties funds shall remain the property of the Counties.

6. General Terms

6.1. Duration. The duration of this Agreement is for the 2021-2022 school year and will continue in effect for the 2022-2023 school year until modified by mutual agreement or terminated.

6.2. Additional Terms. The Agreement must be reviewed and signed by all parties every two years. Any extension of this Agreement must be set forth in a written agreement mutually agreed to not later than the 15th of July immediately prior to the expiration of the Agreement.

6.3. Termination. The Agreement may be terminated by the mutual agreement of the parties hereto. In the event of failure of funding from any source or other non-appropriation of funds, either party may terminate this Agreement on thirty (30) days' written notice to the other.

6.4. Personnel Problems. In the event conflicts arise involving Counties' staff and District staff, the Administrator and the Superintendent will cooperate to develop a response. In the event conflicts arise involving only District staff, resolution of the problem and any disciplinary action shall be in conformity with District policy and procedures.

6.5. Collective Bargaining. The parties understand that the District is under a statutory obligation to bargain with collective bargaining representatives of certain of its employees who may be assigned to this Program, and that such employees may be covered by terms of the collective bargaining agreement. Nothing in this Agreement shall require the District to violate its duty to bargain with the collective bargaining representative, to breach collective bargaining agreement, or to cause the District to take actions inconsistent with adopted District policies.

6.6. Non-Discrimination. The Counties and the District will comply with all state and federal guidelines and/or regulations relating to discrimination, including but not limited to Title VI of the 1964 Civil Rights Act; Section 504 of the Rehabilitation Act,

1973, as amended; American with Disabilities Act, July 26, 1990, P.L. 101-336; and Title IX of the Educational Amendments of 1972, as amended.

6.7. Assumption of Risk. Each party shall assume the risk of, be liable for, and pay all damage, loss, cost and expense of its officers, officials, and employees arising out of any duty performed, or not performed, while acting in good faith within the scope of this Agreement.

6.8. Independent Capacity. The employees or agents of each party who are engaged in the Performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

6.9. Dispute Resolution. In cases of unresolved disputes in areas covered by this Agreement, the Administrator and the Superintendent will select a third person to form a three-person committee to attempt to resolve the dispute. In the event that the committee is unable to resolve the dispute, the parties may exercise any other available legal rights and remedies.

6.10. Governance and Severability. This Agreement is entered into pursuant to and under the laws of the State of Washington. This Agreement shall be construed to conform to those laws. Should any clause, phrase, sentence or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

6.11. Entire Agreement. This Agreement contains the entire understanding of the parties and shall not be modified in any manner except by written agreement signed by persons authorized to bind each of the parties.

Kennewick School District	Benton-Franklin Counties Juvenile Justice Center
7/1/21	7-12-20
Dr. Traci Pierce Date **Superintendent**	**Darryl Banks** Date **Administrator**
BENTON COUNTY APPROVAL Approved as to Form: 02/07/21 Stephen Hallstrom, Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____	**FRANKLIN COUNTY APPROVAL** Approved as to Form: _____ Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Award of public defense contract to E. Scott, A. LaMusga, K. Sierra-Kelly
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 court appointed counsel in Benton County Superior Court on Uniform Guardianship Act cases due to a law change in 2021 ("Services").

As previously presented during Scheduled Business, Benton County is therefore needing to award several contracts for these Services

Contracts with other qualified attorneys were presented for execution during the previous presentation. Contracts with the following qualified attorneys are now being presented for execution:

- Eric Scott
- Asa LaMusga
- Katherine Sierra-Kelly

Fiscal Impact

As previously conveyed, 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 Eric Scott, Asa LaMusga, and Katherine Sierra Kelly for court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolutions as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY KATHERINE SIERRA-KELLY TO PROVIDE PUBLIC DEFENSE 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 ("Services"); and

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

WHEREAS, attorney Katherine Sierra-Kelly is qualified to provide Services and interested in entering into a contract with County for such Services; and

WHEREAS, a proposed public defense contract with attorney Katherine Sierra-Kelly for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed public defense contract with attorney Katherine Sierra-Kelly, to provide public defense services in Benton County Superior Court for Uniform Guardianship Act cases, for the time period from 07/01/21 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, Katherine Sierra-Kelly
Copy – Auditor, S Godinez

E. Hsu

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2122KSK001-UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2122KSK001-UGA**	**Contract Holder**	**Katherine Sierra-Kelly**
WSBA #	**39635**	**Effective Dates**	**07/01/21-12/31/22**
Caseload Cap	**Not applicable**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Gravis Law, PLLC**		

THIS AGREEMENT is entered into by and between **Katherine Sierra-Kelly,** attorney at law, Washington State Bar Association **# 39635** ("Attorney"), dba Gravis Law, 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 **07/01/21**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 **503 Knight St, Ste A, Richland, WA 99352.** Attorney's current local office telephone and fax numbers are **(509) 380-9102** and **(866) 419-9269**respectively; and Attorney's current office/work e-mail address is **katherine@gravislaw.com**.

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

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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: Gravis Law, 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

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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

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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

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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**

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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,

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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

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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.

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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.

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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.

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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

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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
F80F380177689473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/15/2021

DocuSigned by:
katherine Sierra-Kelly
FFED32E5E82D472...

Katherine Sierra-Kelly, WSBA # 39635

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Award of public defense contract to E. Scott, A. LaMusga, K. Sierra-Kelly
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 court appointed counsel in Benton County Superior Court on Uniform Guardianship Act cases due to a law change in 2021 ("Services").

As previously presented during Scheduled Business, Benton County is therefore needing to award several contracts for these Services

Contracts with other qualified attorneys were presented for execution during the previous presentation. Contracts with the following qualified attorneys are now being presented for execution:

- Eric Scott
- Asa LaMusga
- Katherine Sierra-Kelly

Fiscal Impact

As previously conveyed, 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 Eric Scott, Asa LaMusga, and Katherine Sierra Kelly for court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolutions as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY ERIC SCOTT TO PROVIDE PUBLIC DEFENSE 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 ("Services"); and

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

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

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

BE IT RESOLVED that the proposed public defense contract with attorney Eric Scott, to provide public defense services in Benton County Superior Court for Uniform Guardianship Act cases, for the time period from 05/05/21 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, Eric Scott
Copy – Auditor, S Godinez

E. Hsu

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2122EJS001-UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2122EJS001-UGA**	**Contract Holder**	**Eric Scott**
WSBA #	**48913**	**Effective Dates**	**05/05/21-12/31/22**
Caseload Cap	**Not applicable**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Tri-City Legal, PLLC**		
Contract Slot	**UGA-2**		

THIS AGREEMENT is entered into by and between **Eric Scott,** attorney at law, Washington State Bar Association # **48913** ("Attorney"), dba Tri-City Legal, 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:

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1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **05/05/21**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 **7101 W. Hood Pl, Ste B202, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **509-578-1555** and **509-591-9355** respectively; and Attorney's current office/work e-mail address is **escott@tri-citylegal.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

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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

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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

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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.

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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: Tri-City Legal, 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

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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

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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

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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.

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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

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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.

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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

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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

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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

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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

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(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

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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

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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
F80F380177893473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/7/2021

DocuSigned by:
Eric Scott
A9BACF16D21D426...

Eric Scott, WSBA # 48913

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Award of public defense contract to E. Scott, A. LaMusga, K. Sierra-Kelly
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 court appointed counsel in Benton County Superior Court on Uniform Guardianship Act cases due to a law change in 2021 ("Services").

As previously presented during Scheduled Business, Benton County is therefore needing to award several contracts for these Services

Contracts with other qualified attorneys were presented for execution during the previous presentation. Contracts with the following qualified attorneys are now being presented for execution:

- Eric Scott
- Asa LaMusga
- Katherine Sierra-Kelly

Fiscal Impact

As previously conveyed, 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 Eric Scott, Asa LaMusga, and Katherine Sierra Kelly for court appointed counsel services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolutions as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY ASA LAMUSGA TO PROVIDE PUBLIC DEFENSE 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 ("Services"); and

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

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

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

BE IT RESOLVED that the proposed public defense contract with attorney Asa LaMusga, to provide public defense services in Benton County Superior Court for Uniform Guardianship Act cases, for the time period from 07/01/21 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, Asa LaMusga
Copy – Auditor, S Godinez

E. Hsu

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2122ACL001-UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2122ACL001-UGA**	**Contract Holder**	**Asa LaMusga**
WSBA #	**46253**	**Effective Dates**	**07/01/21-12/31/22**
Caseload Cap	**Not applicable**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Gravis Law, PLLC**		

THIS AGREEMENT is entered into by and between **Asa LaMusga,** attorney at law, Washington State Bar Association **# 46253** ("Attorney"), dba Gravis Law, 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 **07/01/21**and shall continue thereafter through and including **12/31/22**, unless earlier terminated pursuant to the applicable terms and provisions of this

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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 **503 Knight St, Ste A, Richland, WA 99352.** Attorney's current local office telephone and fax numbers are **(509) 380-9102** and **(866) 419-9269**respectively; and Attorney's current office/work e-mail address is **asa@gravislaw.com**.

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

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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: Gravis Law, 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

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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

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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**

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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.

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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,

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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

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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.

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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.

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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.

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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

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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

ATTORNEY

Date 7/14/2021

DocuSigned by:
Asa LaMusga
B277B2B57B1B4E3...

Asa LaMusga, WSBA # 46253

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Execution of services agreement LinkedIn for LinkedIn Learning services
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 has been contracting with LinkedIn to provide high quality Lynda.com on-line training (recently renamed "LinkedIn Learning for Government") to Department Managers on a variety of topics useful to their management and leadership of departments. This contract expired June 6, 2021. It was determined that this training has been very useful in assisting managers, their assistants, and staff, in the pursuit of their duties. Therefore, a renewal has been arranged with LinkedIn for the next year, totaling $3,449.60 inclusive of tax. The invoice for the renewal will be paid by P-card once the proposed resolution (and attached subscription contract) has been approved.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute the agreement with LinkedIn for LinkedIn Learning services as proposed.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE RENEWAL OF THE SUBSCRIPTION FOR LINKEDIN LEARNING ON-LINE TRAINING

WHEREAS, Benton County has been contracting with LinkedIn.com for Lyndapro (Lynda.com) high quality on-line training services for Department Managers by way of a contract that expired June 9, 2021 (Training) which has been renamed “Linkedin Learning for Government”; and

WHEREAS, training appears to have been beneficial in assisting Managers in the managing and leading of their departments and it is therefore desirable that training continue to be provided to Managers; and

WHEREAS, after consideration of the needs of departments including Assistant Managers, it was determined that renewal of this training contract, for a reduced total of 10 licenses, on the terms proposed by LinkedIn, appear to be in the best interests of Benton County; **NOW, THEREFORE**

BE IT RESOLVED that the subscription for LinkedIn Learning for Government, provided by LinkedIn for 10 licenses, for the period of June 9, 2021 through June 30, 2022 at the renewal cost of $3,200, plus sales tax (total of $3,449.60) be approved.

BE IT FURTHER RESOLVED that the Chairman of the Board be authorized to sign the subscription contract with LinkedIn, attached to this resolution.

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, Commissioners
Copy – Auditor, S Godinez

E. Hsu

LinkedIn
1000 West Maude Avenue
Sunnyvale, CA 94085
Phone: 650.687.3600
Fax: 1.650.429.2122
www.linkedin.com

Pricing Valid Through: July 29, 2021

Proposed by:
Anthony Herrera
anherrera@linkedin.com
805-755-1261

CONTRACT CONTACT: Eric Hsu

Sold to CustomerCounty of Benton

BILL TO: County of Benton

Bill To Doing Business As:

Contact: Eric Hsu

Address: County of Benton
620 Market St

City/State/Zip: Prosser WA 99350-1300

Country: United States

Email: eric.hsu@co.benton.wa.us

Phone:

By initialing here, I agree that the Billing details are current and accurate._____

SHIP TO: County of Benton

Ship To Doing Business As:

620 Market St

Prosser, WA99350-1300

United States

ORDER INFORMATION

Contract #: CS7162507-20

Billing Period: Annually Upfront

Billing Method: Invoice

Billing Instructions:

For Internal Only:

Type: Renewal

Rep Region: LDC-NA-US-XXX6-GVED-SNL-RM

Agency Name:

Currency: USD

Term(Months) : 12
Contract Start Date*: June 9, 2021
Contract End Date: June 30, 2022
**"The start date of the services on this Order Form will be the later of the Contract Start Date or the date that the Order Form is fully executed"*

Product Order Description	Qty	Term (Months)	Notes	Sales Price	Total
Product Name: LinkedIn Learning for Government Product SKU: LLEFGR000-1801 Product Description: LinkedIn Learning provides organizations with access to high-quality learning content, an intuitive and personalized learning experience and administrative capabilities to manage learners, recommend content and measure performance.	10	12		$320.00	$3,200.00
				SUB TOTAL	$3,200.00
				ESTIMATED TAX*	$0.00
				ESTIMATED ORDER TOTAL	$3,200.00

PURCHASE ORDER INFORMATION

Our records **INDICATE** that a Purchase Order Number may NOT be required for this order.

If a Purchase Order IS required, please enter the PO Number:

By initialing here,I confirm that a Purchase Order number is **NOT** required, or if a Purchase Order Number is listed **ABOVE**, I confirm that it is current and accurate._____

Please attach PO

PAYMENT OPTIONS

- Customer Payment Terms: 30 Days
- US and Canada Customers: Check, Credit Card, or Bank Wire Transfer
- Non-US Customers: Credit Card or Bank Wire Transfer only

TAX INFORMATION

Check here if your company is tax exempt:
Please attach any/all exemption certifications or email documentation to taxinquiry@linkedin.com.

Your order will be taxed using the applicable tax rate for your shipping address. The tax listed on your order form is only an estimate and is calculated on the net price. Your invoice will reflect the final total taxes in effect at the time of invoicing and may differ from the amount listed on this order form.

For customers located in AK, AZ, CO, CT, DC, FL, HI, IA, IL, IN, KY, LA, MA, MD, MN, MS, NE, NM, NJ, NY, NC, OH, PA, RI, SC, SD, TN, TX, UT, VT, WA , WI and WV, Linkedin may be required to charge sales tax on your order pursuant to certain state and local sales tax laws. Any applicable sales tax charges will appear separately on your final invoice. For customers located in other states, your state and/or local government may require you to report your purchase and pay appropriate sales and/or use tax amounts to them directly.

TERMS

• LinkedIn Services provided under this Order Form are governed by the LinkedIn Subscription Agreement between the parties ("LSA"), the terms of which are incorporated into this Order Form. The Service Terms available at https://legal.linkedin.com/service-specific-terms apply to Customer to the extent the specific Service is included in this Order Form, the terms of which are incorporated into this Order Form.
• Except as provided in the LSA, Services purchased under this Order Form are non-cancelable and non-refundable.
• Future orders will be at list price (including any applicable volume based discounts) at the time of purchase.
• Customer will maintain complete and accurate billing and contact information with LinkedIn and will notify LinkedIn of any inaccuracies on an invoice within the time period set forth in the Payment Terms section above.
• Add-on orders must co-term with the originating order.
• With respect to the parties' performance of their obligations under this Order Form, the parties will comply with all applicable international, federal, state, provincial and local laws relating to the import or export of the Services, including but not limited to trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("Trade Laws"). Customer will not take any action that causes LinkedIn to violate Trade Laws.In the event Customer learns of a potential violation of Trade Laws relating to the performance of this Order Form, or a potential violation of the terms in this subsection, it will alert LinkedIn as soon as possible, but in no event more than 14 days after acquiring this knowledge. LinkedIn may suspend or terminate this Order Form to the extent that LinkedIn reasonably concludes that performance would cause it to violate Trade Laws or place LinkedIn at risk of becoming the subject of economic sanctions under Trade Laws.

I HEREBY REPRESENT THAT: (I) I AM AN AUTHORIZED SIGNATORY FOR CUSTOMER; (II) I HAVE READ AND AGREED TO THE TERMS OF THIS ORDER FORM; AND (III) BY SIGNING THIS ORDER FORM, I AM ENTERING INTO A LEGALLY BINDING CONTRACT.

CUSTOMER (or APPROVED AGENCY)	LinkedIn Corporation	
Signature:	Signature:	
Name:	Name:	Katie Lock
Title:	Title:	Senior Manager, Revenue Recognition
Date:	Date:	June 29, 2021

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Amendment of public defense contract with Shelley Ajax
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

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

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

Summary / Background Information

Benton County currently contracts with attorney Shelley Ajax ("Attorney") for public defense services in Benton County Superior Court executed through Resolution #2020-825 (the "Contract").

Because of attorney taking on an additional public defense contract, it has become necessary to amend the Contract by reducing the maximum caseload and monthly compensation allowed by the Contract.

The proposed amendment accomplishes this.

Fiscal Impact

None

Recommendation

Recommend approving the proposed contract amendment to the public defense contract with Shelley Ajax, reducing the maximum caseload and monthly compensation allowed by the contract.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE SUPERIOR COURT PUBLIC DEFENSE CONTRACT WITH ATTORNEY SHELLEY AJAX TO PROVIDE FOR MODIFYING THE MAXIMUM CASELOAD AND MONTHLY COMPENSATION ALLOWABLE UNDER THE CONTRACT

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

WHEREAS, the County has been contracting with attorney Shelley Ajax ("Attorney") to provide Services; and

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of Attorney taking on another public defense contract; and

WHEREAS, it is therefore appropriate to amend the public defense contract with Attorney to provide for modifying the maximum caseload and monthly compensation allowable under the contract; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Shelley Ajax, previously executed by and through Resolution #2020-825, is hereby amended as proposed, to provide for modifying the maximum caseload allowable under the contract and reducing the monthly compensation payment.

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

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AMENDED

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

BCSC2122SAA001A

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122SAA001	**Contract Holder**	Shelley A. Ajax
WSBA #	36227	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**96**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Contract Slot Identifier SCF-8			

THIS AGREEMENT, previously entered into by and between **Shelley A. Ajax,** attorney at law, Washington State Bar Association #36227 ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

IS HEREBY AMENDED BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Attorney has taken on an additional public defense contract with the Washington State Office of Public Defense, which Attorney estimates will be equivalent to a "25% of a fulltime caseload" according to the Washington State public defense caseload standards ("Standards");

B. It is therefore necessary to adjust the caseload maximum of this agreement so that the two agreements, in combination, will continue to meet Standards;

NOW, THEREFORE, the Agreement is amended as follows, with an effective date of September 1, 2021:

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of ~~**140**~~ **96 total cases per calendar year** (proratable for any partial calendar year).

12. **COMPENSATION.**

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a. Attorney shall be compensated in the amount of **$700 per case**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of ~~$8,166~~ $5,600, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

All remaining provisions shall remain in full force and effect.

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 7/20/2021

DocuSigned by:
Shelley Ajax
8B4B1C9B3B29454...

Shelley A. Ajax, WSBA 36227

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Amendment of public defense contract with Jared Hanson
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

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

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

Summary / Background Information

Benton County currently contracts with attorney Jared Hanson ("Attorney") for public defense services in Benton County District Court (executed through Resolution #2021-093 (the "Contract").

Because of attorney joining another law firm, it has become necessary to amend the Contract by changing attorney's contact information and payment details.

The proposed amendment accomplishes this.

Fiscal Impact

None

Recommendation

Recommend approving the proposed contract amendment to the public defense contract with Jared Hanson, changing attorney's contact information and payment details.

Suggested Motion

Approve with Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE DISTRICT COURT PUBLIC DEFENSE CONTRACT WITH ATTORNEY JARED HANSON TO PROVIDE FOR A CHANGE IN ATTORNEY'S EMPLOYMENT STATUS

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

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

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of attorney's change in employment status; and

WHEREAS, it is therefore appropriate to amend the public defense contract with Attorney to provide for a change in attorney's employment status; **NOW, THEREFORE**

BE IT RESOLVED that the public defense contract with attorney Jared Hanson, previously executed by and through Resolution #2021-093, is hereby amended as proposed, to provide for a change in attorney's employment status.

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, Jared Hanson
Copy – Auditor, S Godinez

E. Hsu

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AMENDED
PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT
CONTRACT # BCDC2122JRH001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2122JRH001**	**Contract Holder**	**Jared R. Hanson**
WSBA #	**47891**	**Effective Dates**	**January 1, 2021 – December 31, 2022**
Caseload Cap	**390**	**Compensation**	**$6,375/mo (2021)** **$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Jared R. Hanson Attorney at Law PLLC**		
Contract Slot Identifier: DCF-1			

THIS AGREEMENT previously entered into by and between **Jared R. Hanson,** attorney at law, Washington State Bar Association **# 47891** ("Attorney"), dba Jared R. Hanson Attorney at Law, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court, executed by and through Resolution #2021-093

IS HEREBY AMENDED AS FOLLOWS:

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at ~~**1355 Columbia Park Trail, Richland, WA 99352**~~ **1491 Tapteal Dr, Suite A, Richland, WA 99352.** Attorney's current local office telephone and fax numbers are **(509)** ~~**317-8184**~~ **943-4681** and **(509)** ~~**293-4057**~~ **960-2840** respectively; and Attorney's current office/work e-mail address is **Jared@hansonpllc.com**.

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12. **COMPENSATION.**

All compensation shall be payable to: ~~Jared R. Hanson Attorney at Law, PLLC~~ Armstrong & Jameson, P.S. since Attorney is an associate with that firm.

The effective date of the amendment shall be July 9, 2021 and all other provisions of the underlying agreement shall continue with full force and effect.

SIGNATURES APPEAR ON FOLLOWING PAGE

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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
F60F38011789473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 7/19/2021

DocuSigned by:
C483EC627 29F483...

Jared Hanson, WSBA 47891
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

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

DocuSigned by:
6EEA1564CE0441C...

Randall Jameson, WSBA# 30851
I am a principal with signing authority for Armstrong & Jameson, P.S.. I acknowledge and understand that the above-referenced Attorney, who is an associate with my firm, is about to enter into a public defense agreement with Benton County. I consent to this agreement, represent that my firm has sufficient resources to assist Attorney in faithfully carrying out his/her obligations pursuant to this Agreement and in complying with Washington State public defense laws, rules, and standards.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	8/10/2021
Subject:	Authorization to bid & advertise 2021 Crack Seal project
Presenter:	N/A
Prepared By:	Cristina Woods
Reviewed By:	D. D'Hondt

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

Type of Agenda Item:	**Type of Action Needed:** *(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

It is the intention of the Board of County Commissioners to preserve County road infrastructure by the application of crack seal material. A bid packet (No. CB21-10) for C.E. 2122 SMP – 2021 Crack Seal was prepared by Benton County Public Works Department staff and submitted to the Benton County Prosecuting Attorney's office for review and was approved as to form.

Staff needs Board approval to advertise and proceed with the bid process for this project.

Fiscal Impact

N/A

Recommendation

The Board authorize the County Engineer to proceed with the advertisement and bid process for Bid No. CB21-10 – C. E. 2122 SMP – 2021 Crack Seal.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REQUESTING PERMISSION TO PROCEED WITH THE ADVERTISEMENT AND BID PROCESS FOR C.E. 2122 SMP - 2021 CRACK SEAL

WHEREAS, it is the intention of the Board of County Commissioners to preserve County Road infrastructure by the application of crack seal; and

WHEREAS, a bid packet (No. CB21-10) for C.E. 2122 SMP – 2021 Crack Seal was prepared by Benton County Public Works Department staff and submitted to the Benton County Prosecuting Attorney's office for review; and

WHEREAS, our departmental assigned Deputy Prosecuting Attorney from the Civil Division has reviewed and approved as to form Bid No. CB21-10; **NOW, THEREFORE,**

BE IT RESOLVED that the County Engineer is authorized to proceed with the advertisement and bid process for Bid No. CB21-10 - C.E. 2122 SMP – CRACK SEAL.

Dated this 10th day of August, 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works

S. Christen

CONTRACT PROVISIONS AND PLANS

For Construction of:

2021 Crack Seal
BST Area 6

CE 2122 SMP

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

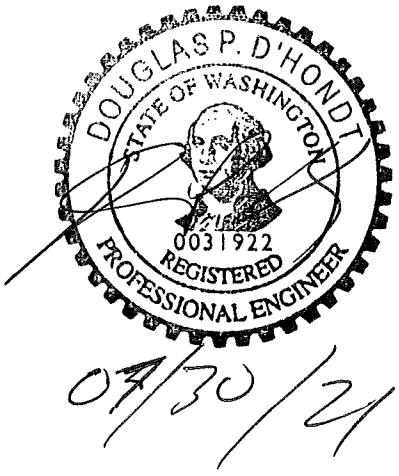
Bid No: 21-10

CERTIFICATIONS

C.E. 2122 SMP
2021 Crack Seal Project
BST Area 6
Bid No. CB 21-10

ENGINEER'S CERTIFICATION:

As the Engineer in direct responsible charge of developing these contract provisions, I certify these provisions have been developed or incorporated into this project under my supervision or as a result of certified specifications provided by other licensed professionals.



07/30/21

APPROVED AS TO FORM:

The Call for Bids and Contract Provisions for the construction of C.E. 2122 SMP - 2021 Crack Seal Project-BST Area 6 have been reviewed and approved as to form:

Deputy Prosecuting Attorney

7/29/21

Date

OFFICE OF THE COUNTY ENGINEER
BENTON COUNTY
(CB NO. 21-10)

CALL FOR BIDS

Sealed bids for C.E. 2122 SMP – 2021 Crack Seal, shall be received by the Benton County Engineer, Benton County Public Services Building, 102206 East Wiser Parkway, Kennewick, Washington 99338 until 10:30 a.m., Local Time, Thursday, August 26, 2021. NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME. Bids are to be opened on Thursday, August 26, 2021 at 10:30 a.m., Local Time, in the Public Works Conference Room, Public Services Building Kennewick, Washington. Contractor's Bid Proposal shall include the complete Proposal, and the proposal bond all enclosed in a sealed envelope marked, "BID FOR 2021 Crack Seal – CE 2122 SMP".

All bid proposals shall be accompanied by a bid proposal deposit as certified check, cashier check or proposal bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to Benton County. The Board reserves the right to reject any or all bids and to waive informalities in the bidding. The award of contract, if made, will be approved by the Board of Benton County Commissioners, Benton County, Washington.

"NOTE: This document and the materials enclosed herewith constitute an invitation to submit bid proposals only and do not represent an offer by Benton County or the Benton County Engineer. Bid proposals submitted in response hereto shall constitute offers to contract with Benton County, and only upon the County's acceptance of such offer by bid award as provided herein, shall any contractual relations be created."

Complete digital project bidding documents are available at www.questcdn.com. Interested bidders may view the plans and specifications at no charge by signing up for an account and inputting Quest Project # **7963264** on the website's Projects Search Page. Firms who intend to submit a bid must download the digital plan documents, specifications, contract documents and bid proposal for fifteen dollars ($15.00). Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership, registration, downloading, and working with this digital project information.

The following is applicable to all Benton County projects:

"Benton County, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award."

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PERFORMANCE BOND (informational)
PAYMENT BOND (informational)

SPECIAL PROVISIONS

INTRODUCTION TO THE SPECIAL PROVISIONS

(December 10, 2020 APWA GSP)

The work on this project shall be accomplished in accordance with the most current edition of the *Standard Specifications for Road, Bridge and Municipal Construction*, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter "Standard Specifications"). The Standard Specifications, as modified or supplemented by the Amendments to the Standard Specifications and these Special Provisions, all of which are made a part of the Contract Documents, shall govern all of the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The project-specific Special Provisions are labeled as shown below. The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

(March 8, 2013 APWA GSP)
(April 1, 2013 WSDOT GSP)
(March 12, 2014 Benton County GSP)
(******) Project Specific Special Provision

Also incorporated into the Contract Documents by reference are:

- *Manual on Uniform Traffic Control Devices for Streets and Highways*, currently adopted edition, with Washington State modifications, if any
- *Standard Plans for Road, Bridge and Municipal Construction*, WSDOT/APWA, current edition

Contractor shall obtain copies of these publications, at Contractor's own expense.

DIVISION 1
GENERAL REQUIREMENTS

DESCRIPTION OF WORK

(March 13, 1995 WSDOT GSP)

This contract provides for the improvement of *** all roads as can be accomplished as budgeted within Benton County BST Area # 6 by means of crack sealing *** and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

SECTION 1-01 DEFINITIONS AND TERMS

1-01.3 Definitions
(January 4, 2016 APWA GSP)

Delete the heading **Completion Dates** and the three paragraphs that follow it, and replace them with the following:

Dates

Bid Opening Date
The date on which the Contracting Agency publicly opens and reads the Bids.

