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/agenda/commissioners

AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, January 4, 2022
Benton County Courthouse, Prosser, WA

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- **December 21, 2021**

Review Agenda

Consent Agenda

Auditor
a. Canvassing Board Appointment

Commissioners
b. Appointment of Randall Bricker to the Kiona Irrigation District
c. Re-appointment of Cynthia Gray to the Benton County Mosquito Control Board

Human Services
d. Fourth Amended Contract w/WA State Health Care Authority for Community Prevention Wellness Initiative Services

Juvenile

e. Contract w/Regional Toxicology Services for Urinalysis Testing
f. Contract w/Roto-Rooter Plumbing for Plumbing Services

Office of Public Defense

g. Juvenile Court Public Defense Agreement w/Susan Henwood
h. Juvenile Court Public Defense Agreement w/Branden Landon
i. Juvenile Court Public Defense Agreement w/Diana Anderson
j. Juvenile Court Public Defense Agreement w/Kathleen Moreno
k. Juvenile Court Public Defense Agreement w/Michelle Trombley
l. Amended Superior Court Public Defense Agreement w/Michelle Alexander
m. Early Termination Notice of District Court Public Defense Agreement w/Rebecca Lemons
n. Early Termination Notice of Superior Court Public Defense Agreement w/Jennifer Azure
o. Early Termination Notice of Superior Court Public Defense Agreement w/Jennifer Azure for Uniform Guardianship Act Cases
p. Early Termination Notice of Juvenile Court Public Defense Agreement w/Jennifer Azure

Planning

q. Appointment of Lorna Zaback to Benton County Planning Commission, District 3

Public Safety

r. Line Item Transfer, Fund No. 0148-101, Dept. 115 to 136
s. Line Item Transfer, Fund No. 0148-101, Dept. 121

Purchasing

t. Agreement w/Ideal Option for Medicated Assisted Opioid Treatment Networks Within the Jail
u. Contract Award to Apollo Mechanical Contractors for Courtroom IT HVAC Project
v. Contract Award to Banlin Construction of Justice Center Front Entrance Security Upgrade Project
w. Purchase of Crack Seal Machine From Arrow Construction Supply for Public Works Dept.

Sheriff

x. Line Item Transfer, Fund No. 0000-101, Dept. 125

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

Public Hearing

Amending the 2022-2027 Six-Year Road Program ~ D D'Hondt

Scheduled Business

Moderate Risk Waste Facility Project Bid Withdrawal & New Contract Award ~ R Blain & D D'Hondt

Commissioners Board Assignments Discussion ~ Commissioners

Other Business

DRAFT

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, December 21, 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
Alt. Clerk of the Board Marilu Flores

Benton County Employees Present During All or a Portion of the Meeting:; Robert Heard, IT Manager; Karlee HR Assistant Manager; Greg Wendt, Community Development Director; Michelle Cooke, Planning Assistant Manager; Donna Hutchinson, Planning Dept. Office Asst.; Tammy McKeirnan, Human Services Budget & Finance Analyst; Clerk Josie Delvin; Jail Commander Josh Shelton

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Review Agenda

- Administrator MacPherson added discussion on the long term care employee deduction.
- Commissioner McKay added an executive session for reviewing the performance of a public employee.

Approval of Minutes

The Minutes of December 14, 2021 were approved.

Consent Agenda

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

Auditor

a. Appointments to the Benton County Accessible Community Advisory Committee

Commissioners

b. First Amended Historic Preservation Grant Agreement w/Benton City Revitalization Organization

District Court

c. Agreement w/WA Administrative Office of the Courts for Reimbursement of Interpreter Costs

Human Resources

d. Establishing Insurance Benefits Contribution for Non-Bargaining Employees & Elected Officials
e. Establishing Insurance Benefits Contribution for Bi-County Non-Bargaining Employees

Information Technologies

f. Three-Year Subscription Renewal for LegalServer From PS Technologies
g. Annual Subscription for NextRequest Public Records Management From SHI International Corp.

Office of Public Defense

h. Superior & District Court Public Defense Interpreting Services Agreement w/Sylvia Garza
i. Superior & District Court Public