Award Date
The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive Bidder for the Work.

Contract Execution Date
The date the Contracting Agency officially binds the Agency to the Contract.

Notice to Proceed Date
The date stated in the Notice to Proceed on which the Contract time begins.

Substantial Completion Date
The day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, any remaining traffic disruptions will be rare and brief, and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

Physical Completion Date
The day all of the Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

Completion Date
The day all the Work specified in the Contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor before establishment of this date.

Final Acceptance Date
The date on which the Contracting Agency accepts the Work as complete.

Supplement this Section with the following:

All references in the Standard Specifications, Amendments, or WSDOT General Special Provisions, to the terms “Department of Transportation”, “Washington State Transportation Commission”, “Commission”, “Secretary of Transportation”, “Secretary”, “Headquarters”, and “State Treasurer” shall be revised to read “Contracting Agency”.

All references to the terms “State” or “state” shall be revised to read “Contracting Agency” unless the reference is to an administrative agency of the State of Washington, a State statute or regulation, or the context reasonably indicates otherwise.

All references to “State Materials Laboratory” shall be revised to read “Contracting Agency designated location”.

All references to “final contract voucher certification” shall be interpreted to mean the Contracting Agency form(s) by which final payment is authorized, and final completion and acceptance granted.

Additive

A supplemental unit of work or group of bid items, identified separately in the Bid Proposal, which may, at the discretion of the Contracting Agency, be awarded in addition to the base bid.

Alternate

One of two or more units of work or groups of bid items, identified separately in the Bid Proposal, from which the Contracting Agency may make a choice between different methods or material of construction for performing the same work.

Business Day

A business day is any day from Monday through Friday except holidays as listed in Section 1-08.5.

Contract Bond

The definition in the Standard Specifications for “Contract Bond” applies to whatever bond form(s) are required by the Contract Documents, which may be a combination of a Payment Bond and a Performance Bond.

Contract Documents

See definition for “Contract”.

Contract Time

The period of time established by the terms and conditions of the Contract within which the Work must be physically completed.

Notice of Award

The written notice from the Contracting Agency to the successful Bidder signifying the Contracting Agency’s acceptance of the Bid Proposal.

Notice to Proceed

The written notice from the Contracting Agency or Engineer to the Contractor authorizing and directing the Contractor to proceed with the Work and establishing the date on which the Contract time begins.

Traffic

Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and equestrian traffic.

SECTION 1-02 BID PROCEDURES AND CONDITIONS

1-02.1 Prequalification of Bidders

Delete this Section and replace it with the following:

1-02.1 Qualifications of Bidder
(January 24, 2011 APWA GSP)

Before award of a public works contract, a bidder must meet at least the minimum qualifications of RCW 39.04.350(1) to be considered a responsible bidder and qualified to be awarded a public works project.

1-02.2 Plans and Specifications
(June 27, 2011 APWA GSP)

Delete this section and replace it with the following:

Information as to where Bid Documents can be obtained or reviewed can be found in the Call for Bids (Advertisement for Bids) for the work.

After award of the contract, plans and specifications will be issued to the Contractor at no cost as detailed below:

To Prime Contractor	No. of Sets	Basis of Distribution
Reduced plans (8.5" x 11")	*** 0 ***	Furnished automatically upon award.
Contract Provisions	*** 2 ***	Furnished automatically upon award.
Large plans (e.g., 22" x 34")	*** 0 ***	Furnished only upon request.

Additional plans and Contract Provisions may be obtained by the Contractor from the source stated in the Call for Bids, at the Contractor's own expense.

1-02.5 Proposal Forms
(July 31, 2017 APWA GSP)

Delete this section and replace it with the following:

The Proposal Form will identify the project and its location and describe the work. It will also list estimated quantities, units of measurement, the items of work, and the materials to be furnished at the unit bid prices. The bidder shall complete spaces on the proposal form that call for, but are not limited to, unit prices; extensions; summations; the total bid amount; signatures; date; and, where applicable, retail sales taxes and acknowledgment of addenda; the bidder's name, address, telephone number, and signature; the bidder's UDBE/DBE/M/WBE commitment, if applicable; a State of Washington

Contractor's Registration Number; and a Business License Number, if applicable. Bids shall be completed by typing or shall be printed in ink by hand, preferably in black ink. The required certifications are included as part of the Proposal Form.

The Contracting Agency reserves the right to arrange the proposal forms with alternates and additives, if such be to the advantage of the Contracting Agency. The bidder shall bid on all alternates and additives set forth in the Proposal Form unless otherwise specified.

1-02.6 Preparation of Proposal
(December 10, 2020 APWA GSP, Option B)

Supplement the second paragraph with the following:

4. If a minimum bid amount has been established for any item, the unit or lump sum price must equal or exceed the minimum amount stated.
5. Any correction to a bid made by interlineation, alteration, or erasure, shall be initialed by the signer of the bid.

Delete the last two paragraphs, and replace them with the following:

The Bidder shall submit with their Bid a completed Contractor Certification Wage Law Compliance form, provided by the Contracting Agency. Failure to return this certification as part of the Bid Proposal package will make this Bid Nonresponsive and ineligible for Award. A Contractor Certification of Wage Law Compliance form is included in the Proposal Forms.

The Bidder shall make no stipulation on the Bid Form, nor qualify the bid in any manner.

A bid by a corporation shall be executed in the corporate name, by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign).

A bid by a partnership shall be executed in the partnership name, and signed by a partner. A copy of the partnership agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

A bid by a joint venture shall be executed in the joint venture name and signed by a member of the joint venture. A copy of the joint venture agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

1-02.6(1) Recycled Materials Proposal
(January 4, 2016 APWA GSP)

The Bidder shall submit with the Bid, its proposal for incorporating recycled materials into the project, using the form provided in the Contract Provisions.

1-02.7 Bid Deposit
(March 8, 2013 APWA GSP)

Supplement this section with the following:

Bid bonds shall contain the following:

1. Contracting Agency-assigned number for the project;
2. Name of the project;
3. The Contracting Agency named as obligee;
4. The amount of the bid bond stated either as a dollar figure or as a percentage which represents five percent of the maximum bid amount that could be awarded;
5. Signature of the bidder's officer empowered to sign official statements. The signature of the person authorized to submit the bid should agree with the signature on the bond, and the title of the person must accompany the said signature;
6. The signature of the surety's officer empowered to sign the bond and the power of attorney.

If so stated in the Contract Provisions, bidder must use the bond form included in the Contract Provisions.

If so stated in the Contract Provisions, cash will not be accepted for a bid deposit.

(March 12, 2014 Benton County GSP)

Revise the second sentence of this section to read:

This deposit may be certified check, cashier's check or a proposal bond (Surety bond).

Supplement this section with the following:

Bidders wishing to submit a bid deposit in bond form shall use the Proposal Bond form included as part of the Proposal packet for this project.

1-02.9 Delivery of Proposal
(June 17, 2021 APWA GSP, Option A)

Delete this section and replace it with the following:

Each Proposal shall be submitted in a sealed envelope, with the Project Name and Project Number as stated in the Call for Bids clearly marked on the outside of the envelope, or as otherwise required in the Bid Documents, to ensure proper handling and delivery.

Proposals that are received as required will be publicly opened and read as specified in Section 1-02.12. The Contracting Agency will not open or consider any Bid Proposal that is received after the time specified in the Call for Bids for receipt of Bid Proposals, or received in a location other than that specified in the Call for Bids. The Contracting Agency will not open or consider any "Supplemental Information" (DBE confirmations, or GFE documentation) that is received after the time specified above, or received in a location other than that specified in the Call for Bids.

If an emergency or unanticipated event interrupts normal work processes of the Contracting Agency so that Proposals cannot be received at the office designated for receipt of bids as specified in Section 1-02.12 the time specified for receipt of the Proposal will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the normal work processes of the Contracting Agency resume.

1-02.10 Withdrawing, Revising, or Supplementing Proposal
(July 23, 2015 APWA GSP)

Delete this section, and replace it with the following:

After submitting a physical Bid Proposal to the Contracting Agency, the Bidder may withdraw, revise, or supplement it if:

1. The Bidder submits a written request signed by an authorized person and physically delivers it to the place designated for receipt of Bid Proposals, and
2. The Contracting Agency receives the request before the time set for receipt of Bid Proposals, and
3. The revised or supplemented Bid Proposal (if any) is received by the Contracting Agency before the time set for receipt of Bid Proposals.

If the Bidder's request to withdraw, revise, or supplement its Bid Proposal is received before the time set for receipt of Bid Proposals, the Contracting Agency will return the unopened Proposal package to the Bidder. The Bidder must then submit the revised or supplemented package in its entirety. If the Bidder does not submit a revised or supplemented package, then its bid shall be considered withdrawn.

Late revised or supplemented Bid Proposals or late withdrawal requests will be date recorded by the Contracting Agency and returned unopened. Mailed, emailed, or faxed requests to withdraw, revise, or supplement a Bid Proposal are not acceptable.

1-02.13 Irregular Proposals
(October 1, 2020 APWA GSP)

Delete this section and replace it with the following:

1. A Proposal will be considered irregular and will be rejected if:
   a. The Bidder is not prequalified when so required;
   b. The authorized Proposal form furnished by the Contracting Agency is not used or is altered;
   c. The completed Proposal form contains any unauthorized additions, deletions, alternate Bids, or conditions;
   d. The Bidder adds provisions reserving the right to reject or accept the award, or enter into the Contract;
   e. A price per unit cannot be determined from the Bid Proposal;
   f. The Proposal form is not properly executed;
   g. The Bidder fails to submit or properly complete a Subcontractor list, if applicable, as required in Section 1-02.6;

h. The Bidder fails to submit or properly complete a Disadvantaged Business Enterprise Certification, if applicable, as required in Section 1-02.6;
i. The Bidder fails to submit written confirmation from each DBE firm listed on the Bidder's completed DBE Utilization Certification that they are in agreement with the bidder's DBE participation commitment, if applicable, as required in Section 1-02.6, or if the written confirmation that is submitted fails to meet the requirements of the Special Provisions;
j The Bidder fails to submit DBE Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award was made;
k. The Bidder fails to submit a DBE Bid Item Breakdown form, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
l. The Bidder fails to submit DBE Trucking Credit Forms, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
m. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation; or
n. More than one Proposal is submitted for the same project from a Bidder under the same or different names.

2. A Proposal may be considered irregular and may be rejected if:
   a. The Proposal does not include a unit price for every Bid item;
   b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the Contracting Agency;
   c. Receipt of Addenda is not acknowledged;
   d. A member of a joint venture or partnership and the joint venture or partnership submit Proposals for the same project (in such an instance, both Bids may be rejected); or
   e. If Proposal form entries are not made in ink.

1-02.14 Disqualification of Bidders
(May 17, 2018 APWA GSP, Option A)

Delete this section and replace it with the following:

A Bidder will be deemed not responsible if the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended.

The Contracting Agency will verify that the Bidder meets the mandatory bidder responsibility criteria in RCW 39.04.350(1). To assess bidder responsibility, the Contracting Agency reserves the right to request documentation as needed from the Bidder and third parties concerning the Bidder's compliance with the mandatory bidder responsibility criteria.

If the Contracting Agency determines the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1) and is therefore not a responsible Bidder, the Contracting Agency shall notify the Bidder in writing, with the reasons for its determination. If the Bidder disagrees with this determination, it may appeal the determination within two (2) business days of the Contracting Agency's determination by presenting its appeal and any additional information to the Contracting Agency. The Contracting Agency will consider the appeal and any additional information before issuing its final determination. If the final determination affirms that the Bidder is not responsible, the

Contracting Agency will not execute a contract with any other Bidder until at least two business days after the Bidder determined to be not responsible has received the Contracting Agency's final determination.

1-02.15 Pre Award Information
(August 14, 2013 APWA GSP)

Revise this section to read:

Before awarding any contract, the Contracting Agency may require one or more of these items or actions of the apparent lowest responsible bidder:

1. A complete statement of the origin, composition, and manufacture of any or all materials to be used,
2. Samples of these materials for quality and fitness tests,
3. A progress schedule (in a form the Contracting Agency requires) showing the order of and time required for the various phases of the work,
4. A breakdown of costs assigned to any bid item,
5. Attendance at a conference with the Engineer or representatives of the Engineer,
6. Obtain, and furnish a copy of, a business license to do business in the city or county where the work is located.
7. Any other information or action taken that is deemed necessary to ensure that the bidder is the lowest responsible bidder.

SECTION 1-03 AWARD AND EXECUTION OF CONTRACT

1-03.1 Consideration of Bids
(January 23, 2006 APWA GSP)

Revise the first paragraph to read:

After opening and reading proposals, the Contracting Agency will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit will control. If a minimum bid amount has been established for any item and the bidder's unit or lump sum price is less than the minimum specified amount, the Contracting Agency will unilaterally revise the unit or lump sum price, to the minimum specified amount and recalculate the extension. The total of extensions, corrected where necessary, including sales taxes where applicable and such additives and/or alternates as selected by the Contracting Agency, will be used by the Contracting Agency for award purposes and to fix the Awarded Contract Price amount and the amount of the contract bond.

1-03.1(1) Identical Bid Totals
(January 4, 2016 APWA GSP)

Revise this section to read:

After opening Bids, if two or more lowest responsive Bid totals are exactly equal, then the tie-breaker will be the Bidder with an equal lowest bid, that proposed to use the highest percentage of recycled materials in the Project, per the form submitted with the Bid Proposal. If those

percentages are also exactly equal, then the tie-breaker will be determined by drawing as follows: Two or more slips of paper will be marked as follows: one marked “Winner” and the other(s) marked “unsuccessful”. The slips will be folded to make the marking unseen. The slips will be placed inside a box. One authorized representative of each Bidder shall draw a slip from the box. Bidders shall draw in alphabetic order by the name of the firm as registered with the Washington State Department of Licensing. The slips shall be unfolded and the firm with the slip marked “Winner” will be determined to be the successful Bidder and eligible for Award of the Contract. Only those Bidders who submitted a Bid total that is exactly equal to the lowest responsive Bid, and with a proposed recycled materials percentage that is exactly equal to the highest proposed recycled materials amount, are eligible to draw.

1-03.3 Execution of Contract
(October 1, 2005 APWA GSP)

Revise this section to read:

Copies of the Contract Provisions, including the unsigned Form of Contract, will be available for signature by the successful bidder on the first business day following award. The number of copies to be executed by the Contractor will be determined by the Contracting Agency.

Within 10 calendar days after the award date, the successful bidder shall return the signed Contracting Agency-prepared contract, an insurance certification as required by Section 1-07.18, and a satisfactory bond as required by law and Section 1-03.4. Before execution of the contract by the Contracting Agency, the successful bidder shall provide any pre-award information the Contracting Agency may require under Section 1-02.15.

Until the Contracting Agency executes a contract, no proposal shall bind the Contracting Agency nor shall any work begin within the project limits or within Contracting Agency-furnished sites. The Contractor shall bear all risks for any work begun outside such areas and for any materials ordered before the contract is executed by the Contracting Agency.

If the bidder experiences circumstances beyond their control that prevents return of the contract documents within the calendar days after award, the Contracting Agency may grant up to a maximum of 10 additional calendar days for return of the documents, provided the Contracting Agency deems the circumstances warrant it.

1-03.4 Contract Bond
(July 23, 2015 APWA GSP)

Delete the first paragraph and replace it with the following:

The successful bidder shall provide executed payment and performance bond(s) for the full contract amount. The bond may be a combined payment and performance bond; or be separate payment and performance bonds. In the case of separate payment and performance bonds, each shall be for the full contract amount. The bond(s) shall:

1. Be on Contracting Agency-furnished form(s);
2. Be signed by an approved surety (or sureties) that:
    a. Is registered with the Washington State Insurance Commissioner, and
    b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,

3. Guarantee that the Contractor will perform and comply with all obligations, duties, and conditions under the Contract, including but not limited to the duty and obligation to indemnify, defend, and protect the Contracting Agency against all losses and claims related directly or indirectly from any failure:
    a. Of the Contractor (or any of the employees, subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform and comply with all contract obligations, conditions, and duties, or
    b. Of the Contractor (or the subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work;
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the project under titles 50, 51, and 82 RCW; and
5. Be accompanied by a power of attorney for the Surety's officer empowered to sign the bond; and
6. Be signed by an officer of the Contractor empowered to sign official statements (sole proprietor or partner). If the Contractor is a corporation, the bond(s) must be signed by the president or vice president, unless accompanied by written proof of the authority of the individual signing the bond(s) to bind the corporation (i.e., corporate resolution, power of attorney, or a letter to such effect signed by the president or vice president).

Add the following new section:

1-03.4(1) Retainage in Lieu of Contract Bond
(May 17, 2018 APWA GSP)

For contracts of up to $150,000.00 or less, the Contractor may, at the Contractor's option, authorize the Contracting Agency to retain up to 10% of the contract amount in lieu of furnishing a performance and/or payment bond. If the Contractor elects this option, the retainage shall be held for a period of thirty (30) days after the date of final acceptance, or until receipt of all necessary releases from the Departments of Revenue and of Labor and Industries and settlement of any liens filed under RCW 60.28, whichever is later. The Contractor must advise the Contracting Agency in writing of the Contractor's election to authorize retainage in lieu of a bond, at the time of execution of the Contract.

In choosing this option, the Contractor agrees that if the Contractor, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, and shall faithfully perform all the provisions of such contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified, and shall pay all laborers, mechanics, subcontractors, and material suppliers, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, on his or her part, and shall indemnify and save harmless the Contracting Agency, its officers and agents from any claim for such payment, then the funds retained in lieu of a performance bond shall be released at the time provided above; otherwise, the funds shall be retained until the Contractor fulfills the said obligations.

1-03.7 Judicial Review
(November 30, 2018 APWA GSP)

Revise this section to read:

Any decision made by the Contracting Agency regarding the Award and execution of the Contract or Bid rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Such review, if any, shall be timely filed in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction.

SECTION 1-04 SCOPE OF WORK

1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda
(December 10, 2020 APWA GSP)

Revise the second paragraph to read:

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Addenda,
2. Proposal Form,
3. Special Provisions,
4. Contract Plans,
5. Standard Specifications,
6. Contracting Agency's Standard Plans or Details (if any), and
7. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

SECTION 1-05 CONTROL OF WORK

1-05.7 Removal of Defective and Unauthorized Work
(October 1, 2005 APWA GSP)
Supplement this section with the following:

If the Contractor fails to remedy defective or unauthorized work within the time specified in a written notice from the Engineer, or fails to perform any part of the work required by the Contract Documents, the Engineer may correct and remedy such work as may be identified in the written notice, with Contracting Agency forces or by such other means as the Contracting Agency may deem necessary.

If the Contractor fails to comply with a written order to remedy what the Engineer determines to be an emergency situation, the Engineer may have the defective and unauthorized work corrected immediately, have the rejected work removed and replaced, or have work the Contractor refuses to perform completed by using Contracting Agency or other forces. An emergency situation is any situation when, in the opinion of the Engineer, a delay in its remedy could be potentially unsafe, or might cause serious risk of loss or damage to the public.

Direct or indirect costs incurred by the Contracting Agency attributable to correcting and remedying

defective or unauthorized work, or work the Contractor failed or refused to perform, shall be paid by the Contractor. Payment will be deducted by the Engineer from monies due, or to become due, the Contractor. Such direct and indirect costs shall include in particular, but without limitation, compensation for additional professional services required, and costs for repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of the Contractor's unauthorized work.

No adjustment in contract time or compensation will be allowed because of the delay in the performance of the work attributable to the exercise of the Contracting Agency's rights provided by this Section.

The rights exercised under the provisions of this section shall not diminish the Contracting Agency's right to pursue any other avenue for additional remedy or damages with respect to the Contractor's failure to perform the work as required.

1-05.11 Final Inspection
Delete this section and replace it with the following:

1-05.11 Final Inspections and Operational Testing
(October 1, 2005 APWA GSP)

1-05.11(1) Substantial Completion Date

When the Contractor considers the work to be substantially complete, the Contractor shall so notify the Engineer and request the Engineer establish the Substantial Completion Date. The Contractor's request shall list the specific items of work that remain to be completed in order to reach physical completion. The Engineer will schedule an inspection of the work with the Contractor to determine the status of completion. The Engineer may also establish the Substantial Completion Date unilaterally.

If, after this inspection, the Engineer concurs with the Contractor that the work is substantially complete and ready for its intended use, the Engineer, by written notice to the Contractor, will set the Substantial Completion Date. If, after this inspection the Engineer does not consider the work substantially complete and ready for its intended use, the Engineer will, by written notice, so notify the Contractor giving the reasons therefore. Upon receipt of written notice concurring in or denying substantial completion, whichever is applicable, the Contractor shall pursue vigorously, diligently and without unauthorized interruption, the work necessary to reach Substantial and Physical Completion. The Contractor shall provide the Engineer with a revised schedule indicating when the Contractor expects to reach substantial and physical completion of the work.

The above process shall be repeated until the Engineer establishes the Substantial Completion Date and the Contractor considers the work physically complete and ready for final inspection.

1-05.11(2) Final Inspection and Physical Completion Date

When the Contractor considers the work physically complete and ready for final inspection, the Contractor by written notice, shall request the Engineer to schedule a final inspection. The Engineer will set a date for final inspection. The Engineer and the Contractor will then make a final inspection and the Engineer will notify the Contractor in writing of all particulars in which the final inspection reveals the work incomplete or unacceptable. The Contractor shall immediately take such corrective measures as are necessary to remedy the listed deficiencies. Corrective work shall be pursued

vigorously, diligently, and without interruption until physical completion of the listed deficiencies. This process will continue until the Engineer is satisfied the listed deficiencies have been corrected.

If action to correct the listed deficiencies is not initiated within 7 days after receipt of the written notice listing the deficiencies, the Engineer may, upon written notice to the Contractor, take whatever steps are necessary to correct those deficiencies pursuant to Section 1-05.7. The Contractor will not be allowed an extension of contract time because of a delay in the performance of the work attributable to the exercise of the Engineer's right hereunder.

Upon correction of all deficiencies, the Engineer will notify the Contractor and the Contracting Agency, in writing, of the date upon which the work was considered physically complete. That date shall constitute the Physical Completion Date of the contract, but shall not imply acceptance of the work or that all the obligations of the Contractor under the contract have been fulfilled.

1-05.11(3) Operational Testing

It is the intent of the Contracting Agency to have at the Physical Completion Date a complete and operable system. Therefore when the work involves the installation of machinery or other mechanical equipment; street lighting, electrical distribution or signal systems; irrigation systems; buildings; or other similar work it may be desirable for the Engineer to have the Contractor operate and test the work for a period of time after final inspection but prior to the physical completion date. Whenever items of work are listed in the Contract Provisions for operational testing they shall be fully tested under operating conditions for the time period specified to ensure their acceptability prior to the Physical Completion Date. During and following the test period, the Contractor shall correct any items of workmanship, materials, or equipment which prove faulty, or that are not in first class operating condition. Equipment, electrical controls, meters, or other devices and equipment to be tested during this period shall be tested under the observation of the Engineer, so that the Engineer may determine their suitability for the purpose for which they were installed. The Physical Completion Date cannot be established until testing and corrections have been completed to the satisfaction of the Engineer.

The costs for power, gas, labor, material, supplies, and everything else needed to successfully complete operational testing, shall be included in the unit contract prices related to the system being tested, unless specifically set forth otherwise in the proposal.

Operational and test periods, when required by the Engineer, shall not affect a manufacturer's guaranties or warranties furnished under the terms of the contract.

1-05.13 Superintendents, Labor and Equipment of Contractor
(August 14, 2013 APWA GSP)

Delete the sixth and seventh paragraphs of this section.

1-05.15 Method of Serving Notices
(March 25, 2009 APWA GSP)

Revise the second paragraph to read:

All correspondence from the Contractor shall be directed to the Project Engineer. <u>All correspondence from the Contractor constituting any notification, notice of protest, notice of dispute, or other correspondence constituting notification required to be furnished under the Contract, must be in paper</u>

format, hand delivered or sent via mail delivery service to the Project Engineer's office. Electronic copies such as e-mails or electronically delivered copies of correspondence will not constitute such notice and will not comply with the requirements of the Contract.

1-05.16 Water and Power
(October 1, 2005 APWA GSP)`

The Contractor shall make necessary arrangements, and shall bear the costs for power and water necessary for the performance of the work, unless the contract includes power and water as a pay item.

SECTION 1-06 CONTROL OF MATERIAL

1-06.6 Recycled Materials
(January 4, 2016 APWA GSP)

Delete this section, including its subsections, and replace it with the following:

The Contractor shall make their best effort to utilize recycled materials in the construction of the project. Approval of such material use shall be as detailed elsewhere in the Standard Specifications. Prior to Physical Completion the Contractor shall report the quantity of recycled materials that were utilized in the construction of the project for each of the items listed in Section 9-03.21. The report shall include hot mix asphalt, recycled concrete aggregate, recycled glass, steel furnace slag and other recycled materials (e.g. utilization of on-site material and aggregates from concrete returned to the supplier). The Contractor's report shall be provided on DOT form 350-075 Recycled Materials Reporting.

SECTION 1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 Laws to be Observed
(October 1, 2005 APWA GSP)

Supplement this section with the following:

In cases of conflict between different safety regulations, the more stringent regulation shall apply.

The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).

The Contractor shall maintain at the project site office, or other well-known place at the project site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish, and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the project site. Employees should not be permitted to work on the project site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.

The Contractor shall have sole responsibility for the safety, efficiency, and adequacy of the Contractor's plant, appliances, and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely

responsible for the conditions of the project site, including safety for all persons and property in the performance of the work. This requirement shall apply continuously, and not be limited to normal working hours. The required or implied duty of the Engineer to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the project site.

1-07.2 Sales Tax
Delete this section, including its sub-sections, in its entirety and replace it with the following:

1-07.2 State Sales Tax
(June 27, 2011 APWA GSP)

The Washington State Department of Revenue has issued special rules on the State sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The Contracting Agency will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract amounts. In some cases, however, state retail sales tax will not be included. Section 1-07.2(2) describes this exception.

The Contracting Agency will pay the retained percentage (or release the Contract Bond if a FHWA-funded Project) only if the Contractor has obtained from the Washington State Department of Revenue a certificate showing that all contract-related taxes have been paid (RCW 60.28.051). The Contracting Agency may deduct from its payments to the Contractor any amount the Contractor may owe the Washington State Department of Revenue, whether the amount owed relates to this contract or not. Any amount so deducted will be paid into the proper State fund.

1-07.2(1) State Sales Tax — Rule 171

WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used primarily for foot or vehicular traffic. This includes storm or combined sewer systems within and included as a part of the street or road drainage system and power lines when such are part of the roadway lighting system. For work performed in such cases, the Contractor shall include Washington State Retail Sales Taxes in the various unit bid item prices, or other contract amounts, including those that the Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in doing the work.

1-07.2(2) State Sales Tax — Rule 170

WAC 458-20-170, and its related rules, apply to the constructing and repairing of new or existing buildings, or other structures, upon real property. This includes, but is not limited to, the construction of streets, roads, highways, etc., owned by the state of Washington; water mains and their appurtenances; sanitary sewers and sewage disposal systems unless such sewers and disposal systems are within, and a part of, a street or road drainage system; telephone, telegraph, electrical power distribution lines, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system; and installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation.

For work performed in such cases, the Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit bid item prices, or in any other contract amount subject to Rule 170, with the following exception.

Exception: The Contracting Agency will not add in sales tax for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount.

1-07.2(3) Services

The Contractor shall not collect retail sales tax from the Contracting Agency on any contract wholly for professional or other services (as defined in Washington State Department of Revenue Rules 138 and 244).

1-07.13 Contractor's Responsibility of Work
(August 6, 2001 WSDOT GSP)
Repair of Damage
Section 1-07.13(4) is revised to read:

The Contractor shall promptly repair all damage to either temporary or permanent work as directed by the Engineer. For damage qualifying for relief under Sections 1-07.13(1), 1-07.13(2) or 1-07.13(3), payment will be made in accordance with Section 1-04.4. Payment will be limited to repair of damaged work only. No payment will be made for delay or disruption of work.

1-07.18 Public Liability and Property Damage Insurance
Delete this section in its entirety, and replace it with the following:

1-07.18 Insurance
(January 4, 2016 APWA GSP)

1-07.18(1) General Requirements
A. The Contractor shall procure and maintain the insurance described in all subsections of section 1-07.18 of these Special Provisions, from insurers with a current A. M. Best rating of not less than A-: VII and licensed to do business in the State of Washington. The Contracting Agency reserves the right to approve or reject the insurance provided, based on the insurer's financial condition.

B. The Contractor shall keep this insurance in force without interruption from the commencement of the Contractor's Work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated below.

C. If any insurance policy is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes

unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

D. The Contractor's Automobile Liability, Commercial General Liability and Excess or Umbrella Liability insurance policies shall be primary and non-contributory insurance as respects the Contracting Agency's insurance, self-insurance, or self-insured pool coverage. Any insurance, self-insurance, or self-insured pool coverage maintained by the Contracting Agency shall be excess of the Contractor's insurance and shall not contribute with it.

E. The Contractor shall provide the Contracting Agency and all additional insureds with written notice of any policy cancellation, within two business days of their receipt of such notice.

F. The Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the Contracting Agency

G. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the Contracting Agency may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.

H. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made.

1-07.18(2) Additional Insured

All insurance policies, with the exception of Workers Compensation, and of Professional Liability and Builder's Risk (if required by this Contract) shall name the following listed entities as additional insured(s) using the forms or endorsements required herein:

- the Contracting Agency and its officers, elected officials, employees, agents, and volunteers

The above-listed entities shall be additional insured(s) for the full available limits of liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract, and irrespective of whether the Certificate of Insurance provided by the Contractor pursuant to 1-07.18(4) describes limits lower than those maintained by the Contractor.

For Commercial General Liability insurance coverage, the required additional insured endorsements shall be at least as broad as ISO forms CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

1-07.18(3) Subcontractors

The Contractor shall cause each Subcontractor of every tier to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors.

The Contractor shall ensure that all Subcontractors of every tier add all entities listed in 1-07.18(2) as additional insureds, and provide proof of such on the policies as required by that section as detailed in 1-07.18(2) using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

Upon request by the Contracting Agency, the Contractor shall forward to the Contracting Agency evidence of insurance and copies of the additional insured endorsements of each Subcontractor of every tier as required in 1-07.18(4) Verification of Coverage.

1-07.18(4) Verification of Coverage

The Contractor shall deliver to the Contracting Agency a Certificate(s) of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work. Failure of Contracting Agency to demand such verification of coverage with these insurance requirements or failure of Contracting Agency to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the Contracting Agency to be equivalent.
2. Copies of all endorsements naming Contracting Agency and all other entities listed in 1-07.18(2) as additional insured(s), showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.

Upon request by the Contracting Agency, the Contractor shall forward to the Contracting Agency a full and certified copy of the insurance policy(s). If Builders Risk insurance is required on this Project, a full and certified copy of that policy is required when the Contractor delivers the signed Contract for the work.

1-07.18(5) Coverages and Limits

The insurance shall provide the minimum coverages and limits set forth below. Contractor's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Contracting Agency's recourse to any remedy available at law or in equity.

All deductibles and self-insured retentions must be disclosed and are subject to approval by the Contracting Agency. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Contractor. In the event an additional insured incurs a liability subject to any policy's deductibles or self-insured retention, said deductibles or self-insured retention shall be the responsibility of the Contractor.

1-07.18(5)A Commercial General Liability

Commercial General Liability insurance shall be written on coverage forms at least as broad as ISO occurrence form CG 00 01, including but not limited to liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage.

The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement.

Contractor shall maintain Commercial General Liability Insurance arising out of the Contractor's completed operations for at least three years following Substantial Completion of the Work.

Such policy must provide the following minimum limits:

$1,000,000	Each Occurrence
$2,000,000	General Aggregate
$2,000,000	Products & Completed Operations Aggregate
$1,000,000	Personal & Advertising Injury each offence
$1,000,000	Stop Gap / Employers' Liability each accident

1-07.18(5)B Automobile Liability

Automobile Liability shall cover owned, non-owned, hired, and leased vehicles; and shall be written on a coverage form at least as broad as ISO form CA 00 01. If the work involves the transport of pollutants, the automobile liability policy shall include MCS 90 and CA 99 48 endorsements.

Such policy must provide the following minimum limit:

$1,000,000	Combined single limit each accident

1-07.18(5)C Workers' Compensation

The Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

1-07.24, Rights of Way

(July 23, 2015 APWA GSP)

Delete this section in its entirety, and replace it with the following:

Street Right of Way lines, limits of easements, and limits of construction permits are indicated in the Plans. The Contractor's construction activities shall be confined within these limits, unless arrangements for use of private property are made.

Generally, the Contracting Agency will have obtained, prior to bid opening, all rights of way and easements, both permanent and temporary, necessary for carrying out the work. Exceptions to this are noted in the Bid Documents or will be brought to the Contractor's attention by a duly issued Addendum.

Whenever any of the work is accomplished on or through property other than public Right of Way, the Contractor shall meet and fulfill all covenants and stipulations of any easement agreement obtained by the Contracting Agency from the owner of the private property. Copies of the easement agreements may be included in the Contract Provisions or made available to the Contractor as soon as practical after they have been obtained by the Engineer.

Whenever easements or rights of entry have not been acquired prior to advertising, these areas are so noted in the Plans. The Contractor shall not proceed with any portion of the work in areas

where right of way, easements or rights of entry have not been acquired until the Engineer certifies to the Contractor that the right of way or easement is available or that the right of entry has been received. If the Contractor is delayed due to acts of omission on the part of the Contracting Agency in obtaining easements, rights of entry or right of way, the Contractor will be entitled to an extension of time. The Contractor agrees that such delay shall not be a breach of contract.

Each property owner shall be given 48 hours notice prior to entry by the Contractor. This includes entry onto easements and private property where private improvements must be adjusted.

The Contractor shall be responsible for providing, without expense or liability to the Contracting Agency, any additional land and access thereto that the Contractor may desire for temporary construction facilities, storage of materials, or other Contractor needs. However, before using any private property, whether adjoining the work or not, the Contractor shall file with the Engineer a written permission of the private property owner, and, upon vacating the premises, a written release from the property owner of each property disturbed or otherwise interfered with by reasons of construction pursued under this contract. The statement shall be signed by the private property owner, or proper authority acting for the owner of the private property affected, stating that permission has been granted to use the property and all necessary permits have been obtained or, in the case of a release, that the restoration of the property has been satisfactorily accomplished. The statement shall include the parcel number, address, and date of signature. Written releases must be filed with the Engineer before the Completion Date will be established.

The Contractor shall be responsible for providing, without expense or liability to the Contracting Agency, any additional land and access thereto that the Contractor may desire for temporary construction facilities, storage of materials, or other Contractor needs. However, before using any private property, whether adjoining the work or not, the Contractor shall file with the Engineer a written permission of the private property owner, and, upon vacating the premises, a written release from the property owner of each property disturbed or otherwise interfered with by reasons of construction pursued under this contract. The statement shall be signed by the private property owner, or proper authority acting for the owner of the private property affected, stating that permission has been granted to use the property and all necessary permits have been obtained or, in the case of a release, that the restoration of the property has been satisfactorily accomplished. The statement shall include the parcel number, address, and date of signature. Written releases must be filed with the Engineer before the Completion Date will be established.

SECTION 1-08 PROSECUTION AND PROGRESS

Add the following new section:

1-08.0 Preliminary Matters
(May 25, 2006 APWA GSP)

Add the following new section:

1-08.0(1) Preconstruction Conference
(October 10, 2008 APWA GSP)

Prior to the Contractor beginning the work, a preconstruction conference will be held between the Contractor, the Engineer and such other interested parties as may be invited. The purpose of the preconstruction conference will be:

1. To review the initial progress schedule;
2. To establish a working understanding among the various parties associated or affected by the work;
3. To establish and review procedures for progress payment, notifications, approvals, submittals, etc.;
4. To establish normal working hours for the work;
5. To review safety standards and traffic control; and
6. To discuss such other related items as may be pertinent to the work.

The Contractor shall prepare and submit at the preconstruction conference the following:

1. A breakdown of all lump sum items;
2. A preliminary schedule of working drawing submittals; and
3. A list of material sources for approval if applicable.

Add the following new section:

1-08.0(2) Hours of Work
(December 8, 2014 APWA GSP)

Except in the case of emergency or unless otherwise approved by the Engineer, the normal working hours for the Contract shall be any consecutive 8-hour period between 7:00 a.m. and 6:00 p.m. Monday through Friday, exclusive of a lunch break. If the Contractor desires different than the normal working hours stated above, the request must be submitted in writing prior to the preconstruction conference, subject to the provisions below. The working hours for the Contract shall be established at or prior to the preconstruction conference.

All working hours and days are also subject to local permit and ordinance conditions (such as noise ordinances).

If the Contractor wishes to deviate from the established working hours, the Contractor shall submit a written request to the Engineer for consideration. This request shall state what hours are being requested, and why. Requests shall be submitted for review no later than 48 hours prior to the day(s) the Contractor is requesting to change the hours.

If the Contracting Agency approves such a deviation, such approval may be subject to certain other conditions, which will be detailed in writing. For example:

1. On non-Federal aid projects, requiring the Contractor to reimburse the Contracting Agency for the costs in excess of straight-time costs for Contracting Agency representatives who worked during such times. (The Engineer may require designated representatives to be present during the work. Representatives who may be deemed necessary by the Engineer include, but are not limited to: survey crews; personnel from the Contracting Agency's material testing lab; inspectors; and other Contracting Agency employees or third party consultants when, in the opinion of the Engineer, such work necessitates their presence.)
2. Considering the work performed on Saturdays, Sundays, and holidays as working days with regard to the contract time.

3. Considering multiple work shifts as multiple working days with respect to contract time even though the multiple shifts occur in a single 24-hour period.
4. If a 4-10 work schedule is requested and approved the non working day for the week will be charged as a working day.
5. If Davis Bacon wage rates apply to this Contract, all requirements must be met and recorded properly on certified payroll

1-08.3 General Requirements

1-08.3(2)A Type A Progress Schedule
(March 13, 2012 APWA GSP)

Revise this section to read:

The Contractor shall submit ***1*** copies of a Type A Progress Schedule no later than at the preconstruction conference, or some other mutually agreed upon submittal time. The schedule may be a critical path method (CPM) schedule, bar chart, or other standard schedule format. Regardless of which format used, the schedule shall identify the critical path. The Engineer will evaluate the Type A Progress Schedule and approve or return the schedule for corrections within 15 calendar days of receiving the submittal.

1-08.4 Prosecution of Work
Delete this section in its entirety, and replace it with the following:

1-08.4 Notice to Proceed and Prosecution of Work
(July 23, 2015 APWA GSP)

Notice to Proceed will be given after the contract has been executed and the contract bond and evidence of insurance have been approved and filed by the Contracting Agency. The Contractor shall not commence with the work until the Notice to Proceed has been given by the Engineer. The Contractor shall commence construction activities on the project site within ten days of the Notice to Proceed Date, unless otherwise approved in writing. The Contractor shall diligently pursue the work to the physical completion date within the time specified in the contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the contract.

When shown in the Plans, the first order of work shall be the installation of high visibility fencing to delineate all areas for protection or restoration, as described in the Contract. Installation of high visibility fencing adjacent to the roadway shall occur after the placement of all necessary signs and traffic control devices in accordance with 1-10.1(2). Upon construction of the fencing, the Contractor shall request the Engineer to inspect the fence. No other work shall be performed on the site until the Contracting Agency has accepted the installation of high visibility fencing, as described in the Contract.

1-08.5 Time for Completion
(November 30, 2018 APWA GSP, Option A)

Revise the third and fourth paragraphs to read:

Contract time shall begin on the first working day following the Notice to Proceed Date.

Each working day shall be charged to the contract as it occurs, until the contract work is physically complete. If substantial completion has been granted and all the authorized working days have been used, charging of working days will cease. Each week the Engineer will provide the Contractor a statement that shows the number of working days: (1) charged to the contract the week before; (2) specified for the physical completion of the contract; and (3) remaining for the physical completion of the contract. The statement will also show the nonworking days and any partial or whole day the Engineer declares as unworkable. Within 10 calendar days after the date of each statement, the Contractor shall file a written protest of any alleged discrepancies in it. To be considered by the Engineer, the protest shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of time disputed. By not filing such detailed protest in that period, the Contractor shall be deemed as having accepted the statement as correct. <u>If the Contractor is approved to work 10 hours a day and 4 days a week (a 4-10 schedule) and the fifth day of the week in which a 4-10 shift is worked would ordinarily be charged as a working day then the fifth day of that week will be charged as a working day whether or not the Contractor works on that day.</u>

Revise the sixth paragraph to read:

The Engineer will give the Contractor written notice of the completion date of the contract after all the Contractor's obligations under the contract have been performed by the Contractor. The following events must occur before the Completion Date can be established:

1. The physical work on the project must be complete; and
2. The Contractor must furnish all documentation required by the contract and required by law, to allow the Contracting Agency to process final acceptance of the contract. The following documents must be received by the Project Engineer prior to establishing a completion date:
    a. Certified Payrolls <u>(per Section 1-07.9(5))</u>.
    b. Material Acceptance Certification Documents
    c. Monthly Reports of Amounts Credited as DBE Participation, as required by the Contract Provisions.
    d. Final Contract Voucher Certification
    e. Copies of the approved "Affidavit of Prevailing Wages Paid" for the Contractor and all Subcontractors
    f. A copy of the Notice of Termination sent to the Washington State Department of Ecology (Ecology); the elapse of 30 calendar days from the date of receipt of the Notice of Termination by Ecology; and no rejection of the Notice of Termination by Ecology. This requirement will not apply if the Construction Stormwater General Permit is transferred back to the Contracting Agency in accordance with Section 8-01.3(16).
    g. <u>Property owner releases per Section 1-07.24</u>

(******)

Supplement this section with the following:

This project shall be physically completed within *** **35** *** working days.

(******)

Supplement this section with the following:

Once notice to proceed has been given, working days shall commence. Individual deliveries and application of material shall be coordinated between the Contractor and the County's Road Superintendents. Scheduled deliveries may be canceled by either party with 24 hours of advanced

notice. Operations may be canceled with less than 24 hours of advanced notice due to unfavorable environmental conditions, as approved by the County. If operations are canceled due to unfavorable environmental conditions, no working days will be charged against the Contractor. If operations are canceled by the Contractor with less than 24 hours of advanced notice when no unfavorable environmental conditions exist, a working day will be counted towards the Contract total.

1-08.9 Liquidated Damages
(March 3, 2021 APWA GSP, Option B)

Revise the second and third paragraphs to read:

Accordingly, the Contractor agrees:

1. To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for Physical Completion, and

2. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

Liquidated Damages Formula

LD=0.15C/T

Where:

LD = liquidated damages per working day (rounded to the nearest dollar)

C = original Contract amount

T = original time for Physical Completion

When the Contract Work has progressed to Substantial Completion as defined in the Contract, the Engineer may determine the Contract Work is Substantially Complete. The Engineer will notify the Contractor in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established, the formula for liquidated damages shown above will not apply. For overruns in Contract time occurring after the Substantial Completion Date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work. The Contractor shall complete the remaining Work as promptly as possible. Upon request by the Project Engineer, the Contractor shall furnish a written schedule for completing the physical Work on the Contract.

SECTION 1-09 MEASUREMENT AND PAYMENT

1-09.9 Payments
(March 13, 2012 APWA GSP)

Delete the first four paragraphs and replace them with the following:

The basis of payment will be the actual quantities of Work performed according to the Contract and as specified for payment.

The Contractor shall submit a breakdown of the cost of lump sum bid items at the Preconstruction Conference, to enable the Project Engineer to determine the Work performed on a monthly basis. A

breakdown is not required for lump sum items that include a basis for incremental payments as part of the respective Specification. Absent a lump sum breakdown, the Project Engineer will make a determination based on information available. The Project Engineer's determination of the cost of work shall be final.

Progress payments for completed work and material on hand will be based upon progress estimates prepared by the Engineer. A progress estimate cutoff date will be established at the preconstruction conference.

The initial progress estimate will be made not later than 30 days after the Contractor commences the work, and successive progress estimates will be made every month thereafter until the Completion Date. Progress estimates made during progress of the work are tentative, and made only for the purpose of determining progress payments. The progress estimates are subject to change at any time prior to the calculation of the final payment.

The value of the progress estimate will be the sum of the following:

1. Unit Price Items in the Bid Form — the approximate quantity of acceptable units of work completed multiplied by the unit price.

2. Lump Sum Items in the Bid Form — based on the approved Contractor's lump sum breakdown for that item, or absent such a breakdown, based on the Engineer's determination.

3. Materials on Hand — 100 percent of invoiced cost of material delivered to Job site or other storage area approved by the Engineer.

4. Change Orders — entitlement for approved extra cost or completed extra work as determined by the Engineer.

Progress payments will be made in accordance with the progress estimate less:

1. Retainage per Section 1-09.9(1), on non FHWA-funded projects;

2. The amount of progress payments previously made; and

3. Funds withheld by the Contracting Agency for disbursement in accordance with the Contract Documents.

Progress payments for work performed shall not be evidence of acceptable performance or an admission by the Contracting Agency that any work has been satisfactorily completed. The determination of payments under the contract will be final in accordance with Section 1-05.1.

1-09.11(3) Time Limitation and Jurisdiction
(November 30, 2018 APWA GSP)

Revise this section to read*:*

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Contractor has against the Contracting Agency arising from the Contract shall be brought within 180 calendar days from the date of final acceptance (Section

1-05.12) of the Contract by the Contracting Agency; and it is further agreed that any such claims or causes of action shall be brought only in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Contractor asserts against the Contracting Agency arising from the Contract are filed with the Contracting Agency or initiated in court, the Contractor shall permit the Contracting Agency to have timely access to any records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

1-09.13 Claims Resolution

1-09.13(3) Claims $250,000 or Less
(October 1, 2005 APWA GSP)

Delete this Section and replace it with the following:

The Contractor and the Contracting Agency mutually agree that those claims that total $250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree in writing to resolve the claim through binding arbitration.

1-09.13(3)A Administration of Arbitration
(November 30, 2018 APWA GSP)

Revise the third paragraph to read:

The Contracting Agency and the Contractor mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of the county in which the Contracting Agency's headquarters is located, provided that where claims subject to arbitration are asserted against a county, RCW 36.01.050 shall control venue and jurisdiction of the Superior Court. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

1-10 TEMPORARY TRAFFIC CONTROL

1-10.2 Traffic Control Management
(January 3, 2017 WSDOT GSP)
Supplement this section with the following:

1-10.2(1) General

Only training with WSDOT TCS card and WSDOT training curriculum is recognized in the State of Washington. The Traffic Control Supervisor shall be certified by one of the following:

The Northwest Laborers-Employers Training Trust
27055 Ohio Ave.
Kingston, WA 98346
(360) 297-3035

Evergreen Safety Council
12545 135th Ave. NE
Kirkland, WA 98034-8709
1-800-521-0778

The American Traffic Safety Services Association
15 Riverside Parkway, Suite 100
Fredericksburg, Virginia 22406-1022
Training Dept. Toll Free (877) 642-4637
Phone: (540) 368-1701

1-10.2(2) Traffic Control Plans
(******)
Supplement this section with the following:

The Contractor shall submit a traffic control plan prior to commencing operations. The plan is to be used as a guide only and each roadway shall be reviewed for placement of applicable signs.

1-10.3, Traffic Control Labor, Procedures, and Devices

1-10.3(1), Traffic Control Labor
(******)
Supplement this section with the following:

Traffic control required for this contract shall include furnishing, installing and maintaining all Class A construction signs, Temporary Class B construction signs, and all associated flagging for Benton County roads.

1-10.4 Measurement

1-10.4(1) Lump Sum Bid for Project (No Unit Items)
(August 2, 2004, WSDOT GSP)
Supplement this section with the following:

The bid proposal contains the item "Project Temporary Traffic Control," lump sum. The provisions of Section 1-10.4(1) shall apply.

DIVISION 2

EARTHWORK

2-11 TRIMMING AND CLEANUP

2-11.3 Construction Requirements
(******)
This section is supplemented with the following:

7. The Contractor shall remove all sealant material that is applied as a part of this project which is splashed or tracked onto curbs, gutters, sidewalks, bridge rails, sign posts, or any other non-roadway surfaces. The contractor shall also be required to clean or replace pavement

striping that is damaged by tracking or placement of sealant material due to excessive material application, spills, insufficient cure times before opening to traffic, or any other contractor operations.

8. The Contractor shall remove all sealant material from all utility lids, survey monuments, monument cases and grates and shall ensure that access to private driveways and roads is maintained.

9. The Contractor shall remove all sealant containers and other debris generated by their operations and dispose of them properly.

2-11.4 Measurement
(******)
This Section is revised to read:

There will be no measurement for trimming and clean up.

2-11.5 Payment
(******)
This Section is revised to read:

There will be no separate payment for trimming and clean up. All costs associated with this work shall be included in the unit contract price for "Crack Sealing-Ton", per ton per section 5-04.4.

DIVISION 5

SURFACE TREATMENTS AND PAVEMENTS

5-04 HOT MIX ASPHALT

5-04.2 Materials
(******)
This section is supplemented with the following:
Joint Sealants 9-04.2

Hot Poured sealant for bituminous pavement shall meet the requirements of ASTM D6690 Type II.

5-04.3 Construction Requirements

5-04.3(4)A Crack Sealing

5-04.3(4)A1 General
(*****)
Revise the first paragraph to read:

When the Proposal includes a pay item for crack sealing, seal all cracks between ¼ inch and 1-½ inches in width, excepting areas where alligator cracking creates cells that are 4 inches across or less as marked by the engineer.

Supplement the second paragraph of this section with the following:

The Contractor shall remove all loose debris generated by cleaning or otherwise from the roadway before the sealing operation begins. The Contractor shall control their cleaning operation to ensure that debris from the crack being cleaned do not contaminate cracks already cleaned, contaminate cracks already sealed or cause damage to passing vehicles or surrounding property.

The Contractor shall arrange their cleaning and application operation such that cleaning of the cracks occurs immediately in front of the application of sealant. All cracks that are cleaned shall be sealed within one hour, except cracks cleaned by hot air blasting, which shall be sealed within ten (10) minutes of cleaning. Traffic shall not be permitted to cross over cracks that have been cleaned.

Revise the first sentence of the fourth paragraph to read:

Hot Poured Sealant: Cracks of the width and character described in paragraph one of this section shall be sealed using hot poured sealant material meeting the requirements of Section 9-04.2 (1) and the manufacturer's recommendations.

Supplement the fourth paragraph of this section with:

The Contractor shall provide equipment sized appropriately to maintain the sealant within the manufacturers recommended temperature range throughout the project. The equipment shall continuously agitate the sealant to ensure uniform temperature distribution.

Crack sealant shall not be applied when the road surface or crack is wet, precipitation is imminent or the road surface temperature is not at least 40°F and rising. Sealant shall be placed directly in the crack, starting at one end and proceeding in one continuous motion to the other end of the crack. Sealant shall be applied from the bottom of the crack to the top. Sealant shall be level with the existing pavement surface when complete. Overfilling of cracks shall be avoided. Excess sealant material shall be struck or squeegeed off to provide a smooth surface.

The Engineer will periodically check adhesion by pulling up cooled sealant. Unbonded sealant shall be removed and the crack shall be resealed.

The Contractor shall prevent traffic from crossing sealed cracks until the sealant material has cured. The contractor may apply a De-tack material compatible with the sealant in order to open roads to traffic sooner. De-tack materials shall be approved by the Engineer prior to use and applied per the manufacturer's instructions.

5-04.3(4)A3 Crack Sealing Areas Not to be Paved
(******)
Revise this section to read:

In areas where HMA will not be placed, fill the cracks as follows:

1. Cracks 1/4 inch to 1 1/2 inch in width – fill with hot poured sealant.

2. Cracks greater than 1 ½ inch in width – do not fill.

5-04.4 Measurement
(******)
Supplement this section with the following:

"Crack Sealing-Ton" will be measured by the ton.

5-04.5 Payment
(******)
Revise the tenth and eleventh paragraphs to read:

"Crack Sealing-Ton", by the ton
"Crack Sealing" will be paid for by the ton. Payment shall be full cost for the completed work including crack cleaning, crack sealing, striking off excess sealant and de-tack material. The quantities shown on the Bid Proposal are estimates and are for the purpose of providing a common proposal for all bidders. Actual quantities shall be determined in the field, by the Engineer, as the work progresses.

APPENDICES
(January 2, 2012 WSDOT GSP)

The following appendices are attached and made a part of this contract:

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APPENDIX A:
Required Contract Provisions – State Department of Labor and Industries – State Wage Rates

APPENDIX B:
List and Map of roads to be crack sealed.

The following are the Standard Plan numbers applicable at the time this project was advertised. The date shown with each plan number is the publication approval date shown in the lower right-hand corner of that plan. Standard Plans showing different dates shall not be used in this contract.

A-10.10-00.....8/7/07
A-10.20-00.....10/5/07
A-10.30-00.....10/5/07
A-20.10-00.....8/31/07
A-30.10-00.....11/8/07
A-30.30-01.....6/16/11
A-30.35-00.....10/12/07
A-40.00-00.....8/11/09
A-40.10-04.....7/31/19
A-40.15-00.....8/11/09
A-40.20-04.....1/18/17
A-40.50-02.....12/23/14
A-50.10-00…....11/17/08
A-50.20-01…....9/22/09
A-50.30-00…....11/17/08
A-50.40-00…....11/17/08
A-60.10-03.....12/23/14
A-60.20-03.....12/23/14
A-60.30-01.....6/28/18
A-60.40-00.....8/31/07

B-5.20-02.....1/26/17
B-5.40-02.....1/26/17
B-5.60-02.....1/26/17
B-10.20-02.....3/2/18
B-10.40-01.....1/26/17
B-10.70-00……1/26/17
B-15.20-01.....2/7/12
B-15.40-01.....2/7/12
B-15.60-02.....1/26/17
B-30.50-03.....2/27/18
B-30.70-04.....2/27/18
B-30.80-01.....2/27/18
B-30.90-02.....1/26/17
B-35.20-00.....6/8/06
B-35.40-00.....6/8/06
B-40.20-00.....6/1/06
B-40.40-02.....1/26/17
B-45.20-01.....7/11/17
B-75.20-02.....2/27/18
B-75.50-01.....6/10/08
B-75.60-00.....6/8/06
B-80.20-00.....6/8/06
B-80.40-00.....6/1/06
B-85.10-01.....6/10/08
B-85.20-00.....6/1/06
B-85.30-00.....6/1/06
B-85.40-00.....6/8/06

B-20.20-02.....3/16/12
B-20.40-04.....2/27/18
B-20.60-03.....3/15/12
B-25.20-02.....2/27/18
B-25.60-02.....2/27/18
B-30.10-03.....2/27/18
B-30.15-00……..2/27/18
B-30.20-04.....2/27/18
B-30.30-03.....2/27/18
B-30.40-03.....2/27/18
B-45.40-01.....7/21/17
B-50.20-00.....6/1/06
B-55.20-02.....2/27/18
B-60.20-01.....6/28/18
B-60.40-01.....2/27/18
B-65.20-01.....4/26/12
B-65.40-00.....6/1/06
B-70.20-00.....6/1/06
B-70.60-01.....1/26/17
B-85.50-01.....6/10/08
B-90.10-00…….6/8/06
B-90.20-00.....6/8/06
B-90.30-00.....6/8/06
B-90.40-01.....1/26/17
B-90.50-00.....6/8/06
B-95.20-01.....2/3/09
B-95.40-01.....6/28/18

C-1.....6/28/18
C-1a.....7/14/15
C-1b.....7/14/15
C-1d.....10/31/03
C-2c.....6/21/06
C-4f.....7/2/12
C-6a.....10/14/09
C-7.....6/16/11
C-7a.....6/16/11
C-8.....2/10/09
C-8a.....7/25/97
C-8b.....2/29/16
C-8e.....2/21/07
C-8f.....6/30/04
C-16a.....7/21/17
C-20.10-04.....7/21/17
C-20.11-00……..7/21/17
C-20.14-03.....6/11/14
C-20.15-02.....6/11/14
C-20.18-02.....6/11/14
C-20.19-02.....6/11/14
C-20.40-06.....7/21/17
C-20.41-01.....7/14/15
C-20.42-05.....7/14/15
C-20.45.01.....7/2/12
C-22.16-06.....7/21/17
C-22.40-06.....7/21/17
C-22.45-03.....7/21/17
C-23.60-04.....7/21/17
C.24.10-01.....6/11/14
C-25.20-06.....7/14/15
C-25.22-05.....7/14/15
C-25.26-03.....7/14/15
C-25.30-00…….6/28/18
C-25.80-04.....7/15/16
C-40.16-02.....7/2/12
C-40.18-03.....7/21/17
C-60.10-00…….8/22/19
C-70.10-01.....6/17/14
C-75.10-01.....6/11/14
C-75.20-01.....6/11/14
C-75.30-01.....6/11/14
C-80.10-01.....6/11/14
C-80.20-01.....6/11/14
C-80.30-01.....6/11/14
C-80.40-01.....6/11/14
C-80.50-00.....4/8/12
C-85.10-00.....4/8/12
C-85.11-00.....4/8/12
C-85.14-01.....6/11/14
C-85.15-01.....6/30/14
C-85.16-01.....6/17/14
C-85-18-01.....6/11/14
C-85.20-01.....6/11/14

D-2.04-00.....11/10/05
D-2.06-01.....1/6/09
D-2.08-00.....11/10/05
D-2.14-00.....11/10/05
D-2.16-00.....11/10/05
D-2.18-00.....11/10/05
D-2.20-00.....11/10/05
D-2.32-00.....11/10/05
D-2.34-01.....1/6/09
D-2.36-03.....6/11/14
D-2.42-00.....11/10/05
D-2.44-00.....11/10/05
D-2.60-00.....11/10/05
D-2.62-00.....11/10/05
D-2.46-01.....6/11/14
D-2.48-00.....11/10/05
D-2.64-01.....1/6/09
D-2.66-00.....11/10/05
D-2.68-00.....11/10/05
D-2.80-00.....11/10/05
D-2.82-00.....11/10/05
D-2.84-00.....11/10/05
D-2.86-00.....11/10/05
D-2.88-00.....11/10/05
D-2.92-00.....11/10/05
D-3.09-00.....5/17/12
D-3.10-01…….5/29/13
D-3.11-03…….6/11/14
D-3.15-02…….6/10/13
D-3.16-02…….5/29/13
D-3.17-02…….5/9/16
D-4.....12/11/98
D-6.....6/19/98
D-10.10-01.....12/2/08
D-10.15-01.....12/2/08
D-10.20-01.....8/7/19
D-10.25-01.....8/7/19
D-10.30-00.....7/8/08
D-10.35-00.....7/8/08
D-10.40-01.....12/2/08
D-10.45-01.....12/2/08

E-1.....2/21/07
E-2.....5/29/98
E-4.....8/27/03
E-4a.....8/27/03

F-10.12-03.....6/11/14
F-10.16-00.....12/20/06
F-10.62-02.....4/22/14
F-10.64-03.....4/22/14
F-40.15-03.....6/29/16
F-40.16-03.....6/29/16

F-10.18-01.....7/11/17
F-10.40-03.....6/29/16
F-10.42-00.....1/23/07

F-30.10-03.....6/11/14
F-40.12-03.....6/29/16
F-40.14-03.....6/29/16

F-45.10-02.....7/15/16
F-80.10-04.....7/15/16

G-10.10-00.....9/20/07
G-20.10-02.....6/23/15
G-22.10-04.....6/28/18
G-24.10-00.....11/8/07
G-24.20-01.....2/7/12
G-24.30-02.....6/28/18
G-24.40-07.....6/28/18
G-24.50-05.....8/7/19
G-24.60-05.....6/28/18

G-25.10-04.....6/10/13
G-26.10-00……7/31/19
G-30.10-04.....6/23/15
G-50.10-03.....6/28/18
G-90.10-03……7/11/17
G-90.11-00……4/28/16
G-90.20-05……7/11/17
G-90.30-04……7/11/17
G-90.40-02……4/28/16

G-95.10-02.....6/28/18
G-95.20-03.....6/28/18
G-95.30-03.....6/28/18

H-10.10-00.....7/3/08
H-10.15-00.....7/3/08
H-30.10-00.....10/12/07

H-32.10-00.....9/20/07
H-60.10-01.....7/3/08
H-60.20-01.....7/3/08

H-70.10-01.....2/7/12
H-70.20-01.....2/16/12
H-70.30-02.....2/7/12

I-10.10-01.....8/11/09
I-30.10-02.....3/22/13
I-30.15-02.....3/22/13
I-30.16-01.....7/11/19
I-30.17-01.....6/12/19

I-30.20-00.....9/20/07
I-30.30-02.....6/12/19
I-30.40-02.....6/12/19
I-30.60-02.....6/12/19
I-40.10-00.....9/20/07

I-40.20-00.....9/20/07
I-50.20-01.....6/10/13
I-60.10-01.....6/10/13
I-60.20-01.....6/10/13
I-80.10-02.....7/15/16

J-10.....7/18/97
J-10.10-03……6/3/15
J-10.15-01.....6/11/14
J-10.16-00……6/3/15
J-10.17-00……6/3/15
J-10.18-00……6/3/15
J-10.20-02……7/31/19
J-10.21-00……6/3/15
J-10.22-00.....5/29/13
J-10.25-00……7/11/17
J-12.15-00……6/28/18
J-12.16-00……6/28/18
J-15.10-01.....6/11/14
J-15.15-02……7/10/15
J-20.10-04.....7/31/19
J-20.11-03.....7/31/19
J-20.15-03.....6/30/14
J-20.16-02.....6/30/14
J-20.20-02.....5/20/13
J-20.26-01.....7/12/12
J-21.10-04.....6/30/14
J-21.15-01.....6/10/13
J-21.16-01.....6/10/13
J-21.17-01.....6/10/13
J-21.20-01.....6/10/13

J-28.40-02.....6/11/14
J-28.42-01.....6/11/14
J-28.43-01.....6/28/18
J-28.45-03.....7/21/16
J-28.50-03.....7/21/16
J-28.60-02.....7/21/16
J-28.70-03.....7/21/17
J-29.10-01.....7/21/16
J-29.15-01.....7/21/16
J-29.16-02.....7/21/16
J-30.10-00……6/18/15
J-40.05-00……7/21/16
J-40.10-04……4/28/16
J-40.20-03……4/28/16
J-40.30-04……4/28/16
J-40.35-01……5/29/13
J-40.36-02……7/21/17
J-40.37-02……7/21/17
J-40.38-01.....5/20/13
J-40.39-00……5/20/13
J-40.40-02……7/31/19
J-45.36-00……7/21/17
J-50.05-00……7/21/17
J-50.10-01…….7/31/19
J-50.11-02…….7/31/19

J-60.13-00…….....6/16/10
J-60.14-01……...7/31/19
J-75.10-02……...7/10/15
J-75.20-01……7/10/15
J-75.30-02……...7/10/15
J-75.40-02……6/1/16
J-75.41-01……6/29/16
J-75.45-02……6/1/16
J-80.10-00……6/28/18
J-80.15-00……6/28/18
J-81.10-00……6/28/18
J-86.10-00……6/28/18
J-90.10-03…….6/28/18
J-90.20-03…….6/28/18
J-90.21-02……6/28/18
J-90.50-00……6/28/18

J-22.15-02.....7/10/15
J-22.16-03.....7/10/15
J-26.10-03…..7/21/16
J-26.15-01…..5/17/12
J-26.20-01…..6/28/18
J-27.10-01…..7/21/16
J-27.15-00…..3/15/12
J-28.10-02.....8/7/19
J-28.22-00.....8/07/07
J-28.24-01.....6/3/15
J-28.26-01.....12/02/08
J-28.30-03.....6/11/14
J-50.12-02…….8/7/19
J-50.13-00…….8/22/19
J-50.15-01…….7/21/17
J-50.16-01…….3/22/13
J-50.18-00…….8/7/19
J-50.19-00…….8/7/19
J-50.20-00…….6/3/11
J-50.25-00…….6/3/11
J-50.30-00…….6/3/11
J-60.05-01…….7/21/16
J-60.11-00…....5/20/13
J-60.12-00…....5/20/13

K-70.20-01.....6/1/16
K-80.10-01.....6/1/16
K-80.20-00.....12/20/06
K-80.35-00.....2/21/07
K-80.37-00.....2/21/07

L-10.10-02.....6/21/12
L-20.10-03.....7/14/15
L-30.10-02.....6/11/14
L-40.10-02.....6/21/12
L-40.15-01.....6/16/11
L-40.20-02.....6/21/12
L-70.10-01.....5/21/08
L-70.20-01.....5/21/08

M-1.20-03.....6/24/14
M-1.40-02.....6/3/11
M-1.60-02.....6/3/11
M-1.80-03.....6/3/11
M-2.20-03.....7/10/15
M-2.21-00……7/10/15
M-3.10-03.....6/3/11
M-3.20-02.....6/3/11
M-3.30-03.....6/3/11
M-3.40-03.....6/3/11
M-3.50-02.....6/3/11
M-5.10-02.....6/3/11
M-7.50-01.....1/30/07
M-9.50-02.....6/24/14
M-9.60-00……..2/10/09
M-11.10-03.....8/7/19
M-12.10-01……6/28/18
M-15.10-01.....2/6/07
M-17.10-02.....7/3/08
M-20.10-02.....6/3/11
M-20.20-02.....4/20/15
M-20.30-04.....2/29/16
M-20.40-03.....6/24/14
M-20.50-02.....6/3/11
M-24.20-02.....4/20/15
M-24.40-02.....4/20/15
M-24.60-04.....6/24/14
M-24.65-00……7/11/17
M-24.66-00……7/11/17
M-40.10-03.....6/24/14
M-40.20-00...10/12/07
M-40.30-01.....7/11/17
M-40.40-00.....9/20/07
M-40.50-00.....9/20/07
M-40.60-00.....9/20/07
M-60.10-01.....6/3/11
M-60.20-02.....6/27/11
M-65.10-02.....5/11/11
M-80.10-01.....6/3/11
M-80.20-00.....6/10/08
M-80.30-00.....6/10/08

WAGE RATES

APPENDIX A:

STATE WAGE RATES

For Construction of:

2021 Crack Seal Project
BST Area 6

CE 2122 SMP

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-10

APPENDIX A

REQUIRED CONTRACT PROVISIONS - STATE DEPARTMENT OF LABOR AND INDUSTRIES

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

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

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

> The Department of Labor & Industries prevailing wage rate website is http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm
>
> The effective date to use is August 26, 2021.
>
> The public works project is located in Benton County.

A copy of the prevailing wage rates, the benefit code key and the supplement are available for viewing at the Public Services Building, 102206 Wiser Parkway, Kennewick, WA 99338, Monday through Friday, between 8:00 a.m. & noon and between 1:00 p.m. & 5:00 p.m. except holidays.

The Public Works Department will mail a hard copy of the wage rates upon request. We can be reached at (509)786-5611 or (509)736-3084 or by email at publicworks@co.benton.wa.us

CRACK SEAL ROADS

APPENDIX B:

LIST AND MAP OF ROADS TO BE CRACK SEALED

For Construction of:

2021 Crack Seal Project
BST Area 6

CE 2122 SMP

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-10

APPENDIX B
CRACK SEAL 2021 - ROAD LIST

Road Log	Road Name	BMP	EMP
48590	MILLS RD	1.2110	1.2300
48850	UPPER BLAIR RD	0.8350	0.9300
48870	LOWER BLAIR RD	1.2120	1.2340
48900	COUGAR RD	0.0000	0.1720
48910	NINE CANYON RD	2.29	13.0160
49550	FINLEY RD	0.0000	0.0970
49550	FINLEY RD	7.2430	15.4320
49770	MEALS RD	2.3160	10.0530
71400	36TH AVE, E	0.0000	0.2910
71400	36TH AVE, E	0.7630	0.9920
71500	JUNIPER ST S	0.0000	0.1390
71990	45TH AVE, E	0.0000	0.2970
72020	44TH AVE, E	0.0000	0.0360
72030	GUM ST S	0.0000	1.5940
72050	ELM ST S	0.0000	0.0600
72060	ELM PL S	0.0000	0.0680
72090	FIR ST S	0.0000	0.0600
72150	CEDAR ST S	0.0000	0.9780
72630	BEECH ST S	0.0000	0.1070
72820	47TH AVE E	0.0000	0.2610
74000	19TH AVE E	0.0000	0.9800
74370	KINGWOOD ST	0.0000	0.4100
74610	HAWTHORNE ST S	0.0000	0.9920
74670	MYRTLE ST S	0.0000	0.2520
74670	MYRTLE ST S	0.2520	0.3760
74800	23RD AVE E	0.0820	0.9800
74850	REDWOOD ST S	0.0000	0.2090
74860	30TH AVE E	0.0000	0.3240
74870	SPRUCE ST S	0.0000	0.4790
74880	15TH AVE E	0.0000	0.4550
74890	VERBENA ST S	0.0000	0.5630
74890	VERBENA ST S	2.0740	2.2720
74910	15TH PL E	0.0000	0.1900
74960	14TH AVE E	0.0000	0.1780
75000	13TH AVE E	0.2540	0.3810
75000	13TH AVE E	2.1550	2.2820
75100	YEW ST S	0.0000	1.0010
75100	YEW ST S	1.5910	2.4310
75300	GAME FARM RD	0.0000	1.5990
75300	GAME FARM RD	2.6020	3.7200
75300	GAME FARM RD	3.8980	4.5780
75590	CARLSON RD	0.0000	0.4150
75650	DAGUE RD	0.0000	0.7570

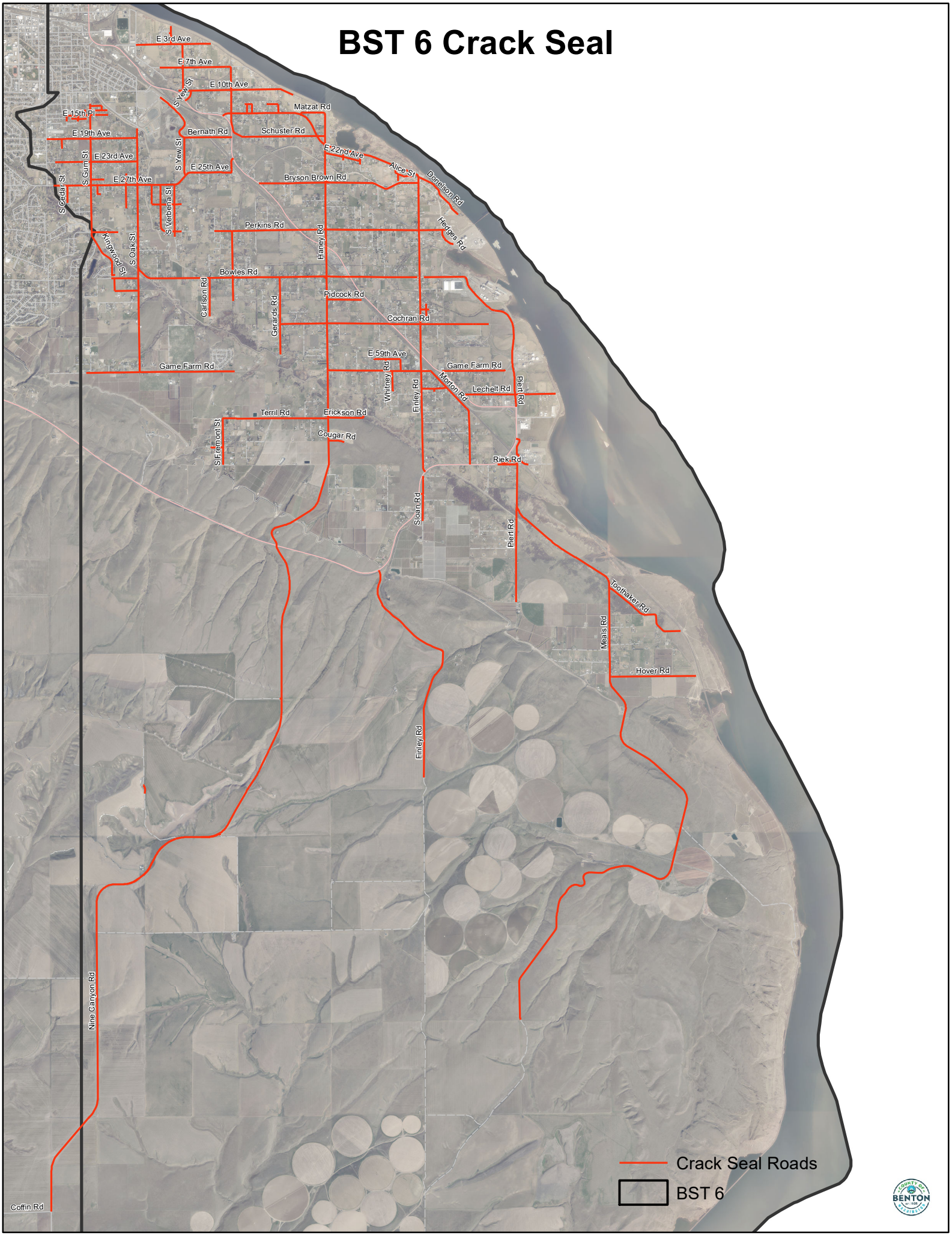
APPENDIX B
CRACK SEAL 2021 - ROAD LIST

Road Log	Road Name	BMP	EMP
75720	PERKINS RD	0.0000	2.4870
75730	HEDGES RD	0.0000	0.2170
75750	26TH AVE SE	0.0000	0.1060
75800	27TH AVE E	0.0000	1.3500
75810	25TH AVE E	0.0000	0.8050
76100	BERNATH RD	0.0000	0.5170
76130	OAK ST S	0.0000	2.6350
76300	SCHUSTER RD	0.0000	1.2120
76310	HAVANA ST S	0.0000	0.5050
76320	07TH AVE E	0.0000	0.7740
76400	HANEY RD	0.0000	2.7760
76410	MATZAT RD	0.0000	0.2750
76420	HANEY Y - BOWLES	0.0000	0.0440
76430	HANEY Y - BRYSON BROWN	0.0000	0.0500
76500	10TH AVE E	0.0000	1.1180
76900	03RD AVE E	0.0000	0.8100
76920	01ST AVE E	0.0000	0.0220
76940	02ND AVE E	0.0000	0.0220
77110	HOVER RD	0.0000	0.9000
77130	TOOTHAKER RD	0.0000	1.0050
77210	PIERT RD	0.0000	1.6960
77210	PIERT RD	2.3430	4.0210
77220	PIERT Y - MEALS	0.0000	0.0200
77280	RIEK RD	0.0000	0.1820
77290	STRAIGHTBANK RD	0.0000	0.3800
77330	SLOAN RD	0.0360	0.1630
77410	MORTON RD	0.0000	1.1740
77480	MAIN ST	0.0000	0.2760
77490	LINCOLN ST	0.0000	0.0350
77510	WHITNEY RD	0.0000	0.2270
77600	TERRIL RD	0.0000	1.1450
77610	FREMONT ST S	0.0000	0.5100
77620	73RD AVE E	0.0000	0.1360
77680	ERICKSON RD	0.0000	0.4230
77760	LECHELT RD	0.0000	0.9790
77900	59TH AVE E	0.0000	0.2830
77910	LEMON DR	0.0000	0.1280
77950	DUNHAM RD	0.0000	0.1280
78050	GERARDS RD	0.0000	0.8460
78100	COCHRAN RD	0.0000	2.5270
78180	PIDCOCK RD	0.0000	0.3780
78200	50TH PL E	0.0000	0.0990
78210	QUINN ST	0.0000	0.1650

APPENDIX B
CRACK SEAL 2021 - ROAD LIST

Road Log	Road Name	BMP	EMP
78230	KEYSTONE ST S	0.0000	0.1010
78240	14TH PL E	0.0000	0.1080
78250	LEXINGTON ST S	0.0000	0.1130
78260	BOWLES RD	0.0000	3.6020
78270	PULLMAN ST	0.0000	0.0970
78280	BOWLES Y - OAK	0.0000	0.0280
78500	BRYSON BROWN RD	0.0000	1.7590
78600	22ND AVE E	0.0000	0.3910
78610	LOCUST LN	0.0000	0.1190
78650	DONELSON RD	0.0000	0.6140
78690	KIRBY RD	0.0000	0.1100
78690	KIRBY RD	0.1100	0.1180
78710	STEVENS DR	0.0900	0.2020
78720	ALICE ST	0.0000	0.1130
78730	SHORT AVE	0.0000	0.0800
78770	GERTRUDE ST	0.0000	0.0730

BST 6 Crack Seal



PROPOSAL
FOR BIDDING PURPOSES

For Construction of:

2021 Crack Seal Project
BST Area 6

CE 2122 SMP

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-10

P R O P O S A L

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned, (insert name of company) _____ hereby certifies that they have examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

CE 2122 SMP – 2021 CRACK SEAL PROJECT

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

ITEM NO.	QTY.	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts.	Dollars	Cts.
1	123	TONS	CRACK SEALING - TON				
2	1	L.S.	PROJECT TEMPORARY TRAFFIC CONTROL				
3	1	L.S.	SPCC PLAN				
	TOTAL						

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

Cashier's Check	_____	In the Amount of _____
Certified Check	_____	($_____) Payable to the County Treasurer of Benton County, Washington.
Proposal Bond	_____	In the amount of 5% of the Bid.

Receipt is hereby acknowledged of Addendum No(s). _____, _____, & _____.

PUBLIC WORKS TRAINING

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

CONTRACTOR'S REGISTRATION NO. _____

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. _____

FIRM NAME: _____

_____ _____
SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

_____ _____
SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

PROPOSAL MUST BE SIGNED

DATED this _____ day of _____, 20_____.

ADDRESS OF BIDDER: _____

PRINCIPAL PLACE OF BUSINESS: _____

TELEPHONE NO.: (____)_____ EMAIL:_____

NOTE: (1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.

(2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we, _____

_____ of _____

as principal, and the _____, a corporation

duly organized under the laws of the State of _____, and authorized

to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

CE 2122 SMP – 2021 CRACK SEAL PROJECT

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of **ten (10) days** from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be

signed and sealed this _____ day of _____, _____.

_____
(Principal)

_____
(Surety)

_____
(Attorney-in-fact)

COUNTY OF BENTON WASHINGTON

Proposal for Incorporating Recycled Materials into the Project

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials. Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E. Table on Maximum Allowable Percent (By weight) of Recycled Material, of the Standard Specifications.

Proposed total percentage: _____percent.

Note: Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tiebreaker, per the APWA GSP in Section 1-03.1 of the Special Provisions. Regardless, the Bidders stated proposed percentages will become a goal the Contractor should do its best to accomplish. Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06.6 of the Special Provisions.

Bidder: _____

Signature: _____

Date: _____

This form must be submitted with the Bid Proposal or as a Supplement to the Bid no later than 24 hours after the time for delivery of the Bid Proposal, as provided for in Section 1-02.9 of the Contract Provisions.

Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date, August 26th, 2021, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

_____
Bidder's Business Name

_____
Signature of Authorized Official*

_____
Printed Name

_____
Title

_____ _____ _____
Date City (where signed) State

Check One:
Sole Proprietorship ☐ Partnership ☐ Joint Venture ☐ Corporation ☐

State of Incorporation, or if not a corporation, State where business entity was formed:

_____

If a co-partnership, give firm name under which business is transacted:

_____

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

CONTRACT

INFORMATION FOR THE CONTRACTOR THAT IS AWARDED THE CONTRACT

For Construction of:

2021 Crack Seal Project
BST Area 6

CE 2122 SMP

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-10

CONTRACT

THIS CONTRACT, made and entered into this _____ day of _____, **YEAR**, between the COUNTY OF BENTON, STATE OF WASHINGTON, (hereinafter "the County") acting through the Board of County Commissioners, under and by virtue of RCW 36, as amended, and _____, (hereinafter "the Contractor").

WITNESSETH:

That in consideration of the terms and conditions contained herein and in the Contract Documents attached hereto and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall furnish all tools, materials, and equipment, and shall do all work described in and in accordance with the attached plans and specifications entitled "**Contract Provisions and Plans, CE XXXX SMP – PROJECT NAME**," and as described in and in accordance with the State of Washington **YEAR** Standard Specifications for Road, Bridge, and Municipal Construction adopted by the County, (hereinafter collectively referred to as "the Contract Documents") which are by this reference incorporated herein and made part hereof, and shall perform any changes to the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by the County.

II. The County hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached plans and specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices at the time and in the manner and upon the conditions provided for in this contract. The County further agrees to employ the Contractor to perform any alterations in or additions to the work covered by this contract and every part thereof and any force account work that may be ordered and to pay for the same under the terms of this contract and the attached plans and specifications.

III. The Contractor, for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

IV. The County agrees to pay to the Contractor, as full and complete compensation for materials and work provided in accordance with the Contract Documents, the sum of $_____, payable as provided in the Contract Documents.

V. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

VI. The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorney fees thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractors acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees, or agents.

Informational Copy

VII. The Contractor specifically waives the Contractor's immunity under Title 51 RCW (Industrial Insurance statute), and acknowledges that his waiver of immunity was mutually and expressly negotiated by the parties, and expressly agrees that Contractor's promise to indemnify and hold harmless applies to all claims filed by and/or injuries to the Contractor's own employees.

IN WITNESS WHEREOF, the said Contractor has executed this instrument, and the Board of County Commissioners of Benton County, Washington has caused this instrument to be executed by and in the name of the said Board of County Commissioners the day and year first above written.

Executed by the Contractor:

_____
Signature

_____
Title

_____
Date

COUNTY OF BENTON

_____
Chairman, Board of Commissioners

Attest:_____
Clerk of the Board

_____
Date

APPROVED AS TO FORM:

_____
Reid Hay
Benton County Deputy Prosecuting Attorney

_____
Date

Informational Copy

PUBLIC WORKS PERFORMANCE BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to _____ (Principal), a contract for the construction of the project designated as **2021 Crack Seal BST Area 6, Project No.: CE 2122 SMP,** in Benton County, Washington (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL	SURETY
_____	_____
Principal Signature Date	Surety Signature Date
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title

Name, address, and telephone of local office/agent of Surety Company is:

Informational Copy

PUBLIC WORKS PAYMENT BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to _____ (Principal), a contract for the construction of the project designated as **2021 Crack Seal BST Area 6, Project No.: CE 2122 SMP,** in Benton County, Washington (Contract), and said Principal is required, under the terms of that Contract, to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL		SURETY	
_____		_____	
Principal Signature	Date	Surety Signature	Date
_____		_____	
Printed Name		Printed Name	
_____		_____	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:

Informational Copy

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Purchase Agreement between Benton County and Compunet, Inc. utilizing Region 14 Education Service Center, TX Contract No. 01-107
Presenter:	
Prepared By:	Paul Schut
Reviewed By:	Robert Blain & Robert Heard

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 2021-296, Benton County entered into an agreement with the National Cooperative Purchasing Alliance (NCPA) to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise.

The Region 14 Education Service Center is also a member of NCPA and issued RFP #29-20 for Audio/Visual Products and Services to establish a national cooperative contract for said services as per Contract No. 01-107, for a term commencing December 8, 2020, and terminating December 31, 2023.

The Benton County IT Department wishes to utilize Contract No. 01-107 for the purchase of additional backup storage space as further outlined in the attached Purchase Agreement between Benton County and Compunet, Inc. and the documents attached thereto, for a contract amount not to exceed $141,916.93 including WSST.

Fiscal Impact

Amount: $141,916.93 including WSST

Fund: Fund # 0132-101– Central Services Replacement Fund

Recommendation

Approve the attached Resolution and Purchase Agreement between Benton County and Compunet, Inc. and authorize the Chairman of the Board to sign said agreement.

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 PURCHASE OF ADDITIONAL BACKUP STORAGE SPACE FROM COMPUNET, INC. UTILIZING THE NATIONAL COOPERATIVE PURCHASING ALLIANCE AND REGION 14 EDUCATION SERVICE CENTER, TX CONTRACT NO. 01-107

WHEREAS, per Resolution 2021-296, Benton County entered into an agreement with the National Cooperative Purchasing Alliance (NCPA) 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, Region 14 Education Service Center, TX is also a member with NCPA and issued RFP No. 29-20 for Audio/Visual Products and Services on October 6, 2020, to establish a national cooperative contract for said supplies and services; and

WHEREAS, proposals were received and evaluated and Region 14 Education Service Center, NCPA, and Compunet, Inc. successfully negotiated Contract No. 01-107 for a term commencing December 8, 2020, and expiring December 31, 2023; and

WHEREAS, the Benton County IT Department wishes to utilize Contract No. 01-107 for the purchase of additional backup storage space, as further outlined in the attached Purchase Agreement between Benton County and Compunet, Inc., and documents attached thereto, for an overall contract amount not to exceed $141,916.93 including WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the attached Purchase Agreement between Benton County and Compunet, Inc., utilizing the NCPA and Region 14 Education Service Center Contract No. 01-107 for the purchase of additional backup storage space, with an amount not to exceed $141,916.93 including WSST; and

BE IT FURTHER RESOLVED, the attached Purchase Agreement shall commence upon signature of both parties and shall terminate December 31, 2023; and

BE IT FURTHER RESOLVED, the Chairman of the Board is hereby authorized to sign the attached Purchase Agreement between Benton County and Compunet, Inc.

Dated this _____ day of _____, 2021.

_____
Chairman of the Board

_____
Member

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: Purchasing Dept.
Cc: Auditors, PA, Compunet, Inc. P. Schut

PURCHASE AGREEMENT
Benton County, Washington

Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350

RESOLUTION No: _____

Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.

Vendor: Compunet, Inc.
Vendor Code:
Vendor Contact: Jamie Kelly - jkelly@compunet.biz
Vendor Contact Phone: 208-559-2783
Vendor Principal Place of Business: 1111 S Silverstone Way; STE 200, Meridian, ID 83642

Ship To:
Benton County IT Department

Bill To:
Benton County IT Department

AGREEMENT:
The Vendor agrees to make available the goods provided in Exhibit A to Benton County under the terms described herein.

Line	Description	Qty	Amount:
	The Vendor agrees to make available the goods provided in Exhibit A and listed down below to Benton County		
EX52-SEC	Disk Capacity: Raw: 128 TB, Useable: 104 TB. 52 TB Full Backup. Includes 1 10 Gigabit Add on Card Disks are encrypted.	1	58,750.00
EX27-SEC	Disk Capacity: Raw: 72 TB, Useable: 54 TB. 27 TB Full Backup. Disks are encrypted.	1	32,967.86
EX-10GBE-TWINAX	10 Gigabit Ethernet Dual Port SFP+ TWINAX Option for all ExaGrid models. Does not include twin axial cable.	1	-
EX-10GBE-TWINAX	10 Gigabit Ethernet Dual Port SFP+ TWINAX Option for all ExaGrid models. Does not include twin axial cable.	1	961.90
EX-3YR-MS-S	Three year 5 x 8 Customer Support and product Maintenance	1	37,998.81
		Subtotal:	**130,678.57**
		Sales Tax (8.6%):	**11,238.36**
		Total:	**$ 141,916.93**
	Vendor agrees to provide all items and name brands in accordance with the attached Region 14 Education Service Center Contract No. 01-107 and further outlined in Attachment B of said Contract as currently in effect, or hereafter amended.		
	The attached Contract includes following categories as futher outlined in Attachment B:		
	1) Audio/Visual Products & Services		

The term of this Agreement shall commence upon signature of both parties and shall expire 12/31/2023.

This purchase agreement incorporates by reference all terms and conditions issued off the Region 14 Edcucation Center Cooperative Contract 01-107 (copy attached hereto as Master Contract) as well as the Price Worksheet (attached as Exhibit A); as a registered member of the National Cooperative Purchasing Alliance.

Vendor signature on this Purchase Agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms and/or previous contracts.

In case of conflict, the order of precedence is:
1. Region 14 Education Service Center Contract No. 01-107
2. This Purchase Agreement

Questions and Clarifications should be Addressed to Buyer Contact:

Contact: Paul Schut
Address: 7122 W. Okanogan Pl, Bldg. A
Kennewick, WA 99336
Phone: 509-737-3943
Email: Paul.schut@co.benton.wa.us

Approved as to Form
(Deputy Prosecutor): _____
Eric Andrews, Civil DPA

By signing in the space provided, the parties hereby acknowledge the following:

1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
2) The person executing this Agreement is authorized to do so by his/her party;
3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreement(s) for all purposes.

Vendor Name (Print): Thomas McFarlin Title: VP of Operations Date: 7/28/2021

Vendor Signature: Thomas McFarlin

Chairman
Benton County
Board of Commissioners: _____ Date: _____
Jerome Delvin, Chairman

CompuNet, Inc.

Exagrid EX52 and EX27 - Expires Sept 30, 2021

Contract Information:
All, NCPA, 01-107

Bill To:

Benton County

P.O. Box 608
Prosser, WA 99350

Ship To:

Benton County

620 Market Street
Prosser, WA 99350

Quote Information:

Quote #: MF170286

Version: 1
Delivery Date: 07/15/2021
Expiration Date: 08/14/2021

Prepared by:

Mark Friedman
509-795-8276
mfriedman@compunet.biz

Prepared for:

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

Exagrid

Description		List Price	Price	Qty	Ext. Price
EX52-SEC	Disk Capacity: Raw: 128 TB, Useable: 104 TB. 52 TB Full Backup. Includes 1 10 Gigabit Add on Card Disks are encrypted.	$97,724.00	$58,750.00	1	$58,750.00
EX27-SEC	Disk Capacity: Raw: 72 TB, Useable: 54 TB. 27 TB Full Backup. Disks are encrypted.	$54,837.00	$32,967.86	1	$32,967.86
EX-10GBE-TWINAX	10 Gigabit Ethernet Dual Port SFP+ TWINAX Option for all ExaGrid models. Does not include twin axial cable.	$1,600.00	$0.00	1	$0.00
EX-10GBE-TWINAX	10 Gigabit Ethernet Dual Port SFP+ TWINAX Option for all ExaGrid models. Does not include twin axial cable.	$1,600.00	$961.90	1	$961.90
EX-3YR-MS-S	Three year 5 x 8 Customer Support and product Maintenance	$63,862.00	$37,998.81	1	$37,998.81

Subtotal: **$130,678.57**

Shipping

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

Quote Summary

Description	Amount
Exagrid	$130,678.57
Subtotal:	**$130,678.57**
Estimated Tax:	**$11,238.36**
Total:	**$141,916.93**

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel any order arising from pricing or other errors. If Customer is purchasing a subscription-based product, Customer agrees to pay all charges for the complete term of the subscription. By signing below or issuing a Purchase Order, Customer agrees to CompuNet's standard terms and conditions, which can be reviewed here. Your electronic signature, per the Electronic Signature Act, is considered equivalent to your signed and faxed signature, and allows you to accept and place your order. A copy of this acceptance and the attached proposal document will be sent to your email address to complete your order acceptance. You are NOT required to electronically sign your order, you may fax or email your signed proposal to your Account Executive.

Benton County

Signature: _____

Name: _____

Date: _____

PO Number: _____

CompuNet, Inc.

Competitive Solicitation by Region 14 Education Service Center
For
Audio/Visual Products and Services
On behalf of itself and other Government Agencies And made available through the
National Cooperative Purchasing Alliance RFP #29-20

National Cooperative Purchasing Alliance

Thursday, November 19th, 2020 2:00 CST

CompuNet, Inc.
Corporate Headquarters | 2264 S. Bonito Way, Suite 150 | Meridian, ID 83642 | Toll Free: (877) 822-2841, Phone: (208) 286-3000 | Fax: (208) 286-3002
http://www.compunet.biz

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  - Clean Air and Water Act / Debarment Notice
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November 19, 2020

Region 14 ESC
1850 Highway 351
Abilene, Texas 79601

Re: **RFP #29-20 Audio/Visual Products and Services**

NCPA:

It is a pleasure to introduce **CompuNet, Inc.** an engineering led national information technology (IT) solution provider that offers consulting, design and implementation services built on-premise or in the cloud. Our solutions include Managed Cloud Carrier Co-Location, Modern Infrastructure, Collaboration, Enterprise Networking, Information Security, Physical Security, Integrated Media Solutions, and Modern Applications.

Our approach is to understand our clients' business needs, engineer IT solutions that solve those needs, and deploy those solutions on time and on budget. In other words, we create technology solutions that solve business problems. As a full solution provider, we are strategically partnered with best-in-class technology manufacturers to provide a solution set that offers the breadth our customers demand.

CompuNet appreciates the opportunity to respond to your RFP. We've sold multiple different software and hardware solutions to various State, Local and Education agencies throughout the terms of our current NCPA 01-62 contract and are proposing products and services solution providers which meet the requirements of this RFP. We've also enhanced and added value by offering additional products and services which are defined in this response.

Please contact us should have you have any questions or need further clarification.

Sincerely,

Thomas McFarlin, Vice President of Operations
Email: tmcfarlin@compunet.biz; Phone: (208) 286-3032

TAB 1 –

- **MASTER AGREEMENT GENERAL TERMS AND CONDITIONS**
- **SIGNATURE FORM**

- Customer Support
  - The vendor shall provide timely and accurate technical advice and sales support. The vendor shall respond to such requests within one (1) working day after receipt of the request.

- Disclosures
  - Respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
  - The respondent affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

- Renewal of Contract
  - Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew for up to two (2) additional one-year terms or any combination of time equally not more than 2 years if agreed to by Region 14 ESC and the vendor.

- Funding Out Clause
  - Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:
  - Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.

- Shipments (if applicable)
  - The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.

- Tax Exempt Status
  - Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

- Payments
  - The entity using the contract will make payments directly to the awarded vendor or their affiliates (distributors/business partners/resellers) as long as written request and approval by NCPA is provided to the awarded vendor.

- Adding authorized distributors/dealers
  - Awarded vendors may submit a list of distributors/partners/resellers to sell under their contract throughout the life of the contract. Vendor must receive written approval from NCPA before such distributors/partners/resellers considered authorized.
  - Purchase orders and payment can only be made to awarded vendor or distributors/business partners/resellers previously approved by NCPA.
  - Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder.
  - All distributors/partners/resellers are required to abide by the Terms and Conditions of the vendor's agreement with NCPA.

- Pricing
  - All pricing submitted shall include the administrative fee to be remitted to NCPA by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with NCPA.
  - All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing

- Warranty
  - Proposals should address each of the following:
    - Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
    - Availability of replacement parts
    - Life expectancy of equipment under normal use
    - Detailed information as to proposed return policy on all equipment

- Indemnity
  - The awarded vendor shall protect, indemnify, and hold harmless Region 14 ESC and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract.

- Franchise Tax
  - The respondent hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

- Supplemental Agreements
  - The entity participating in this contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor.

- Certificates of Insurance
  - Certificates of insurance shall be delivered to the Public Agency prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

- Legal Obligations
  - It is the Respondent's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

- Protest
  - A protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CST. Protests shall be filed with Region 14 ESC and shall include the following:
    - Name, address and telephone number of protesters
    - Original signature of protester or its representative
    - Identification of the solicitation by RFP number
    - Detailed statement of legal and factual grounds including copies of relevant documents and the form of relief requested
  - Any protest review and action shall be considered final with no further formalities being considered.

- Force Majeure
  - If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
  - The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other

industrial disturbances, act of public enemy, orders of any kind of government of the United States or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty

- Prevailing Wage
  - It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser. It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

- Miscellaneous
  - Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

- Open Records Policy
  - Because Region 14 ESC is a governmental entity, responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by- page and line-by-line the parts of the response, which it believes, are exempt. In addition, the respondent must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).
  - The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 14 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the respondent are not acceptable. Region 14 ESC must comply with the opinions of the OAG. Region14 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Respondent are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

Process

Region 14 ESC will evaluate proposals in accordance with, and subject to, the relevant statutes, ordinances, rules, and regulations that govern its procurement practices. NCPA will assist Region 14 ESC in evaluating proposals. Award(s) will be made to the prospective vendor whose response is determined to be the most advantageous to Region 14 ESC, NCPA, and its participating agencies. To qualify for evaluation, response must have been submitted on time, and satisfy all mandatory requirements identified in this document.

- Contract Administration
  - The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.
- Contract Term
  - The contract term will be for three (3) year starting from the date of the award. The contract may be renewed for up to two (2) additional one-year terms or any combination of time equally not more than 2 years.
  - It should be noted that maintenance/service agreements may be issued for up to (5) years under this contract even if the contract only lasts for the initial term of the contract. NCPA will monitor any maintenance agreements for the term of the agreement provided they are signed prior to the termination or expiration of this contract.
- Contract Waiver
  - Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.
- Products and Services additions
  - Products and Services may be added to the resulting contract during the term of the contract by written amendment, to the extent that those products and services are within the scope of this RFP.
- Competitive Range
  - It may be necessary for Region 14 ESC to establish a competitive range. Responses not in the competitive range are unacceptable and do not receive further award consideration.
- Deviations and Exceptions
  - Deviations or exceptions stipulated in response may result in disqualification. It is the intent of Region 14 ESC to award a vendor's complete line of products and/or services, when possible.
- Estimated Quantities
  - The estimated dollar volume of Products and Services purchased under the proposed Master Agreement is $15 - $20 million dollars annually. This estimate is based on the anticipated volume of Region 14 ESC and current sales within the NCPA program. There is no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation

Evaluation

- Region 14 ESC will review and evaluate all responses in accordance with, and subject to, the relevant statutes, ordinances, rules and regulations that govern its procurement practices. NCPA

will assist the lead agency in evaluating proposals. Recommendations for contract awards will be based on multiple factors, each factor being assigned a point value based on its importance.

- Formation of Contract
  - A response to this solicitation is an offer to contract with Region 14 ESC based upon the terms, conditions, scope of work, and specifications contained in this request. A solicitation does not become a contract until it is accepted by Region 14 ESC. The prospective vendor must submit a signed Signature Form with the response thus, eliminating the need for a formal signing process.
- NCPA Administrative Agreement
  - The vendor will be required to enter and execute the National Cooperative Purchasing Alliance Administration Agreement with NCPA upon award with Region 14 ESC. The agreement establishes the requirements of the vendor with respect to a nationwide contract effort.
- Clarifications / Discussions
  - Region 14 ESC may request additional information or clarification from any of the respondents after review of the proposals received for the sole purpose of elimination minor irregularities, informalities, or apparent clerical mistakes in the proposal. Clarification does not give respondent an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. After the initial receipt of proposals, Region 14 ESC reserves the right to conduct discussions with those respondent's whose proposals are determined to be reasonably susceptible of being selected for award. Discussions occur when oral or written communications between Region 14 ESC and respondents are conducted for the purpose clarifications involving information essential for determining the acceptability of a proposal or that provides respondent an opportunity to revise or modify its proposal. Region 14 ESC will not assist respondent bring its proposal up to the level of other proposals through discussions. Region 14 ESC will not indicate to respondent a cost or price that it must meet to neither obtain further consideration nor will it provide any information about other respondents' proposals or prices.
- Multiple Awards
  - Multiple Contracts may be awarded as a result of the solicitation. Multiple Awards will ensure that any ensuing contracts fulfill current and future requirements of the diverse and large number of participating public agencies.
- Past Performance
  - Past performance is relevant information regarding a vendor's actions under previously awarded contracts; including the administrative aspects of performance; the vendor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the vendor's businesslike concern for the interests of the customer.

Evaluation Criteria

- Pricing (40 points)
  - Electronic Price Lists
    - Products, Services, Warranties, etc. price list
    - Prices listed will be used to establish both the extent of a vendor's product lines, services, warranties, etc. available from a particular bidder and the pricing per item.

- Ability to Provide and Perform the Required Services for the Contract (25 points)
  - Product Delivery within participating entities specified parameters
  - Number of line items delivered complete within the normal delivery time as a percentage of line items ordered.
  - Vendor's ability to perform towards above requirements and desired specifications.
  - Past Cooperative Program Performance
  - Quantity of line items available that are commonly purchased by the entity.
  - Quality of line items available compared to normal participating entity standards.

- References (15 points)
  - A minimum of ten (10) customer references for product and/or services of similar scope dating within past 3 years

- Technology for Supporting the Program (10 points)
  - Electronic on-line catalog, order entry use by and suitability for the entity's needs
  - Quality of vendor's on-line resources for NCPA members.
  - Specifications and features offered by respondent's products and/or services

- Value Added Services Description, Products and/or Services (10 points)
  - Marketing and Training
  - Minority and Women Business Enterprise (MWBE) and (HUB) Participation
  - Customer Service

Signature Form

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this bid in collusion with any other Respondent and that the contents of this proposal as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: **120 days**

Company name	CompuNet, Inc.
Address	2264 S. Bonito Way, Ste 150
City/State/Zip	Meridian, ID 83642
Telephone No.	208-286-3000
Fax No.	208-286-3002
Email address	tmcfarlin@compunet.biz
Printed name	Thomas McFarlin
Position with company	Vice President of Operations
Authorized signature	Thomas McFarlin

TAB 2 – NCPA ADMINISTRATION AGREEMENT

This Administration Agreement is made as of December 8, 2020, by and between National Cooperative Purchasing Alliance ("NCPA") and CompuNet, Inc. ("Vendor").

Recitals

WHEREAS, Region 14 ESC has entered into a certain Master Agreement dated December 8, 2020, referenced as Contract Number 01-107, by and between Region 14 ESC and Vendor, as may be amended from time to time in accordance with the terms thereof (the "Master Agreement"), for the purchase of Audio/Visual Products and Services;

WHEREAS, said Master Agreement provides that any state, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution, other government agency or nonprofit organization (hereinafter referred to as "public agency" or collectively, "public agencies") may purchase products and services at the prices indicated in the Master Agreement;

WHEREAS, NCPA has the administrative and legal capacity to administer purchases under the Master Agreement to public agencies;

WHEREAS, NCPA serves as the administrative agent for Region 14 ESC in connection with other master agreements offered by NCPA

WHEREAS, Region 14 ESC desires NCPA to proceed with administration of the Master Agreement; WHEREAS, NCPA and Vendor desire to enter into this Agreement to make available the Master

Agreement to public agencies on a national basis;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, NCPA and Vendor hereby agree as follows:

- General Terms and Conditions
  - The Master Agreement, attached hereto as Tab 1 and incorporated herein by reference as though fully set forth herein, and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement.
  - NCPA shall be afforded all of the rights, privileges and indemnifications afforded to Region 14 ESC under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to NCPA under this Agreement including, but not limited to, the Vendor's obligation to provide appropriate insurance and certain indemnifications to Region 14 ESC.
  - Vendor shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.
  - NCPA shall perform all of its duties, responsibilities, and obligations as administrator of purchases under the Master Agreement as set forth herein, and Vendor acknowledges that NCPA shall act in the capacity of administrator of purchases under the Master Agreement.
  - With respect to any purchases made by Region 14 ESC or any Public Agency pursuant to the Master

Agreement, NCPA (a) shall not be construed as a dealer, re-marketer, representative, partner, or agent of any type of Vendor, Region 14 ESC, or such Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Region 14 ESC, any Public Agency or any employee of Region 14 ESC or Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by the Public Agency to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. NCPA makes no representations or guaranties with respect to any minimum purchases required to be made by Region 14 ESC, any Public Agency, or any employee of Region 14 ESC or Public Agency under this Agreement or the Master Agreement.

- The Public Agency participating in the NCPA contract and Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the Public Agency and Vendor. NCPA, its agents, members and employees shall not be made party to any claim for breach of such agreement.

- Term of Agreement
  - This Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the obligation to pay all amounts owed by Vendor to NCPA through the termination of this Agreement and all indemnifications afforded by Vendor to NCPA shall survive the term of this Agreement.

- Fees and Reporting
  - The awarded vendor shall electronically provide NCPA with a detailed quarterly report showing the dollar volume of all sales under the contract for the previous quarter. Reports are due on the fifteenth (15th) day after the close of the previous quarter. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating members and submit one (1) report. The report shall include at least the following information as listed in the example below:

Entity Name	Zip Code	State	PO or Job #	Sale Amount

Total _____

  - Each quarter NCPA will invoice the vendor based on the total of sale amount(s) reported. From the invoice the vendor shall pay to NCPA an administrative fee based upon the tiered fee schedule below. Vendor's annual sales shall be measured on a calendar year basis. Deadline for term of

payment will be included in the invoice NCPA provides.

Annual Sales Through Contract	Administrative Fee
0 - $30,000,000	2%
$30,000,001 - $50,000,000	1.5%
$50,000,001+	1%

- Supplier shall maintain an accounting of all purchases made by Public Agencies under the Master Agreement. NCPA and Region 14 ESC reserve the right to audit the accounting for a period of four (4) years from the date NCPA receives the accounting. In the event of such an audit, the requested materials shall be provided at the location designated by Region 14 ESC or NCPA. In the event such audit reveals an under reporting of Contract Sales and a resulting underpayment of administrative fees, Vendor shall promptly pay NCPA the amount of such underpayment, together with interest on such amount and shall be obligated to reimburse NCPA's costs and expenses for such audit.

- General Provisions
  - This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.
  - Awarded vendor agrees to allow NCPA to use their name and logo within website, marketing materials and advertisement. Any use of NCPA name and logo or any form of publicity regarding this contract by awarded vendor must have prior approval from NCPA.
  - If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement or to recover any administrative fee and accrued interest, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.
  - Neither this Agreement nor any rights or obligations hereunder shall be assignable by Vendor without prior written consent of NCPA, provided, however, that the Vendor may, without such written consent, assign this Agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement.
  - This Agreement and NCPA's rights and obligations hereunder may be assigned at NCPA's sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform NCPA's obligations hereunder
  - All written communications given hereunder shall be delivered to the addresses as set forth below.

National Cooperative Purchasing Alliance:		Vendor: CompuNet, Inc.	
Name:	Matthew Mackel	Name:	Thomas McFarlin
Title:	Director, Business Development	Title:	Vice President of Operations
Address:	PO Box 701273	Address:	2264 S. Bonito Way, Ste 150
	Houston, TX 77270		Meridian, ID 83642
Signature:		Signature:	Thomas McFarlin
Date:	December 8, 2020	Date:	11/18/2020

TAB 3 – VENDOR QUESTIONNAIRE

Please provide responses to the following questions that address your company's operations, organization, structure, and processes for providing products and services.

- States Covered
  - Bidder must indicate any and all states where products and services can be offered.
  - Please indicate the price co-efficient for each state if it varies.

☐ **50 States & District of Columbia** (Selecting this box is equal to checking all boxes below)

☐ Alabama	☐ Maryland	☐ South Carolina
☐ Alaska	☐ Massachusetts	☒ South Dakota
☒ Arizona	☒ Michigan	☒ Tennessee
☐ Arkansas	☒ Minnesota	☐ Texas
☒ California	☐ Mississippi	☒ Utah
☒ Colorado	☐ Missouri	☐ Vermont
☒ Connecticut	☒ Montana	☐ Virginia
☐ Delaware	☐ Nebraska	☒ Washington
☐ District of Columbia	☒ Nevada	☐ West Virginia
☒ Florida	☐ New Hampshire	☒ Wisconsin
☐ Georgia	☐ New Jersey	☒ Wyoming
☐ Hawaii	☒ New Mexico	
☒ Idaho	☐ New York	
☐ Illinois	☐ North Carolina	
☐ Indiana	☐ North Dakota	
☐ Iowa	☐ Ohio	
☐ Kansas	☐ Oklahoma	
☐ Kentucky	☒ Oregon	
☐ Louisiana	☐ Pennsylvania	
☐ Maine	☐ Rhode Island	

☐ **All US Territories and Outlying Areas** (Selecting this box is equal to checking all boxes below)

- ☐ American Samoa
- ☐ Federated States of Micronesia
- ☐ Guam
- ☐ Midway Islands
- ☐ Northern Marina Islands
- ☐ Puerto Rico
- ☐ U.S. Virgin Islands

- Minority and Women Business Enterprise (MWBE) and (HUB) Participation
  - It is the policy of some entities participating in NCPA to involve minority and women business enterprises (MWBE) and historically underutilized businesses (HUB) in the purchase of goods and services. Respondents shall indicate below whether or not they are an M/WBE or HUB certified.
    - Minority / Women Business Enterprise
      - Respondent Certifies that this firm is a M/WBE ☐
    - Historically Underutilized Business
      - Respondent Certifies that this firm is a HUB ☐
- Residency
  - Responding Company's principal place of business is in the city of Meridian, State of Idaho.
- Felony Conviction Notice
  - Please Check Applicable Box;
    - ☐ A publicly held corporation; therefore, this reporting requirement is not applicable.
    - ☒ Is not owned or operated by anyone who has been convicted of a felony.
    - ☐ Is owned or operated by the following individual(s) who has/have been convicted of a felony
  - If the 3rd box is checked, a detailed explanation of the names and convictions must be attached.
- Distribution Channel
  - Which best describes your company's position in the distribution channel:
    - ☐ Manufacturer Direct
    - ☐ Authorized Distributor
    - ☒ Value-added reseller
    - ☐ Certified education/government reseller
    - ☐ Manufacturer marketing through reseller
    - ☐ Other:
- Processing Information
  - Provide company contact information for the following:
    - Sales Reports

      Contact Person: Kelly Freeman

      Title: Corporate Services Administrator

      Company: CompuNet, Inc.

      Address: 2264 S. Bonito Way, Ste 150

      City: Meridian State: ID Zip: 83642

      Phone: 208-286-3028 Email: kfreeman@compunet.biz

- Accounts Payable
  Contact Person: Kallie Yost
  Title: Payables Specialist
  Company: CompuNet, Inc.
  Address: 2264 S. Bonito Way, Ste 150
  City: Meridian State: ID Zip: 83642
  Phone: 208-488-7226 Email: accounting@compunet.biz

- Purchase Orders
  Contact Person: Shannon Jaffa
  Title: Customer Success Manager
  Company: CompuNet, Inc.
  Address: 2264 S. Bonito Way, Ste 150
  City: Meridian State: ID Zip: 83642
  Phone: 1 (877) 822-2841 Email: help@compunet.biz

- Sales and Marketing
  Contact Person: Jamie Kelley
  Title: Business Development Manager
  Company: CompuNet, Inc.
  Address: 2264 S. Bonito Way, Ste 150
  City: Meridian State: ID Zip: 83642
  Phone: 208-559-2783 Email: jkelley@compunet.biz

- Pricing Information
  - In addition to the current typical unit pricing furnished herein, the Vendor agrees to offer all future product introductions at prices that are proportionate to Contract Pricing.
    - If answer is no, attach a statement detailing how pricing for NCPA participants would be calculated for future product introductions.

    ☒ Yes ☐ No
  - Pricing submitted includes the required NCPA administrative fee. The NCPA fee is calculated based on the invoice price to the customer.

    ☒ Yes ☐ No
  - Vendor will provide additional discounts for purchase of a guaranteed quantity.

    ☐ Yes ☒ No

TAB 4 – VENDOR PROFILE

Please provide the following information about your company:

- Company's official registered name.
  CompuNet, Inc.

- Brief history of your company, including the year it was established.
  CompuNet, Inc. is an engineering led national information technology (IT) solution provider that offers consulting, design and implementation services built on-premise or in the cloud. Founded in Grangeville, Idaho in 1998. Our offices are primarily located in the Western United States, headquartered in Boise, Idaho. Our engineering led approach is to understand our clients' business needs, engineer IT solutions that solve those needs while deploying those solutions on time and on budget. In other words, we architect technology solutions that solve business problems.

  Engineering isn't just something we do, it's who we are. Our team believes in the power and benefit of information technology (IT). Our mission is to design, test, deploy, and support the right IT solutions for each customers' most vital business goals.

  We put the customer at the center of every engagement. All CompuNet regional offices have a local, dedicated engineering team committed to delivering personalized service and an exceptional experience, every time.

- Company's Dun & Bradstreet (D&B) number.
  CompuNet DUNS 627024636

- Company's organizational chart of those individuals that would be involved in the contract.

Contract Manager Jamie Kelley Business Development Manager	**Integrated Media Solutions** Ryan Willden Sr. Systems Engineer	**Integrated Media Solutions** Marco Vranish Engineering Manager
Accounts Payable Kallie Yost Payables Specialist	**Physical Security** Jason Smart Business Development Manager	**Enterprise Networking** Darrin Good Business Development Director
Sales Reporting Kelly Freeman Corporate Services Administrator	**Information Security** Darrin Good Business Development Director	**Modern Infrastructure** Dan Beeler Business Development Director
Marketing Rainer Engel Tech Marketing Director	**Collaboration** Jamie Kelley Business Development Manager	**Modern Applications** Jeramey James Business Development Director

- Corporate office location.
  CompuNet, Inc.
  2264 S. Bonito Way, Ste 150
  Meridian, ID 83642

  - List the number of sales and services offices for states being bid in solicitation.

    Arizona: 1
    Idaho: 4
    Montana: 3
    Nevada: 1
    Oregon: 1
    Utah: 1
    Washington: 2

  - List the names of key contacts at each with title, address, phone and e-mail address.

Arizona	Idaho	Northern Idaho
Richard MacQueen, Account Manager Phoenix, AZ 480-355-2262 rmacqueen@compunet.biz	Jay Ellis, VP of Sales 2264 S. Bonito Way, Ste 150 Meridian, ID 83642 208-286-3030 jellis@compunet.biz	Dominic Ponozzo, Account Manager 507 Thain Rd Lewiston, ID 83501 208-848-3972 dponozzo@compunet.biz
Eastern Idaho	**Montana & Wyoming**	**Oregon**
Randy Elsethagen, Account Manager 3910 S. Yellowstone Ave Idaho Falls, ID 83402 208-562-4720 randyelsethagen@compunet.biz	Adam Kopczuk, Director of Sales 55 W. 14th St. #202 Helena, MT 59601 406-922-5622 akopczuk@compunet.biz	Brad Vasel, Director of Sales 15575 SW Sequoia Pkwy Ste 100 Tigard, OR 97224 503-214-4628 bvasel@compunet.biz
Utah, California & Nevada	**Western Washington**	**Eastern Washington**
Shawn Heiden, Vice President of Sales 6985 S. Union Park Center Ste 250 Cottonwood Heights, UT 84047 801-747-5052 sheiden@compunet.biz	Colleen Tillman, Sr. Account Manager Seattle, WA 503-214-4646 ctillman@compunet.biz	Dominic Casey, Director of Sales 1326 N Whitman Ln Liberty Lake, WA 99019 509-795-8270 dcasey@compunet.biz

- Define your standard terms of payment.
  CompuNet payment terms are Net 30.

- Who is your competition in the marketplace?
  While we at CompuNet find our engineering lead model unique in the marketplace we do find ourselves occasionally competing with other reseller/VAR's in the market such as CDW, SHI and WWT.

- What differentiates your company from competitors?

Our engineering-centric engagement model. Each customer works with a dedicated local team who understands their business, their infrastructure, and their goals. This team takes ownership for the entire project lifecycle, from discovery and design through deployment, training, and handoff.

Our engineering-led culture means that our engineers make decisions based on good engineering and design principles, not sales quotas. Decisions to bring in products and services to our customers are made by experienced and certified engineers who listen to customer demand. It is not driven by sales or by manufacturer pressures. This autonomy of our engineers and our cultural respect for excellent engineering sets us apart from many of our sales-led competitors. This innovative company structure makes for happy employees and happy customers.

Our people. Our team consists of highly skilled IT architects and enterprise engineers with a long history designing IT solutions that solve real-world business problems and improve operational efficiency. Our Account Managers all have a consistent thread of; experience with long-term relationship first mentalities and who do not carry sales quotas Our track record. Because of our absolute commitment to helping customers achieve success, many of our engagements become long-term relationships. We are proud that our customers across many industries see us as a trusted advisor.

Our relationships. Our partnerships bring you a broad ecosystem of technologies and solutions that can meet your business and technical requirements. Plus, we hold some of the industry's most elite partner certifications.

Our track record. Because of our absolute commitment to helping customers achieve success, many of our engagements become long-term relationships. We are proud that our customers across many industries see us as a trusted advisor.

Our approach. While we know perfection is tough to achieve, we always have it in our sights. Every day we work to design, deliver, and support IT solutions that help our customers succeed, whether they need to cut costs, boost productivity, reach new markets, or all of the above.

- Describe how your company will market this contract if awarded.
  CompuNet has an active; State, Local and Education strategy with dedicated employees and resources with many long standing and new customers. We communicate to these as well as prospective customers frequently with information about new technologies, services and buying vehicles. We also hold exclusive public sector events to accomplish the same on a larger scale. We will also publish this information on our website. Should we be awarded with the ability to be named to NCPA, CompuNet will proactively market to all of the above with an email campaign, an official press release on our News feed on our Website and social media outlets as well as at all in-person events over the coming months.

- Describe how you intend to introduce NCPA to your company.
  As a current contract holder our sales team is already accustomed to promoting and utilizing NCPA Contracts. CompuNet also advertises this contract vehicle via tradeshows and vendor events. CompuNet holds weekly all-staff meetings as well as leadership meetings in which we will announce our partnership and post to our internal communication hub.

- Describe your firm's capabilities and functionality of your on-line catalog / ordering website.
  Our corporate website; www.compunet.biz has an individual customer login for participating organizations to log in and shows order history, shipment status, invoice as well as other order details. This site is constantly being upgraded and new features/functionality added which will include marketplace capabilities in the future. Manufactures and suppliers are listed on the site today.

- Describe your company's Customer Service Department (hours of operation, number of service centers, etc.)
  Sales and Sales Support: Monday-Friday, 8:00AM-5:00PM Mountain Time.
  We strive to have representatives available for all customers during all business hours. If a customer contacts CompuNet outside of these hours, CompuNet will respond to any missed calls, voicemails, or E-mails at the earliest appropriate time.

- Green Initiatives
  - As our business grows, we want to make sure we minimize our impact on the Earth's climate. We are taking every step we can to implement innovative and responsible environmental practices throughout NCPA to reduce our carbon footprint, reduce waste, energy conservation, ensure efficient computing and much more. To that effort we ask respondents to provide their companies environmental policy and/or green initiative.
    CompuNet is committed to protecting natural resources, promoting environmental stewardship, and implementing sustainable business practices to reduce our carbon footprint. Protecting our shared environment is of fundamental importance to us. It is our policy to carry out all company activities in a manner that minimizes environmental impacts, conserves natural resources, and provides effective stewardship of the environment. To that end, CompuNet is committed to making environmental management an integral core value and vital part of our company's culture.

    As a value-added reseller (VAR) of information technology products and services our actions are somewhat limited, as we do not manufacture any of the products we sell, we lease our office spaces,

and therefore we have a very small carbon footprint. Our primary partners and distributors all have Environmental Sustainability programs in place.

CompuNet does however have some sustainability initiatives worth mentioning:

* Video conferencing to reduce the amount of in-person events
* Flexible working policy enabling employees to work from home saving travel time
* Move towards virtualized cloud environments eliminating the need for physical servers, both for us and our customers. This saves on heating and cooling of data centers
* Use of Energy Star compliant hardware reducing electricity
* Utilizing email blasts instead of marketing materials to cut down on paper and shipping
* Recycling bins placed in key office areas and cubicles
* Recycling program for all cardboard, paper, toner, aluminum and other recyclable materials
* Employees are encouraged to turn lights off when not in use
* Outdated and old PCs are donated

- Vendor Certifications (if applicable)
  - Provide a copy of all current licenses, registrations and certifications issued by federal, state and local agencies, and any other licenses, registrations or certifications from any other governmental entity with jurisdiction, allowing respondent to perform the covered services including, but not limited to, licenses, registrations, or certifications. Certifications can include M/WBE, HUB, and manufacturer certifications for sales and service.

CompuNet is licensed to do business in the identified states. We are also ISO 27001:2013 certified and hold a number of elite certifications with our partners, including but not limited to:

- Cisco – Gold Partner
- Palo Alto Networks – Diamond Level & CPSP
- Pure Storage -Elite
- HPE – Gold Partner
- VMware – Premier Solution Partner
- Dell – Gold Partner
- F5 – Unity Gold, Guardian Partner
- Microsoft – Gold Partner
- Veeam – Platinum Partner
- NetApp - Gold Partner
- Gigamon – Catalyst Gold Partner
- Genetec – Unified Elite Partner
- Gemalto – Platinum Partner
- ExtraHop - Platinum Partner
- Axis – Solution Gold Partner

TAB 5 – PRODUCTS AND SERVICES / SCOPE

- Respondent shall perform and provide these products and/or services under the terms of this agreement. The supplier shall assist the end user with making a determination of their individual needs.
- The following is a list of suggested (but not limited to) categories. List all categories along with manufacturer that you are responding with:
  - Products
    - Presentations and Displays
    - Interactive Solutions
    - Control Systems
    - Cameras and Videos
    - Audio Solutions
    - Interactive White Boards
    - Interactive Displays
    - Software
    - Curriculum and Assessment
    - Document Cameras
    - Mounts
    - Projectors and Screens
  - Services
    - Customer Support
    - Installation
    - Warranty

Integrated Media Solutions (Audio/Visual Solutions)

The Integrated Media Solutions team is committed to helping our customers create new and more productive ways to work using the latest trends in **Audio Visual technologies**. We partner with your team to design a workplace experience that's fits your unique business needs.

We believe integrated media solutions will provide the foundation for tomorrow's work experience. CompuNet's engineers can help you choose, configure and deploy solutions that will get you there.

Solutions Provided:

Video Conferencing, Design, Mobility, Endpoints & Applications, Next Generation Meeting Rooms
https://compunet.biz/solutions/integrated-media-services

Products	Manufacturers include, but are not limited to:
Presentations and Displays	LG, Sharp, Samsung, Sony, Mersive, Chief, NEC, Planar
Interactive Solutions	LG, Cisco, Crestron, Apple
Control Systems	Crestron, Extron
Cameras and Videos	Crestron, Cisco, Zoom, Extron, Vaddio, AVer, Huddly IQ, Kramer Electronics
Audio Solutions	Biamp, QSC, Shure, Crown, BSS Harman, Atlas, Audio Enhancement, Behringer, ClearOne, JBL Professional, Williams Sound, Listen Technologies
Interactive White Boards	Crestron
Interactive Displays	LG, Sharp, Cisco
Software	WebEx, Microsoft Teams, Zoom, AudioCodes
Document Cameras	Vaddio, Samsung
Mounts	Chief, Legrand, Peerless, Premier Mounts
Projectors and Screens	Sony, Panasonic, Da-Lite, Chief, Epson, Draper, NEC, Christie
Digital Signage	AppSpace, Crestron, Spinetix, Mersive, Brightsign
Rack Solutions and Accessories	Tripp Lite, Middle Atlantic, APC, Cables To Go, Contemporary Research, Countryman
Recording Solutions	Denon, Extron, Epiphan Video
Furniture	Intelligent Lecterns, SoundCraft
Codecs	Poly, Cisco, Crestron, Logitech

Services	
Installation/Support Services	Engineer: $200/hr Project Manager: $195/hr
Materials for installation a %percent Markup from cost	10%
Add-On Services	per project or per scope
Extended Warranties	per equipment/manufacturer

Distributors	
ADI Global	https://www.adiglobaldistribution.us/
Almo Pro AV	https://www.almoproav.com/
TechData	https://shop.techdata.com/

***COMPUNET USES DISTRIBUTORS TO FULFILL UNIQUE CUSTOMER NEEDS SUCH AS ADAPTERS, CONNECTORS, CABLES ETC TO FORM A COMPLETE SOLUTION.**

TAB 8 – VALUE ADDED PRODUCTS AND SERVICES

- Include any additional products and/or services available that vendor currently performs in their normal course of business that is not included in the scope of the solicitation that you think will enhance and add value to this contract for Region 14 ESC and all NCPA participating entities.

CompuNet is offering additional products and solutions to enhance and add value to this contract.

See core competencies below and included **RFP #29-20 VALUE ADDED Products and Services Pricing** with listed manufacturers and discounts.

Modern Infrastructure

Hybrid IT is the new normal!
CompuNet's Modern Infrastructure group **streamlines the journey** for organizations to become digital businesses that **deliver better experiences** to their customers and **empower** employees to do their best work. Our solutions span compute, storage and data management, on-premise to hybrid to cloud, and the digital workspace.
https://compunet.biz/solutions/modern-infrastructure

Cisco	Pure Storage	Gravity Data
VMware	Dell	Clumio
Citrix	NetApp	Veeam
HPE	Microsoft	Rubrik

CompuNet Professional Services: $250/hr

Collaboration

Today's workplace is more than just **making connections** between people, ideas and information.

CompuNet will help build or modernize your organization's unified communications framework so it can yield extraordinary value in terms of productivity, creativity and cost savings.
https://compunet.biz/solutions/collaboration

Cisco	RedSky
Microsoft	Zoom

CompuNet Professional Services: $250/hr

Enterprise Networking

Enterprise Networking technologies are evolving at an exceptional rate to keep up with customer needs to support complex datacenter environments, cloud centric applications, and mobile workforces.

The amount of available technologies positioned to meet these needs can be overwhelming to evaluate, design, and implement by IT personnel that are already stretched with advanced job duties.

This is where CompuNet excels. CompuNet's **"Engineering-Led" model** enables customers to engage with extremely knowledgeable architects and engineers with a true passion for network design and implementation. CompuNet truly **understands customer needs and will match the appropriate solution** to completely meet the requirements, as well as providing all the services required to implement the solution within the customer's timelines and ensuring that the customer's goals are fully satisfied.
https://compunet.biz/solutions/enterprise-networking

Cisco
Cisco Meraki
F5
CompuNet Professional Services: $250/hr
Gigamon
HPE
InfoBlox
OpenGear
Ekahau
Cradlepoint

Information Security

Information Security now impacts just about every aspect of today's workplace. Whether it's **securing data, validating identities or providing safe and secure remote access**, CompuNet engineers can design and build effective security solutions for every need.

Leveraging the Center for Information Security Critical Security Control framework as well as industry best practices, CompuNet takes pride in designing **tailored solutions** to solve complex problems. When tackling information security challenges, there is no one size fits all approach. We combine decades of experience and published industry frameworks to provide an attainable security blueprint for our customers.
https://compunet.biz/solutions/information-security

Arctic Wolf
Cisco
Cofense
CriticalStart
Crowdstrike
CyberArk
Exabeam
CompuNet Professional Services: $250/hr
ExtraHop
F5
Gigamon
Imperva
InfoBlox
Mimecast
Palo Alto Networks
Proofpoint
Splunk
Tenable
Thycotic
Varonis

Physical Security

Security is always too much….until it's not enough!

Let us help you understand the ROI and TCO to a solution that fits your needs.

Another strong element that CompuNet has to offer is Physical Security. With more than a **decade of experience** in the industry, we are here to listen and provide a solution that helps solve your business needs in **securing, managing, and auditing** your physical security activity.
https://compunet.biz/solutions/physical-security

Genetec
Assa Abloy
Mercury Security
CompuNet Professional Services: $250/hr

Axis
Certified Integrator
2N

Altronix

Modern Applications

The Modern Applications Group (MAG) at CompuNet. Today's applications are changing the way business gets done. Software combined with Cloud Services has made it possible to secure access to our data in physical, mobile and virtual environments. We engage with vendors whose tools have a significant impact on business outcomes. Line-of-business applications, workplace productivity and understanding the licensing landscape are all part of the consultative skill set that we employ.
https://compunet.biz/solutions/modern-applications

Microsoft 365
Microsoft Teams
Azure
CompuNet Professional Services: $250/hr

TAB 9 – REQUIRED DOCUMENTS

- Clean Air and Water Act / Debarment Notice
- Contractors Requirements
- Antitrust Certification Statements
- Required Clauses for Federal Funds Certifications
- Required Clauses for Federal Assistance by FTA
- State Notice Addendum

CLEAN AIR AND WATER ACT & DEBARMENT NOTICE

I, the Vendor, am in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as Amended (42 U.S. C. 1857 (h), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14 (1) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator for the Enforcement.

I hereby further certify that my company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations

Potential Vendor	CompuNet, Inc.
Print Name	Thomas McFarlin, Vice President of Operations
Address	2264 S. Bonito Way, Ste 150
City, Sate, Zip	Meridian, ID 83642
Authorized signature	
Date	11/18/2020

CONTRACTOR REQUIREMENTS

Contractor Certification
Contractor's Employment Eligibility

By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal and state immigration laws and regulations. The Contractor further warrants that it is in compliance with the various state statues of the states it is will operate this contract in.

Participating Government Entities including School Districts may request verification of compliance from any Contractor or subcontractor performing work under this Contract. These Entities reserve the right to confirm compliance in accordance with applicable laws.

Should the Participating Entities suspect or find that the Contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The offeror complies and maintains compliance with the appropriate statutes which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy of the NCPA Participating entities in which work is being performed

Fingerprint & Background Checks
If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district if requested of each person or employee who may provide such service.
Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The district shall conduct a fingerprint check in accordance with the appropriate state and federal laws of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

The offeror shall comply with fingerprinting requirements in accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted.

Contractor shall comply with governing board policy in the school district or Participating Entity in which work is being performed

Business Operations in Sudan, Iran
In accordance with A.R.S. 35-391 and A.R.S. 35-393, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan and/or Iran.

Authorized signature _____
CompuNet, Inc. - Thomas McFarlin, Vice President of Operations

Date 11/18/2020

ANTITRUST CERTIFICATION STATEMENTS (TEX. GOVERNMENT CODE § 2155.005)

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law; and

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Company Name	CompuNet, Inc.
Address	2264 S. Bonito Way, Ste 150
City, Sate, Zip	Meridian, ID 83642
Telephone No.	208-286-3032
Fax No.	208-286-3002
Email address	tmcfarlin@compunet.biz
Printed Name	Thomas McFarlin
Position with the company	Vice President of Operations
Authorized signature	Thomas McFarlin

REQUIRED CLAUSES FOR FEDERAL FUNDS CERTIFICATIONS

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. The following certifications and provisions may be required and apply when a Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non- Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision

for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission ofintelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee

of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

REQUIRED CLAUSES FOR FEDERAL ASSISTANCE PROVIDED BY FTA

ACCESS TO RECORDS AND REPORTS

Contractor agrees to:

a) Maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract or any extensions thereof except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Public Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

b) Permit any of the foregoing parties to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed for the purpose of audit and examination.

FTA does not require the inclusion of these requirements of Article 1.01 in subcontracts. Reference 49 CFR 18.39 (i)(11).

CIVIL RIGHTS / TITLE VI REQUIREMENTS

1) Non-discrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C.
§ 5332, Contractor or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, marital status age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2) Equal Employment Opportunity. The following Equal Employment Opportunity requirements apply to this Contract:

   a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Dept. of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR, Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, marital status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

   b. Age. In accordance with the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625, prohibit employment discrimination by Contractor against individuals on the basis of age, including present and prospective employees. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Contractor agrees that it will comply with the requirements of the Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR, Part 1630, pertaining to employment of persons with disabilities and with their responsibilities under Titles I through V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions.

d. Segregated Facilities. Contractor certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor agrees that a breach of this certification will be a violation ofthis Civil Rights clause.

3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations relative to non-discrimination on the grounds of race, color, creed, sex, disability, age or national origin.

4) Sanctions of Non-Compliance. In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, Public Agency shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to: 1) Withholding of payments to Contractor under the Contract until Contractor complies, and/or; 2) Cancellation, termination or suspension of the Contract, in whole or in part.

Contractor agrees to include the requirements of this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS PARTICIPATION

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*", therefore, it is the policy of the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of DOT-assisted contracts.

1) Non-Discrimination Assurances. Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as public agency deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)).

2) Prompt Payment. Contractor is required to pay each subcontractor performing Work under this prime Contract for satisfactory performance of that work no later than thirty (30) days after Contractor's receipt of payment for that Work from public agency. In addition, Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Contract is satisfactorily completed and any liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of public agency. This clause applies to both DBE and non-DBE subcontractors. Contractor must promptly notify public agency whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that Work through its own forces, or those of an affiliate, without prior written consent of publicagency.

3) DBE Program. In connection with the performance of this Contract, Contractor will cooperate with public agency in meeting its commitments and goals to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract work, regardless of whether a contract goal is set for this Contract. Contractor agrees to use good faith efforts to carry out a policy in the award of its subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize DBEs consistent with the efficient performance of the Contract.

ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* and 41 CFR Part 301-10.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract between public agency and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the DOT, as set forth in the most current FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any public agency requests that would cause public agency to be in violation of the FTA terms and conditions.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Agency and Contractor acknowledge and agree that, absent the Federal Government's express written consent and notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to me made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed.

In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to me made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

STATE NOTICE ADDENDUM

The National Cooperative Purchasing Alliance (NCPA), on behalf of NCPA and its current and potential participants to include all county, city, special district, local government, school district, private K-12 school, higher education institution, state, tribal government, other government agency, healthcare organization, nonprofit organization and all other Public Agencies located nationally in all fifty states, issues this Request for Proposal (RFP) to result in a national contract.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/State_and_Territories.shtml

https://www.usa.gov/local-governments

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Awarding and executing a contract with Frontier Fence, Inc. for Primary Gate Replacement Project at the Benton County Jail
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

Bids were solicited for the replacement of the primary gate at the Benton County Jail utilizing the limited public works process through the MRSC Small Works Roster and one bid was received in the amounts below:

Frontier Fence, Inc., Pasco, WA (FRONTF*258BH) $ 52,260.00

Fiscal Impact

Amount: $52,260.00 excluding W.S.S.T.

Fund: Capital Project Fund (Fund # 0305-101)

Recommendation

Award the contract for Primary Gate Replacement Project in an amount not to exceed $52,260.00 to Frontier Fence, Inc., Pasco, WA and authorize the Chairman to sign said contract.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING THE CONTRACT FOR THE PRIMARY GATE REPLACEMENT PROJECT TO FRONTIER FENCE, INC. OF PASCO, WA AND AUTHORIZING THE CHAIRMAN TO SIGN SAID CONTRACT

WHEREAS, bids were solicited for the replacement of the primary gate at the Benton County Jail utilizing the limited publics works process through the MRSC Small Works Roster; and

WHEREAS, one bid was received in the amounts below:

Frontier Fence, Inc., Pasco, WA (FRONTF*258BH) $ 52,260.00

WHEREAS, the Director of Operations and Capital Programs recommends award of the bid to Frontier Fence, Inc., Pasco, WA; and

WHEREAS, a contract has been prepared; reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney from the Civil Division; and has been executed by Frontier Fence, Inc., Pasco, WA; and

WHEREAS, the Director of Operations and Capital Programs recommends the Chairman sign said contract; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Director of Operations and Capital Program's recommendation and awards the bid for the Primary Gate Replacement Project to Frontier Fence, Inc., Pasco, Washington in a not to exceed amount of $52,260.00 excluding Washington State Sales Tax; and

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

BE IT FURTHER RESOLVED, said contract expires March 31, 2022.

Dated this 10th day of August, 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

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

Orig.: Purchasing P. Schut
c: Auditor

BENTON COUNTY
PUBLIC WORKS CONTRACT

TERMS AND CONDITIONS

THIS Contract is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **FRONTIER FENCE, INC.**, a corporation organized under the laws of the State of Washington with its principal offices at 2516 N Commercial Ave, Pasco, WA 99301 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Washington State Prevailing Wage Rates for Public Works Contracts.
b. Exhibit B – Bid Form
c. Exhibit C – Specifications

2. DURATION OF CONTRACT

The initial term of this Contract shall begin upon signature of both parties and March 31, 2022. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR agrees to replace the current security master gate at the Benton County Justice Center in accordance with the Specifications, attached hereto as Exhibits C, respectively, and incorporated herein by reference. The CONTRACTOR must order the gate from the manufacturer within ten (10) calendar days after execution of this contract and install the gate no later than forty-five (45) calendar day after receipt of the gate. The COUNTY has the sole authority to grant additional time due to inclement weather.

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, materials, and equipment/tools. 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.

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:	Brad Snuggs, President
Address:	2516 N Commercial Ave
	Pasco, WA 99301
Phone:	509-545-1801
Email:	bsnuggs@frontierfenceinc.com

b. For COUNTY:

Name:	Robert Blain, Director of Operations and Capital Programs
Address:	7122 W. Okanogan Pl., Bldg. A
	Kennewick, WA 99336
Phone:	509-736-2704
Email:	procurement@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Fifty-Two Thousand Two Hundred and Sixty Dollars and Zero Cents ($52,260.00), excluding W.S.S.T., in accordance with Exhibit B, “Bid Form”, which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Fifty-Two Thousand Two Hundred and Sixty Dollars and Zero Cents ($52,260.00), including W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.

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

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

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

6. INVOICING

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

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

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

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

7. AMENDMENTS AND CHANGES IN WORK

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

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

8. HOLD HARMLESS AND INDEMNIFICATION

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

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

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

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

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

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

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

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

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

performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

d. **Other Insurance Provisions**:

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

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

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

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

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

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

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

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

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

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

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

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

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

3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

10. PERFORMANCE AND PAYMENT BONDS

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

11. NON-WAIVER OF RIGHTS

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

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. INSPECTION OF BOOKS AND RECORDS

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

14. CHOICE OF LAW AND JURISDICTION

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

15. SUCCESSORS AND ASSIGNS

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

16. TERMINATION

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

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit A, 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. VERIFICATION OF SUBCONTRACTOR RESPONSIBILITY CRITERIA

A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses a contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. CONFIDENTIALITY

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

This section was intentionally left blank

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and it is effective upon signature of both parties.

Date:_____

BENTON COUNTY

Jerome Delvin, Chairman
Benton County Commissioners

Approved as to Form:

Eric Andrews, Civil DPA

Date: 7-30-21

FRONTIER FENCE, INC.

Brad K. Suggs
Signature

President
Title

Brad Suggs
PRINTED NAME

EXHIBIT A

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 23, 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

BID FORM

Justice Center – Security Master Gate Replacement

Company Name Frontier Fence

ACKNOWLEDGEMENT OF ADDENDA:
The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:

Addendum No. 1, dated _____

Addendum No. 2, dated _____

BID AMOUNT:

LUMP SUM (excluding sales tax) $ 52,260.00

LUMP SUM (excluding sales tax), in words Fifty two thousand two hundred Sixty $ no/100

GENERAL ACKNOWLEDGEMENT:
The undersigned hereby certifies that they have examined the location of the work outlined in the request for proposal, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this project, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this project in accordance with the said plans, specifications and contract, and the above lump sum price.

BID BOND:
The undersigned hereby certifies that a proposal guaranty in an amount of five percent (5%) of the total bid, and in one of the forms as indicated below, is attached hereby:

Cashier's Check	✓	In the Amount of $ 2613.00
Certified Check	_____	($_____) Payable to the County Treasurer of Benton County, Washington.
Bid Bond	_____	In the amount of 5% of the Bid.

CONTRACTOR'S LICENSE:

The undersigned states that it is a duly licensed contractor, for the type of work proposed, in the State of Washington, and that all fees, permits, etc., pursuant to submitting this bid have been paid in full.

PUBLIC WORKS TRAINING:

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

NON-COLLUSION DECLARATION

I hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of Chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction.

SUBMISSION OF BID

Respectfully submitted this 23rd day of July 2021.

COMPANY NAME: Frontier Fence

AUTHORIZED SIGNATURE: Brad K Snuggs

TYPE OR PRINT NAME: Brad Snuggs

TITLE: President

STREET ADDRESS: 2516 N Commercial Avenue

CITY, STATE, ZIP: Pasco, Wa. 99301

TELEPHONE NO.: 509-545-1801

EMAIL: bsnuggs@frontierfenceinc.com

CONTRACTOR'S LICENSE NO.: FRONTF*258BH

UBI NO.: 600-144-110

WASHINGTON STATE EMPLOYMENT SECURITY NO.: 386603005

MODEL HYJG
HYDRAULIC VERTICAL PIVOT GATE SYSTEM

PART 1 - GENERAL

1.01 SUMMARY

A. Section Includes: Provide vertical pivot gate system including gates and special Tilt-A-Way hydraulic operator, with accessories as required for complete operational installation. Tilt-A-Way vertical pivot gate systems are UL 325, and CSA C22.2#247 listed.

1.02 SYSTEM DESCRIPTION

A. Performance Requirements:
1. Safety Devices: Provide manufacturer's standard safety devices including following features.
   a. Provide pressure relief valve to avoid crushing obstruction encountered in either direction of travel.
   b. Provide shut off power device if balance system fails.
2. Power Failure: Provide manual bypass system, which allows barrier to be opened and to be closed in event of power failure.
3. Operation: Design system to allow for minimum 2900 open and close operations per day.
4. Connect the new gate into the County's current Access Control System.
9. Provide & install a new power disconnect as well as connecting power (back) to the new gate.

[Note: Gate heights up to eight feet, use a standard operator model HYJG. Contact manufacture for gate heights above nine for gate length restrictions.]

B. Gate Height: [__7'_____[As indicated on Drawings].

[Note: Gate widths from 25 feet wide or up to 50 feet total width for two vertical pivot gate operators are possible with aluminum barriers, up to 40 feet total width for steel barriers, with no center posts, overhead supports, tracks, or special framing required.]

C. Gate Width: [__16'____[As indicated on Drawings.]

1.03 SUBMITTALS

A. Product Data: Furnish manufacturer's literature for gate and operator and each manufactured accessory to be provided for Project.
1. Wiring Diagrams: Furnish manufacturer's wiring diagrams for gate operator.
2. Maintenance Data: Furnish manufacturer's operators and parts manual.

B. Certificates: Furnish manufacturer's certification indicating system provided complies with specified requirements.

1.04 QUALITY ASSURANCE

A. Installer Qualifications: Firm approved by manufacturer or with minimum five years successful experience completing vertical pivot gate installation similar to that required.

B. Pre-installation Conference: Conduct meeting at site prior to commencing work related to vertical pivot gate system installation.
   1. Require attendance of parties directly affecting vertical pivot gate installation.
   2. Review site conditions, procedures, and coordination required with related work.

1.05 PROJECT CONDITIONS

A. Field Measurements: Verify dimensions and component layout by field measurements prior to beginning installation.

1.06 WARRANTY

A. Provide manufacturer's standard limited warranty for system and system components against failure resulting from normal use based on manufacturer's literature.
   1. Failure shall be defined as any defect in manufacturing, which prevents gate from operating as intended.

B. Warranty Period: Three years.

PART 2 - PRODUCTS

2.01 MANUFACTURER

A. Ideal Manufacturing, Inc., 2011 Harnish Blvd., Billings, MT 59101;
Telephone 800-523-3888 or 406-656-4360; Fax 406-656-4363;
Web address: www.tilt-a-way.com; E-mail: info@tilt-a-way.com

2.02 MANUFACTURED UNIT

A. Vertical Pivot Gate System: Ideal Mfg., Inc./TILT-A-WAY Model HYJG.

2.03 CURRENT GATE INFORMATION

A. Brand: Tilt-A-Way (a subsidiary of Ideal Manufacturing Inc.)
Model: KJB-25
Serial #: B06270257

B. The current gate is the master gate of a double gate system

2.04 COMPONENTS

A. Hydraulic Power Unit: 1 HP TEFC motor, 1725 RPM, 460 Volt Three-Phase Spencer Hydraulic power unit capable of delivering 4 GPM at 385 PSI, with external adjustment relief valve and 4-way solenoid operated 3-position manual override valve.
   1. Hydraulic pump, motor, and reservoir will be all as one unit with fluid thermometer and fluid level sight gauge.
   2. The hydraulic system will be designed to keep the gate locked in the closed position, keeping any person from lifting the gate open when it is in the closed position.
   3. Pedestal Frame: Welded construction with removable outer skin of cross break corrosion resistant painted gray .063 aluminum plate panels.
   4. Inspection Door Hardware: Stainless steel continuous hinges and heavy-duty lockable pull down catches to hold inspection door shut.
   5. Power: [460 Volt Three-Phase] 4 Wire
      Total gate system requires 5-amp service, with no more than 3% drop in voltage, while gate is in operation. (FOR WIRE SIZE: CONSULT LOCAL ELECTRICAL CODE.)

B. Hydraulic System: 3000-psi hydraulic cylinder.
   1. Cylinder: 2-1/2” by 38” stroke hydraulic cylinder with 1-3/8” diameter rod, limit switches and cushioned slow down on each end of travel, and adjustable stops with lock down in any position.
   2. Hydraulic Fluid: Manufacturer’s standard, factory checked, filled, and tested.

C. Balance System: System designed to allow barrier to be hand raised and to be hand lowered with 12 to 15 pounds of pressure, consisting of manufacturer’s standard cables, sheaves, sealed cam yoke roller bearings, and tension springs pulled in a straight line.
   1. Safety Control Switch: Provide built-in safety control switch capable of stopping barrier in any position should balance system fail.
   2. Testing: Factory test and adjust balance system to ensure gate may be manually raised and lowered with specified pressure.
   3. Signage: Signage to be added to the gate barrier must be declared at the time of order so the manufacturer can add the signs on the barrier, to ensure Ideal Mfg. balances the operator correctly at the time of manufacturing.

D. Electrical System: Oversized rain tight enclosure housing electrical components except limit switches, safety switches, and motor.
   1. Wire: Oil and gasoline resistant.
   2. Overload Protection: Allen Bradley type overload protection relay to protect motor.
   3. Reversing Controller: Provide as required to operate motor and solenoid valves.
   4. Overrun Delay Timers: Integral to board capable of shutting down system in case motor runs longer than 30 seconds.

5. Limit Switches: Adjustable snap action style limit switches capable of stopping barrier at each end of travel.
6. Logic Board: Programmable logic board with manufacturer's full range of available functions.
7. All gates are equipped with a dry contactor to accommodate all types of access equipment.
8. Connect the new gate into the County's current Access Control System.
9. Provide & install a new power disconnect as well as connecting power (back) to the new gate.

[Note: Coordinate selection of following options with manufacturer.]

2. Options:
   a. Cold Weather Package: (required in areas where the temperature drops to less than 35° F). Included
   b. Stanchion: (this is for the free end of the gate). Not Included
   c. Radio Controls: Provide standard open-close-stop commercial transmitters/receivers systems. Not Included
   d. Loop Detectors: Provide detector system (except loop) to allow free exit/safety, safety or close gate operation; system to be factory wired inside electrical box and tested. Not Included
   e. Reversing Edge: Provide manufacturers standard reversing edge system. Included
   f. Synchronizing Box: Master slave system for paired gate system (required only when 2 gates operate in conjunction with each other). Included
   g. Gate Status Lights: Provide light stacks indicating gate status: such as green light indicates barrier is open; red light indicates barrier is closed; and amber flashing indicates barrier is moving. Not Included
   h. Locks: Magnetic lock secures gate in closed position. Not Included
   i. Photo Eye: Used as a form of safety. Not Included
   j. S.O.S.: Siren Operated Sensor (emergency access system) Not Included
   k. Stainless steel fasteners. Not Included
   l. Heater for Electrical Box: Provide heater, including full box insulation to protect system for conditions to -70° F. Not Included
   n. Ice Scrapers: (for cable sheaves). Not Included
   o. Weather Guard Package Not Included

[Note: Coordinate selection of systems with vertical pivot gate system manufacturer.]

   o. Access Control Systems: Supplied by others
      1) Key switches.
      2) Key pads.
      3) Card readers.
      4) Intercom stations.
      5) Proximity card readers.
      6) Phone access systems.
      7) Fire access systems.

8) Pedestals.
9) Closed circuit television.
10) Infrared detectors.

E. Barrier System (Gates): Design to resist twist and to resist sway.

1. Type: Manufacturer's standard aluminum barrier (up to 25 foot wide opening per gate leaf), nominal 3.125" by 2.875" diamond 6063-T5 alloy aluminum screen fabric (amplimesh) welded both sides completely, with sway bracing. Leading member of an aluminum barrier 4" schedule 40 round tube, sway braces- 1 ¼ x 1 ¼ x 1/8 square tube uprights- 2 x 2 x .188 square tube. Sway braces bolted to barrier. Barrier with sway braces is designed to with stand 100 MPH wind load, or optional 150 MHP sway bracing.
2. Type: Custom barrier as indicated on Drawings, with sway bracing.

F. Accessories: Provide as required for complete operational installation.
1. Child Guards: Provide child and small animal guard on secured side of operator.

2.04 FINISHES

A. Finish: Factory prime with DTM epoxy and paint with Gensis acrylic urethane to resist corrosion.
1. Color: As selected from manufacturer's standard colors.] [Custom color as indicated on Finish Schedule.]
2. Manufacturer's standard color is Sherwin Williams Gray.
3. Specify color of gate if different from manufacturer's standard color.
4. If a color (other than standard gray) is ordered the operator panels could be made from plastic or 16 gauge aluminum.

PART 3 - EXECUTION

3.01 EXAMINATION

A. Verification of Conditions: Verify concrete support slab complies with requirements and verify anchors and conduits are properly installed
1. Ensure alignment with adjacent construction, fencing, and paving; coordinate with adjacent construction.

3.02 INSTALLATION

A. Comply with manufacturer's recommendations and installation instructions.
1. Install vertical pivot gate system to provide rigid and secure installation as indicated, straight and true to lines and levels indicated, for free, easy operation.
2. Install components square and level, accurately fitted and free from distortion and free from defects.

B. Advise Owner regarding programmable features and controls and preset controls according to Owner requirements.

1. Instruct Owner personnel in proper operation, maintenance, and reprogramming of system.

3.03 PROTECTION

A. Protect vertical pivot gate system from damage during remainder of construction operations; replace components damaged by subsequent construction operations.

B. Touch-up scratched and damaged surfaces using same primer and finish system applied in shop.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	Contract w/ Express Services, Inc. DBA Express Employment Professionals for Temporary Landscape Maintenance Staffing
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 was unable to get a contract with a landscape maintenance contractor this year. Facilities staff had to step in and maintain the landscaping at several County properties. The Procurement & Contracts Coordinator reached out to several local municipalities to see what they do for their landscape maintenance help and was informed that they use a local temporary employment agency to do the work.

The Procurement & Contracts Coordinator, along with the Director of Operations and Capital Programs, have negotiated a contract with Express Employment Professionals to provide temporary landscape maintenance.

The contract was prepared, reviewed, and approved to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division and executed by Express Services, Inc. DBA Express Employment Professionals.

Fiscal Impact

Amount: $90,000.00 including WSST

Fund: Fund # 0000-101 – Facilities Department

Recommendation

It is recommended by the Procurement and Contract Coordinator & Director of Operations & Capital Programs to approve the contract with Express Services, Inc., DBA Express Employment Professionals for temporary landscape maintenance staffing.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A CONTRACT WITH EXPRESS SERVICES, INC. DBA EXPRESS EMPLOYMENT PROFESSIONALS FOR TEMPORARY LANDSCAPE STAFF AND AUTHORIZING THE CHAIRMAN TO SIGN SAID CONTRACT

WHEREAS, Benton County was unable to get a landscape maintenance contractor this year; and

WHEREAS, Facilities staff had to step in and maintain the landscaping at several County properties; and

WHEREAS, the Procurement & Contracts Coordinator reached out to several local municipalities to see what they do for landscape maintenance and was informed that they use a local temporary employment agency to do the work; and

WHEREAS, the Procurement & Contracts Coordinator, along with the Director of Operations and Capital Programs, have negotiated a contract with Express Employment Professionals to provide temporary landscape maintenance; and

WHEREAS, the contract was prepared, and reviewed and approved as to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division, and has been executed by Express Services, Inc. DBA Express Employment Professionals; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby approves the contract with Express Services, Inc. DBA Express Employment Professional for temporary landscape maintenance staff in the amount not to exceed $90,000.00 including WSST; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract to Express Services, Inc. DBA Express Employment Professionals; and

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

Dated this 10th day of August 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, Express Services, Inc.

P. Schut

BENTON COUNTY
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **EXPRESS SERVICES, INC. DBA EXPRESS EMPLOYMENT PROFESSIONALS** , a corporation organized under the laws of the State of Colorado with its local notice address at 7014 W. Okanogan PL, Kennewick, WA, 99336 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Services and Bill Rate; and
b. Exhibit B – Additional Terms & Conditions

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on 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 shall provide labor for maintenance/groundskeeping to complete landscaping work at all County owned facilities. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Services and Bill Rate", which is attached hereto and incorporated herein by reference.

b. The CONTRACTOR agrees to provide its own labor. Unless otherwise provided in this Contract, no labor will be furnished by the COUNTY.

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

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Candice Turcotte
Address:	7104 W Okanogan Place Kennewick, WA, 99336
Phone:	509-205-2157
Email:	Candice.Turcotte@ExpressPros.com

b. For COUNTY:

Name:	Jeff Jones
Address:	7122 W Okanogan St Kennewick WA 99336
Phone:	509-783-3118
Email:	Thomas.Jones@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid hourly at the rates set forth in Exhibit A, "Services and Bill Rate", 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 Ninety Thousand Dollars ($90,000.00), including W.S.S.T.

c. No payment shall be made for any work performed by the

CONTRACTOR, except for work identified and set forth in this Contract.

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by

both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. MUTUAL INDEMNITY

a. To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

b. A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

c. In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

d. In any and all claims against the CONTRACTOR or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 7 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or

other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

e. In any and all claims against Benton 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 Section 7 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for 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 Noxious Weed 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.

f. Benton County has insurance for any motor vehicle or other motorized mobile equipment that might be driven by Contractor's employees. During an assignment, if Contractor's employees operates a motor vehicle, forklift, or any other motorized equipment, Benton County agrees to indemnify and hold Contractor harmless for bodily injury, property damage, collision, or public liability claims, regardless of fault.

g. In no event shall either party be liable for any special, punitive, lost profit, or consequential damages, regardless of the form of action, whether in contract, in tort, including negligence, by statute or under any quasi-contractual theory of liability, even if a party has been advised of the possibility of such damages.

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage

from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability, except for the negligence or willful misconduct of the COUNTY.

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

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

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

The commercial general liability policy must contain an endorsement naming the COUNTY and its elected and appointed officials, employees, and agents as an Additional Insured, except for the negligence or willful misconduct of the COUNTY and its elected and appointed officials, employees, and agents, and an endorsement that specifically states that CONTRACTOR's commercial general liability policy shall be primary, per the CONTRACTOR'S assumed liability hereunder, and not contributory, with any other insurance maintained by the COUNTY.

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

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

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

c. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY or its elected and appointed officers, officials, employees, or agents, per the CONTRACTOR'S assumed liabilities hereunder. 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, except for the negligence or willful misconduct of COUNTY.

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, except for the negligence or willful misconduct of COUNTY and its elected and appointed officials, employees, and agents. 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.

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

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

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

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

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

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

9. <u>TERMINATION</u>

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn,

reduced, or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such

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

27. PUBLIC RECORDS ACT

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

- This section left blank intentionally -

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

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 7/29/21

FOR: EXPRESS SERVICES, INC. DBA EXPRESS EMPLOYMENT PROFESSIONALS

_____
Signature

Business Development Manager
Title:

Candice Turcotte
Print Name

Exhibit A

April 23, 2021

Services and Bill Rate

Company: Benton County
Attention: Paul Schut
Preparer: Candice Turcotte

The following information provided for your business includes a detailed list of various benefits of using Express Employment Professionals. This bill rate is good for 90 days and may undergo evaluation after that date due to any changes in State of Washington employment fees.

Express Employment Professionals, as the legal employer of record will provide, but is not limited to, the following services:

Flexible Staffing/Evaluation Hire:

- Advertising and recruitment of all workers and replace as necessary
- Bonding of Express Employees
- 24-hour dispatch service
- Verification of I-9 using E-Verify system
- In-depth interview, w/ reference checks
- Appropriate skills testing
- Responsible for all unemployment and workers' compensation claims
- Weekly payroll checks for employees
- Employer portion of payroll taxes (Unemployment, Social Security, and Medicare) and quarterly/annual reports
- WA State Family Medical Leave Act
- WA State Paid Sick Leave
- Drug screen at *client request*
- Criminal background check *as relevant and per client request*
- Pay rolling Services, *call office for details*
- Holiday pay for qualified associates

For any additional questions please contact your Express Employment Professionals team for at 509-735-7072.

Job Title	Hourly Pay Rate	Hourly Service Rate
Maintenance/Groundskeepers (7113)	$16.50	$24.43

*This quote covers flexible and evaluation hire assignments. The associate is on Express' payroll for the first **720** hours and can be transitioned to your payroll after that time without a transition fee. Transition may occur prior to this based on a prorated fee determined by the remaining hours left.*

Sign: _____ Date: _____

Express® EMPLOYMENT PROFESSIONALS
Respecting People. Impacting Business.™

Exhibit B – Additional Terms & Conditions

1. The CONTRACTOR shall hire associates as CONTRACTOR employees and provide all wages, taxes, withholding, workers' compensation, and unemployment insurance. The CONTRACTOR recruits and assigns associates to you to perform only the job duties you specify. The County agrees not to change the specified duties or the assigned workplace of the associate.
2. The CONTRACTOR shall comply with all federal, state, and local employment laws and regulations, as applicable. The County agrees to provide the CONTRACTOR'S associates with a safe, suitable workplace and equipment, provide all legally mandated meal and rest breaks, and comply with all applicable federal, stale, and local employment laws, including appropriate workplace-specific safely and health training that adequately addresses potential hazards at the County worksites.
3. The County agrees to safeguard and protect any private information regarding the CONTRACTOR'S employees to which the County gains access, including biometric information, and agrees to abide by any applicable laws addressing the collection, use, storage, or protection of private and/or biometric information.
4. The bill rates charged by the CONTRACTOR are specific to the office location. Therefore, they may vary from office to office and are subject to change based upon federal, state, or local laws that benefit the CONTRACTOR's associates or prior notice. A service charge of 1.5% per month (18% per annum) may be assessed on charges remaining unpaid 30 days after the invoice date.
5. The CONTRACTOR will only provide associates operating a motor vehicle, forklift, or other motorized mobile equipment if notified in writing before an assignment. The CONTRACTOR must know in advance, so the CONTRACTOR can assign associates qualified to meet the County's specifications. During an assignment, if the CONTRACTOR'S associate operates a motor vehicle, forklift, or any other motorized mobile equipment, the County agrees to maintain liability insurance for any such motorized equipment.
6. The County will supervise, direct, and control the work performed by the CONTRACTOR'S associates and assume responsibility for all work product and operational results, including personal injury to a third party or the County agents or employees losses or damage to property or data in the care, custody, or control of the CONTRACTOR'S associate.
7. In addition to the CONTRACTOR duties and responsibilities set forth herein, the CONTRACTOR, as the common-law employer, has the right to inspect the worksite and work processes physically; to review and address, unilaterally or in coordination with you, the associates' work performance issues; and to enforce the CONTRACTOR'S employment policies relating to associates' conduct at the worksite.
8. We offer an evaluation hire program designed to provide you with associates on a trial basis before converting them to your payroll. To take advantage of Our evaluation hire program, you agree to negotiate a pre-determined trial period or fee before an associate's assignment to you.
9. At your written request, the CONTRACTOR will conduct criminal history checks based on your targeted screening criteria, motor vehicle record checks, and drug screens as permitted by federal, state, and local laws and regulations. The costs vary depending upon the specific lest or report ordered, and the charges will be agreed upon before ordering the tests and reports.
10. Suppose the County has the CONTRACTOR'S associate on an assignment and would like to hire the associate directly from the CONTRACTOR. In that case, the County will pay the CONTRACTOR 30% of the associate's expected annual salary, provided all invoices are current. This only

applies to direct hiring and does not apply if the associate applies for a position posted through the County's normal hiring process.

11. You agree, for 180 days from the date of introduction or last date on the assignment, whichever is later, not to hire directly or use the CONTRACTOR'S associates through another staffing firm without paying a liquidation fee of 30% of the CONTRACTOR associate's expected annual compensation unless otherwise agreed to by the CONTRACTOR in writing. This only applies to direct hiring and does not apply if the associate applies for a position posted through the County's normal hiring process.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	8/10/2021
Subject:	Trial Court Improvement Fund Expenditure Request
Presenter:	N/A
Prepared By:	Tiffany Deaton
Reviewed By:	Commissioner's Review

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 Trial Court Improvement Committee is presenting 2021-2022 expenditure requests that have been approved and recommended by the Trial Court Improvement Committee. Please see attached letter.

Fiscal Impact

None – expenditures paid through the trial court improvement monies. Trial Court Improvement has an approved budget of $860,784.00 for 2021-2022.

Recommendation

Recommend approval of expenditures and resolution. Further, recommend that Benton County Resolution 2020-307 be rescinded.

Suggested Motion

N/A – Consent Agenda.

RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING A PURCHASES AS IDENTIFIED IN THE LETTER FROM THE TRIAL COURT IMPROVEMENT FUND COMMITTEE FOR EXPENDITURES FOR 2021-2022 TOTALING UP TO $244,500.00, UTILIZING FUNDS FROM THE BENTON COUNTY TRIAL COURT IMPROVEMENT FUND AND RESCINDING RESOLUTION 2020-307

WHEREAS, the Benton County Board of Commissioners received a letter from the Trial Court Improvement Committee requesting authorization for expenditures for 2021-2022 totaling up to $244,500.00; and

WHEREAS, Benton County District Court, Superior Court and the County Clerk desire to purchase equipment, professional services and travel and training costs for their respective offices as identified on the attached letter; and

WHEREAS, the Board of Benton County Commissioners constitutes the legislative authority of Benton County and deems this to be in the best interest of the County; and

NOW THEREFORE, BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the purchase as identified on the attached letter from the Trial Court Improvement Fund Committee for expenditures totaling up to $244,500.00, utilizing funds from the Trial Court Improvement Fund, 0156-101; and

BE IT FURTHER RESOLVED that Benton County Resolution 2020-307 is hereby rescinded.

DATED this _____ day of _____, 2021.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest:_____
Clerk of the Board

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

cc: Info. Technology, Superior Court Admin., Auditor

Prepared by: Tiffany Deaton

ATTACHMENT "A"
Benton County Trial Court Improvement Committee

Judge Samuel Swanberg
Judge John Ziobro
Clerk Josie Delvin
Chief Deputy Clerk Elaine Osborne
Superior Court Administrator Tiffany Deaton
District Court Administrator Ela Selga

July 22, 2021

Benton County Board of Commissioners
P.O. Box 1900
Prosser, WA 99350

Re: 2021-2022 Trial Court Improvement Fund Expenditure Authorization

Dear Board of Commissioners:

The Trial Court Improvement Committee has reviewed and approved the following 2021-2022 expenditure requests and agrees the expenditures are in compliance with the Trial Court Improvement Fund guidelines as outlined by the Washington Administrative Office of the Courts.

Infax Support Service Contract for Reader Boards	$ 5,000.00
Travel/Training funds for Superior Court	$ 5,000.00
Travel/Training funds for District Court	$ 5,000.00
District Court Replacement of Miscellaneous Equipment to include but not limited to: computers, printers, jury room equipment, etc.	$ 10,000.00

Superior Court Replacement of Miscellaneous Equipment to include but not limited to: computers, printers, file cabinets, chambers furniture, tables, bailiff radio accessories for Benton County, etc.	$ 10,000.00
Clerk Replacement of Miscellaneous Equipment to include but not limited to: computers, printers, file cabinets, tables, etc.	$ 10,000.00
Dual Monitor Arms for Workstation	$ 1,000.00
District Court Desk Chairs	$ 2,000.00
Superior Court Desk Chairs	$ 3,000.00
Clerk Desk Chairs	$ 2,000.00
District Court Interpreter Communication Devices	$ 5,000.00
JAVS ongoing support	$ 10,000.00
JAVS Recorder & Autolog 8 upgrade	$ 66,000.00
Protective Armor Vest for Superior Court on call Bailiff (Franklin County to share in the cost based on 2021 agreed percentage rates)	$ 1,000.00
District Court OnBase, Odyssey & CodeSmart (to include configuration for both systems, licenses, and computer peripherals)	$ 45,000.00
Superior Court Adobe Acrobat Device Licenses (licenses for bench computers)	$ 2,500.00
IP Phones for Jail Pods & Superior & District Courtrooms	$ 10,000.00
Superior Courtroom Clocks	$ 2,000.00
District Court Bailifff - Courtroom Security	$ 50,000.00
Clerk OnBase Program (ongoing support and upgrades)	TBD
Superior Court portable wheel chair ramp for courtrooms (to be built in-house)	TBD
District Court Security Equipment	TBD

Total Expenditure Cost:	$ 244,500.00
2021-2021 Budget:	$ 860,784.00
2021-2022 Budget Expended as of 04/30/2021:	$ 320,715.06
TCI Revenue Balance as of 05/01/2021:	$ 621,562.62

The Trial Court Improvement Committee recommends the Board of County Commissioners approve the above expenditures up to $244,500.00.

Judge John Ziobro
Presiding Judge – District Court

Judge Samuel Swanberg
Presiding Judge – Superior Court

Ela Selga
District Court Administrator

Tiffany Deaton
Superior Court Administrator

Josie Delvin
Benton County Clerk

Elaine Osborne
Chief Deputy Clerk

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 10, 2021
Subject:	6-Year Road Program
Presenter:	Douglas D'Hondt
Prepared By:	Blanca Parham
Reviewed By:	Douglas D'Hondt

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

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

Summary / Background Information

A Six-Year Road Program is required to be prepared every year describing the road maintenance and improvement program. A Program has been prepared for 2022-2027. A public hearing will be held on August 10, 2021 and if no opposition is brought forth, Board approval is recommended.

Fiscal Impact

See attached spreadsheet.

Recommendation

Approve the 2022-2027 Six-Year Road Program.

Suggested Motion

The Board of Benton County Commissioners hereby approves the 2022-2027 Six-Year Road Program as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: APPROVAL OF THE 2022 - 2027 SIX-YEAR ROAD PROGRAM

WHEREAS, RCW 36.81.121 requires development of perpetual advanced six-year plans for coordinated transportation; and

WHEREAS, the updated six-year plan, describing the road maintenance and improvement program for the period of 2022 through 2027 shall be adopted prior to adoption of the annual budget, after one or more public hearings; and

WHEREAS, a public hearing on said six-year plan/road program was held on August 10, 2021 after being advertised for 2 weeks with no opposition brought forth; and

WHEREAS, in accordance with WAC 136-14-050 and WAC 136-20-060, the priority array and bridge report prepared by the County Engineer and staff were considered as a part of the six-year plan; and

WHEREAS, the County Engineer recommends approval of the 2022 – 2027 Six-Year Road Program; **NOW THEREFORE**,

BE IT RESOLVED that the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the County Engineer's recommendation and hereby approves the 2022 – 2027 Six-Year Road Program.

Dated this 10th day of August, 2021.

_____
Chairman

_____
Chairman Pro-Tem.

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works B. Parham

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

001

Crosby Road Phase II

McClure Road "Y" to M.P. 10.64

Description and Scope

Crosby Road is a rural major collector in northwest Benton County. This project would widen a narrow section of roadway and fill in ruts with crushed rock material before applying a wedge penetration overlay.

Purpose and Need

Crosby Road, situated in the northwest of Benton County, serves as a haul road for farms in the area. Improvement of the road will allow for better access from farm to arterials, the freeway, and nearby towns.

History and Current Status

The northernmost part of Crosby Road received similar treatment in 2019. Improving this section helped to reestablish the road and improve access.

Operating and Maintenance Impact

Once Crosby Road is improved, it will be maintained through the County's chip seal program.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
CROSBY RD	22,190	RC	MCCLURE Y	M.P. 10.64	7.76	10.64	08	EXEMPT	4

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal			$ -						
State			$ -						
County	ROAD	PT & MVFT	$ 525,000.00	$ 225,000.00	$ 300,000.00				
Local			$ -						
		TOTAL	$ 525,000.00	$ 225,000.00	$ 300,000.00	$ -	$ -	$ -	$ -

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 40,000.00	$ 25,000.00	$ 15,000.00				
Construction/Service Cost		$ 485,000.00	$ 200,000.00	$ 285,000.00				
		$ -						
		$ -						
	TOTAL	$ 525,000.00	$ 225,000.00	$ 300,000.00	$ -	$ -	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027
SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

002

Hanks Road Phase I

Crosby to 1/2 mile east of McDonald (1.5 miles)

Description and Scope

Hanks Road runs just over 12 miles in Benton County. A rural minor collector, Hanks Road sees extensive farming freight traffic, particularly during harvest. The proposed project would improve 1.5 miles of Hanks Road via reconstruction to an all-weather standard and correcting horizontal and vertical alignment deficiencies.

Purpose and Need

The existing road is substandard for the traffic it serves with horizontal sight obstructions and relatively narrow lanes providing challenges for freight. Additionally, inclement weather can lead to weight restrictions and closures. The improvement of this roadway section through reconstruction will address these issues.

History and Current Status

Hanks Road is a T-3 freight route conveying up to four million tons of goods annually. This proposal is part of a larger series of projects aimed at improving farm-to-market freight routes in rural Benton County.

Operating and Maintenance Impact

The high volume of truck traffic increases the maintenance costs of Hanks Road compared to other roads of similar use and condition in Benton County. Improving the road to an all-weather status and correcting the existing deficiencies should reduce those costs. Upon completion of the project, Hanks Road will return to the normal maintenance regime.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
HANKS	22220	RC	CROSBY	1/2 mi EAST OF MCDONALD	6.07	7.6	08	EXEMPT	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal			$ -						
State	CRAB	RAP	$ 1,413,000.00	$ 10,000.00	$ 1,403,000.00				
County	ROAD	PT & MVFT	$ 157,000.00		$ 157,000.00				
Local			$ -						
		TOTAL	$ 1,570,000.00	$ 10,000.00	$ 1,560,000.00	$ -	$ -	$ -	$ -

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ -					$ -	
Construction/Service Cost	$ 1,560,000.00		$ 1,560,000.00				
Right-of-way	$ 10,000.00	$ 10,000.00				$ -	
	$ 1,570,000.00	$ 10,000.00	$ 1,560,000.00	$ -	$ -	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

003

County Well Road - Phase I
SR 221 to McBee (3.0 miles)

Description and Scope

County Well Road runs over seven miles in Benton County. Classified as a rural minor collector, the road sees significant truck traffic during the farming season. This project is the first phase of a three-part series that will overlay nearly seven (7) miles of the road to an all-weather standard and work to improve safety and drainage.

Purpose and Need

The existing road has poor drainage and a substandard surface. Improving the road to an all-weather, paved, roadway will improve safety, ensure there are no travel restrictions during inclement weather, and reduce overall maintenance costs.

History and Current Status

County Well Road is designated a T-5 freight route, moving up to 20,000 tons of freight over sixty days. This is the first phase of this series aiming at improving roadway conditions and safety. The project is currently in the preliminary planning phase.

Operating and Maintenance Impact

County Well Road has high maintenance costs compared to other gravel roads in the area due to the large volume of trucks using it during the farming season. Improving the roadway will reduce overall maintenance costs and provide a better operating experience for the road users and surrounding land owners.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
County Well Road	11110	2R	SR221	MCBEE	0	3.12	08	EXEMPT	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal									
State	CRAB	RAP	$ 2,250,000.00				$ 2,250,000.00		
County			$ -						
		TOTAL	$ 2,250,000.00	$ -	$ -	$ -	$ 2,250,000.00	$ -	$ -

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 175,000.00				$ 175,000.00		
Right of Way	$ 50,000.00				$ 50,000.00		
Construction/Service Cost	$ 2,025,000.00				$ 2,025,000.00		
TOTAL	$ 2,250,000.00	$ -	$ -	$ -	$ 2,250,000.00	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

004

Badger Road - Interstate 82 Roundabouts and Pathway

Cottonwood Drive to Kennewick City Limits

Description and Scope

This project will construct four roundabouts along Badger Road, three at the interchange with I-82 and one at Cottonwood Drive. A non-motorized pathway will be constructed along the north side of the road to remove pedestrians and other non-motorized traffic from the roadway.

Purpose and Need

This area of Badger Road has seen substantial development in the last ten years, including an increase in commercial, light industrial, and residential use. It has also seen the construction of a school near the intersection of Wiser Parkway and Badger Road. During times of high traffic, this can lead to backups for those attempting to make left turns onto Badger Road from both Wiser Parkway and the interstate. This is particularly hazardous, as a parallel rail line runs along this section of Badger Road, potentially creating conflicts between traffic and trains.

History and Current Status

The area to the west and north of Badger Road is adjacent to both the Cities of Richland and Kennewick and abuts the freeway. As such, it has developed dramatically in the past ten years, changing from rural farmland to residential, commercial, and light industrial areas. This, combined with a school at Wiser Parkway and Badger Road, has seen a dramatic increase in traffic. Currently, there is more property to the west of Cottonwood Drive that could be similarly developed, which would effectively exacerbate existing issues.

Operating and Maintenance Impact

The roundabouts at the interchange will be in the Washington State Department of Transportation right-of-way and will be subject to their maintenance schedule. The roundabout at Cottonwood Drive and Badger Road will be maintained by the Benton County Public Works Department, though as it will be a concrete structure, its effective lifespan will be substantially longer than the surrounding BST roadways (approximately 30-40 years, compared to the seven averaged by BST roads in Benton County). The pathway along the County portion of Badger Road will be maintained by the Public Works Department through Paths and Trails funding.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
BADGER RD	55,100	RC	COTTONWOOD DR	KENNEWICK CITY LIMITS	10.09	12.01	17	EA	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal		RAISE	$ 14,350,000.00						$ 14,350,000.00
State			$ -						
County	ROAD	CRIMP	$ 6,500,000.00			$ 6,500,000.00			
Local			$ -						
		TOTAL	$ 20,850,000.00	$ -	$ -	$ 6,500,000.00	$ -	$ -	$ 14,350,000.00

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 6,500,000.00			$ 6,500,000.00			
Right-of-way		$ -						
Construction/Service Cost		$ 14,350,000.00						$ 14,350,000.00
		$ -						
	TOTAL	$ 20,850,000.00	$ -	$ -	$ 6,500,000.00	$ -	$ -	$ 14,350,000.00

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

005

Bert James Road

Young Road to Sellards Road (2.0 miles)

Description and Scope

Bert James Road is a rural minor collector running for over ten miles in Benton County. Providing a freight shortcut to SR 221, Bert James Road experiences extensive truck traffic during harvest season. The proposed project would reconstruct two (2) miles of the existing roadway in order to improve its width so that it might better function in this capacity.

Purpose and Need

Due to recently irrigated lands on this portion of the Horse Heaven Hills we have seen a significant increase of Truck Traffic and we are anticipating this to increase more. We would like to build an all weather County Road in our existing Right of Way.

History and Current Status

Bert James Road is a T-3 route, seeing up to four million tons of freight per year. Anticipating the need for reconstruction, the County has already surveyed the right-of-way, procured much of the right-of-way needed for construction, and designed plans. A small amount of right-of-way still needs to be procured. This project may be broken into phases depending on funding.

Operating and Maintenance Impact

Completion of this project will reduce the frequency with which it must be maintained, including the frequency with which it will be chip sealed. Maintenance and operating costs will thus be reduced. Road closures will also be reduced, allowing better realization of the route for users and adjacent property owners.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
BERT JAMES	15560	3R	Young Road	Sellards Road	3.89	5.98	08	Exempt	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal			$ -						
State	CRAB	RAP	$ 1,260,000.00				$ 1,260,000.00		
County	ROAD	PT & MVFT	$ 140,000.00				$ 140,000.00		
Local			$ -						
		TOTAL	$ 1,400,000.00	$ -	$ -	$ -	$ 1,400,000.00	$ -	$ -

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 200,000.00				$ 200,000.00		
Construction/Service Cost	$ 1,200,000.00				$ 1,200,000.00		
Other	$ -						
Operations and Maintenance	$ -						
TOTAL	$ 1,400,000.00	$ -	$ -	$ -	$ 1,400,000.00	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

006

Bert James Road Overlay

Sellards Road to SR-221

Description and Scope

Bert James Road is a rural minor collector running for over ten miles in Benton County. Providing a freight shortcut to SR 221, Bert James Road experiences extensive truck traffic during harvest season. The proposed project would overlay 4.25 miles of the existing roadway in order to improve its width and surface so that it might better function in this capacity .

Purpose and Need

The existing segment of Bert James Road has substandard width and an aging surface, which can make it difficult to navigate for trucks hauling freight. Overlay will see this road section widened and resurfaced.

History and Current Status

Bert James Road is a T-3 route, seeing up to four million tons of freight per year. Anticipating the need for reconstruction, the County has already surveyed the right-of-way, procured much of the right-of-way needed for construction, and designed plans. A small amount of right-of-way still needs to be procured. This project may be broken into phases depending on funding.

Operating and Maintenance Impact

Completion of this project will reduce the frequency with which it must be maintained. Maintenance and operating costs will thus be reduced. Road closures will also be reduced, allowing better realization of the route for users and adjacent property owners.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
BERT JAMES	15560	2R	Sellards	SR-221	5.99	10.24	08	EXEMPT	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal			$ -						
State	CRAB	RAP	$ 1,845,000.00					$ 1,845,000.00	
County	ROAD	PT & MVFT	$ 205,000.00					$ 205,000.00	
Local									
		TOTAL	$ 2,050,000.00	$ -	$ -	$ -	$ -	$ 2,050,000.00	$ -

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 205,000.00					$ 205,000.00	
Construction/Service Cost	$ 1,845,000.00					$ 1,845,000.00	
Other	$ -						
Operations and Maintenance	$ -						
TOTAL	$ 2,050,000.00	$ -	$ -	$ -	$ -	$ 2,050,000.00	$ -

BENTON COUNTY ROAD DEPARTMENT
2122-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

007

Hanks Road II

1/2 mile east of McDonald to Aller (1.5 miles)

Description and Scope

Hanks Road runs just over 12 miles in Benton County. A rural minor collector, Hanks Road sees extensive farming freight traffic, particularly during harvest. The proposed project would improve 1.5 miles of Hanks Road via reconstruction to an all-weather standard and improving some horizontal and vertical alignment deficiencies.

Purpose and Need

The existing road is substandard for the traffic it serves with vertical and horizontal sight obstructions and relatively narrow lanes providing challenges for freight. Additionally, inclement weather can lead to weight restrictions and closures. The improvement of this roadway section through reconstruction will address these issues.

History and Current Status

Hanks Road is a T-3 freight route conveying up to four million tons of goods annually. This proposal is part of a larger series of projects aimed at improving farm-to-market freight routes in rural Benton County.

Operating and Maintenance Impact

The high volume of truck traffic increases the maintenance costs of Hanks Road compared to other roads of similar use and condition in Benton County. Improving the road to an all-weather status and correcting the existing deficiencies should reduce those costs. Upon completion of the project, Hanks Road will return to the normal maintenance regime.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
HANKS	22220	RC	1/2 mi EAST OF MCDONALD	ALLER	7.6	9.1	08	EXEMPT	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal	BFCOG	STP/R&U	$ 1,700,000.00						$ 1,700,000.00
State	CRAB	RAP	$ 60,000.00						$ 60,000.00
County	ROAD	PT & MVFT	$ -						
Local			$ -						
		TOTAL	$ 1,760,000.00	$ -	$ -	$ -	$ -	$ -	$ 1,760,000.00

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 50,000.00						$ 50,000.00
Construction/Service Cost	$ 1,700,000.00						$ 1,700,000.00
Right-of-way	$ 10,000.00						$ 10,000.00
TOTAL	$ 1,760,000.00	$ -	$ -	$ -	$ -	$ -	$ 1,760,000.00

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

008

County Well Road - Phase II

McBee to Clodius (2.0 miles)

Description and Scope

County Well Road runs over seven miles in Benton County. Classified as a rural minor collector, the road sees significant truck traffic during the farming season. This project is the second phase of a three-part series that will reconstruct nearly seven (7) miles of the road to an all-weather standard and work to improve safety.

Purpose and Need

Improving the road with an all-weather, paved, roadway will improve safety, ensure there are no travel restrictions during inclement weather, and reduce overall maintenance costs.

History and Current Status

County Well Road is designated a T-5 freight route, moving up to 20,000 tons of freight over sixty days. This is the second phase of this series aiming at improving roadway conditions and safety. The project is currently in the preliminary planning phase.

Operating and Maintenance Impact

County Well Road has high maintenance costs due to the large volume of trucks using it during the farming season. Improving the roadway will reduce overall maintenance costs and provide a better operating experience for the road users and surrounding land owners.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
County Well Road	11110	RC	MCBEE	CLODIUS	3.12	5.13	08	EXEMPT	

PARTICIPATING FUNDS	TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Undetermined Funding Source	$ 1,500,000.00						$ 1,500,000.00
	$ -						
	$ -						
TOTAL	$ 1,500,000.00	$ -	$ -	$ -	$ -	$ -	$ 1,500,000.00

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 150,000.00						$ 150,000.00
Right of Way	$ -						
Construction/Service Cost	$ 1,350,000.00						$ 1,350,000.00
TOTAL	$ 1,500,000.00	$ -	$ -	$ -	$ -	$ -	$ 1,500,000.00

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

009

County Well Road - Phase III
Clodius to County Pit (1.8 miles)

Description and Scope

County Well Road runs over seven miles in Benton County. Classified as a rural minor collector, the road sees significant truck traffic during the farming season. This project is the final phase of a three-part series that will reconstruct nearly seven (7) miles of the road to an all-weather standard and work to improve safety and drainage.

Purpose and Need

Improving the road with an all-weather, paved, roadway will improve safety, ensure there are no travel restrictions during inclement weather, and reduce overall maintenance costs.

History and Current Status

County Well Road is designated a T-5 freight route, moving up to 20,000 tons of freight over sixty days. This is the third phase of this series aiming at improving roadway conditions and safety. The project is currently in the preliminary planning phase.

Operating and Maintenance Impact

County Well Road has high maintenance costs due to the large volume of trucks using it during the farming season. Improving the roadway will reduce overall maintenance costs and provide a better operating experience for the road users and surrounding land owners.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
County Well Road	11110	RC	CLODIUS	COUNTY PIT	3.12	5.13	08	EXEMPT	

PARTICIPATING FUNDS	TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Undetermined Funding Source	$ 1,350,000.00						$ 1,350,000.00
	$ -						
	$ -						
TOTAL	$ 1,350,000.00	$ -	$ -	$ -	$ -	$ -	$ 1,350,000.00

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 135,000.00						$ 135,000.00
Right of Way	$ -						
Construction/Service Cost	$ 1,215,000.00						$ 1,215,000.00
TOTAL	$ 1,350,000.00	$ -	$ -	$ -	$ -		$ 1,350,000.00

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

010

Finley Road

MP 5.2 to End of Pavement (2.1 miles)

Description and Scope

Finley Road runs over 15 miles in Benton County. A rural minor collector, Finley Road sees extensive farming freight traffic, particularly during harvest. The proposed project would improve 2.1 miles of gravel Finley Road to a paved, all-weather standard and establishing proper widths.

Purpose and Need

The existing road is a gravel road with substandard lanes that provide challenges for freight. Due to it being a gravel road, inclement weather can lead to weight restrictions and closures. The improvement of this roadway section through paving will address these issues.

History and Current Status

Finley Road is a T-4 freight route conveying up to 300,000 tons of goods annually. This proposal is part of a larger series of projects aimed at improving farm-to-market freight routes in rural Benton County.

Operating and Maintenance Impact

The relatively high volume of truck traffic increases the maintenance costs of Finley Road compared to other roads of similar use and condition in Benton County. Improving the road to a paved, all-weather status and correcting the existing width deficiencies should reduce those costs. Upon completion of the project, Finely Road will return to the normal maintenance regime for similar roads.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
FINLEY	49550	RC	MP5.2	END OF PAVEMENT	5.2	7.24	08	EXEMPT	

PARTICIPATING FUNDS		TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Undetermined Funding Source		$ 2,500,000.00						$ 2,500,000.00
		$ -						
		$ -						
	TOTAL	$ 2,500,000.00	$ -	$ -	$ -	$ -	$ -	$ 2,500,000.00

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 125,000.00						$ 125,000.00
Right of Way		$ 50,000.00						$ 50,000.00
Construction/Service Cost		$ 2,325,000.00						$ 2,325,000.00
	TOTAL	$ 2,500,000.00	$ -	$ -	$ -	$ -	$ -	$ 2,500,000.00

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

011

Dague Road

Terril to Game Farm (0.5 miles)

Description and Scope

Dague Road is a proposed 0.5-mile, paved, all-weather road that would connect E Game Farm Road to E Terril Road in Benton County, southeast of Kennewick, Washington.

Purpose and Need

East Game Farm Road currently terminates at its east end with no other way in or out. The connection of these two roads would establish a freight route that ultimately connects rural agrarian land to SR-397, creating a farm-to-market route.

History and Current Status

While there has been some residential development in the general vicinity of these two roads, the surrounding land is still heavily agrarian. Providing this through route would allow for more readily dissemination of produce. It would also provide access for those residences that have been constructed in the area.

Operating and Maintenance Impact

Currently, Dague Road does not exist. Its construction would add 0.5 miles of paved, all-weather roadway to the County's maintenance schedule.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
DAGUE	75650	NC	TERRIL	GAME FARM	0	0.5	09	EXEMPT	

PARTICIPATING FUNDS	TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Undetermined Funding Source	$ 650,000.00	$ 50,000.00	$ 600,000.00				
	$ -						
	$ -						
TOTAL	$ 650,000.00	$ 50,000.00	$ 600,000.00	$ -	$ -	$ -	$ -

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 50,000.00	$ 50,000.00					
Right of Way	$ -						
Construction/Service Cost	$ 600,000.00		$ 600,000.00				
TOTAL	$ 650,000.00	$ 50,000.00	$ 600,000.00	$ -	$ -	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

012

Johnson Road

ECR 12 to Griffin (2.2 miles)

Description and Scope

Johnson Road runs over five (5) miles in Benton County. A rural local access road, Johnson Road is narrower than prescribed standards. The proposed project would improve 2.2 miles of Jolmson Road to establish proper widths.

Purpose and Need

The existing road is a narrow road with substandard lanes that provide challenges for safety. The improvement of this roadway section through widening aims to address this issue.

History and Current Status

Johnson Road has experienced six recorded accidents on this segment since 2011. This proposal aims at improving safety along this segment.

Operating and Maintenance Impact

Johnson Road is already maintained on a regular basis by the Benton County Road Department. The increased lane widths would likely only increase material costs, as labor would be geared towards standard road widths.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
JOHNSON	20280	RC	CR12	GRIFFIN	1.03	3.24	07	EXEMPT	

PARTICIPATING FUNDS		TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
COUNTY CONTRIBUTIONS		$ 1,320,000.00		$ 75,000.00	$ 75,000.00		$ 1,170,000.00	
		$ -						
		$ -						
	TOTAL	$ 1,320,000.00	$ -	$ 75,000.00	$ 75,000.00	$ -	$ 1,170,000.00	$ -

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 75,000.00		$ 75,000.00				
Right of Way		$ 75,000.00			$ 75,000.00			
Construction/Service Cost		$ 1,170,000.00					$ 1,170,000.00	
	TOTAL	$ 1,320,000.00	$ -	$ 75,000.00	$ 75,000.00	$ -	$ 1,170,000.00	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

013

Adair Road

End of County Road to Chirstensen (1.1 miles)

Description and Scope

Adair Road is a proposed new 1.1-mile, paved roadway. This segment of roadway would connect the existing Adair Road to Christensen Road, south of Kennewick, Washington.

Purpose and Need

This new road segment will create a throughway for industrial development along the west side of the freeway (I-82). Similar development has already occurred on the east side of I-82. Development is consistent with local planning and zoning in the area.

History and Current Status

The property along the proposed roadway is currently undeveloped. On the east side of the freeway, industrial development has already occurred. This project is in the preliminary planning phase.

Operating and Maintenance Impact

Once completed, this segment of Adair Road will add 1.1 miles of paved road to the Benton County road system. Maintenance will occur on the regularly scheduled interval of that maintenance district.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
ADAIR	44830	NC	END OF COUNTY ROAD	CHRISTENSEN	1.484	2.584	09	EXEMPT	

PARTICIPATING FUNDS	TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
COUNTY CONTRIBUTIONS	$ 2,000,000.00				$ 2,000,000.00		
	$ -						
	$ -						
TOTAL	$ 2,000,000.00	$ -	$ -	$ -	$ 2,000,000.00	$ -	$ -

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 150,000.00				$ 150,000.00		
Right of Way	$ 200,000.00				$ 200,000.00		
Construction/Service Cost	$ 1,650,000.00				$ 1,650,000.00		
TOTAL	$ 2,000,000.00	$ -	$ -	$ -	$ 2,000,000.00	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

014

Belmont Road

City Limits to Kennedy (1.2 miles)

Description and Scope

Belmont Road is a proposed new 1.2-mile, paved roadway. This segment of roadway would connect the existing Belmont Road to Kennedy Road near the city limits of West Richland, Washington.

Purpose and Need

This new road segment will create a throughway for commercial development between Keene and Kennedy Road. Development is consistent with local planning and zoning in the area and is anticipated to rapidly increase with the construction of the Red Mountain interchange.

History and Current Status

Development has occurred around the area of this proposal, but not in the immediate vicinity. It is expected that more development will occur once the road is in place, especially with the construction of the Red Mountain interchange. This project is in the preliminary planning phase.

Operating and Maintenance Impact

Once completed, this segment of Belmont Road will add 1.1 miles of paved, all-weather road to the Benton County road system. Maintenance will occur on the regularly scheduled interval of that maintenance district.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
BELMONT	44830	NC	CITY LIMITS	KENNEDY	0	1.2	08	EXEMPT	

PARTICIPATING FUNDS	TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
COUNTY CONTRIBUTIONS	$ 2,600,000.00		$ 600,000.00		$ 2,000,000.00		
	$ -						
	$ -						
TOTAL	$ 2,600,000.00	$ -	$ 600,000.00	$ -	$ 2,000,000.00	$ -	$ -

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 300,000.00		$ 300,000.00				
Right of Way	$ 300,000.00		$ 300,000.00				
Construction/Service Cost	$ 2,000,000.00				$ 2,000,000.00		
TOTAL	$ 2,600,000.00	$ -	$ 600,000.00	$ -	$ 2,000,000.00	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

015

Guardrail Safety Improvements

Countywide

Description and Scope

Multiple locations within Benton County have a need for Guardrail because of roadside slopes being steeper than 4 to 1. Federal Grants available for roadside safety improvement will be used for this project. Signage and roadway delineators will also be added thoughout the County.

Purpose and Need

The goal is to improve roadside safety within Benton County.

History and Current Status

Safety guideline show that a slope steeper that 4 to 1 has a higher chance of rollover accidents. When a 4 to 1 is not achievable inside the right of way, placing guardrail is a recommended alternative.

Operating and Maintenance Impact

Once completed, the chosen locations will have been Improved and Safer to the traveling public

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
Varies	Varies	NC	N/A	N/A	N/A	N/A	N/A	EXEMPT	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal	CONTRIBUTIONS	HSIP	$ 1,270,403.00	$ 1,270,403.00					
			$ -						
			$ -						
		TOTAL	$ 1,270,403.00	$ 1,270,403.00	$ -	$ -	$ -	$ -	$ -

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 238,200.00	$ 238,200.00					
Right of Way		$ -						
Construction/Service Cost		$ 1,032,203.00	$ 1,032,203.00					
	TOTAL	$ 1,270,403.00	$ 1,270,403.00	$ -	$ -	$ -	$ -	$ -

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

016

Reata Road Widening and Pathway

I-82 Overpass to Richland City Limits (2.09 miles)

Description and Scope

Reata Road is a Rural Major Collector that has seen significant growth in the surrounding areas bringing increased daily traffic. The proposed project would add a 12 foot pathway on the north side of the road and widen the roadway to accommodate three (3) eleven foot lanes from the I-82 Overpass to Richland City Limits .

Purpose and Need

Reata Road will continue to see significant growth with planned subdivisions using it as a Major Corridor. An increase in surrounding neighborhoods will increase the need for pedestrian pathways.

History and Current Status

Reata Road is currently seeing average daily traffic of around 2,000 vehicles a day, with a varying road width between 24-26 feet.

Operating and Maintenance Impact

Badger Road is already maintained by the Benton County Road Department. The additional widening will be maintained in sequence with the rest of the roadway in its maintenance district.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
REATA	50180	NC	I-82 OVERPASS	CITY LIMITS	1.68	3.77	17	EXEMPT	

PARTICIPATING FUNDS	TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Undetermined Funding Source	$ 8,500,000.00			$ 2,550,000.00			$ 5,950,000.00
	$ -						
	$ -						
TOTAL	$ 8,500,000.00	$ -	$ -	$ 2,550,000.00	$ -	$ -	$ 5,950,000.00

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering	$ 550,000.00			$ 550,000.00			
Right of Way	$ -						
Construction/Service Cost	$ 7,950,000.00			$ 2,000,000.00			$ 5,950,000.00
TOTAL	$ 8,500,000.00	$ -	$ -	$ 2,550,000.00	$ -	$ -	$ 5,950,000.00

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

017

Gum Street Improvements

East 36th Ave. to Kennewick City Limits (1.45 miles)

Description and Scope

The proposed project would widen the roadway to 32 feet with 5 foot bike lanes, set back utilites and reestablish existing right of way

Purpose and Need

The Proposed wideining would improve intersections that have a high occurrence of accidents and increase the safety of the entire corridor that has seen increased traffic from new subdivisions.

History and Current Status

Gum Street has an approximate ADT of 1,600 vehicles a day and is currently only 22 feet wide. It has an established 60 foot right of way to utilize in the proposed widening.

Operating and Maintenance Impact

Gum Street is already maintained by the Benton County Road Department. The additional widening will be maintained in sequence with the rest of the roadway in its maintenance district.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
GUM	72,030	NC	EAST 36TH AVE	CITY LIMITS	0.14	1.59	19	EXEMPT	

PARTICIPATING FUNDS		TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Undetermined Funding Source		$ 2,750,000.00				$ 500,000.00		$ 2,250,000.00
		$ -						
		$ -						
	TOTAL	$ 2,750,000.00	$ -	$ -	$ -	$ 500,000.00	$ -	$ 2,250,000.00

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 500,000.00				$ 500,000.00		
Right of Way		$ -						
Construction/Service Cost		$ 2,250,000.00						$ 2,250,000.00
	TOTAL	$ 2,750,000.00	$ -	$ -	$ -	$ 500,000.00	$ -	$ 2,250,000.00

BENTON COUNTY ROAD DEPARTMENT
2021-2026 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

018

Badger Road Pathway

I-82 to Dallas Road (7.0 miles)

Description and Scope

Badger Road runs 12 miles in Benton County, effectively connecting the Tri-City metropolitan to Weber Canyon Road near Benton City, Washington. This route is popular with recreationalists, particularlt cyclists. The proposed project would add two (2) six-foot bike lanes along seven miles of Badger Road, from the City of Kennewick to Dallas Road.

Purpose and Need

Dallas Road is popular with cyclists, but its structure only has two-foot gravel shoulders. Given the speed limit of 50 miles per hour, this can make cyclists unease while using this route. The wider road surface will provide a standard distance from the vehicles, reducing lane congestion and providing cyclists with dedicated road surface.

History and Current Status

Currently, several cycling organizations use this route for events. The road is also listed as a popular route on maps produced by the Benton Franklin Council of Governments. Said maps also cite that the route merits caution in its current form.

Operating and Maintenance Impact

Badger Road is already maintained by the Benton County Road Department. The additional 12 feet of pavement will be maintained in sequence with the rest of the roadway in its maintenance district.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
BADGER	55100	P&T	DALLAS RD.	I-82	4.679	11.765	08	EXEMPT	

PARTICIPATING FUNDS			TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023		2024-2025		2026-2027	
Federal			$ -						
State			$ -						
County	ROAD		$ 1,750,000.00				$ 250,000.00		$ 1,500,000.00
Local			$ -						
		TOTAL	$ 1,750,000.00	$ -	$ -	$ -	$ 250,000.00	$ -	$ 1,500,000.00

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 250,000.00				$ 250,000.00		
Right of Way		$ -						
Construction/Service Cost		$ 1,500,000.00						$ 1,500,000.00
	TOTAL	$ 1,750,000.00	$ -	$ -	$ -	$ 250,000.00		$ -

BENTON COUNTY ROAD DEPARTMENT
2021-2026 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

019

Johnson Road/Griffin Road

Intersection Improvements (0.5 miles)

Description and Scope

Johnson Road runs over 5 miles in Benton County. A rural local access road, Johnson Road is narrower than prescribed standards, and suffers substandard conditions at the intersection with Griffin Road. The proposed project would improve 0.5 miles around the intersection to improve widths and sight triangles.

Purpose and Need

The existing Johnson Road is a narrow road with substandard lanes and sight triangles that provide challenges for safety. The improvement of this roadway segment through through the intersection aims to address this issue.

History and Current Status

This intersection experienced five recorded accidents since 2011. This proposal aims at improving safety at this intersection. This project is part of a series of two projects aimed at improving safety on Johnson Road.

Operating and Maintenance Impact

Johnson Road is already maintained on a regular basis by the Benton County Road Department. The increased lane widths and improved sight triangles would likely only increase material costs, as labor would be geared towards standard road widths.

ROAD NAME	ROAD NUMBER	PROJECT TYPE	FROM	TO	BMP	EMP	FUNCTIONAL CLASS	EAT	IMPROVEMENT TYPE CODE
Johnson	20250/20280	NC	N/A	N/A	N/A	N/A	9	EXEMPT	

PARTICIPATING FUNDS	TOTAL ESTIMATED PROJECT REVENUE	REVENUES 2022-2023	2024-2025	2026-2027
Undetermined Funding Source	$ 1,250,000.00			$ 1,250,000.00
	$ -			
	$ -			
TOTAL	$ 1,250,000.00	$ - $ -	$ -	$ - $ - $ 1,250,000.00

FUND DISTRUBUTION	TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023	2024-2025	2026-2027
Preliminary Engineering	$ 100,000.00			$ 100,000.00
Right of Way	$ 150,000.00			$ 150,000.00
Construction/Service Cost	$ 1,000,000.00			$ 1,000,000.00
TOTAL	$ 1,250,000.00	$ - $ -	$ -	$ - $ - $ 1,250,000.00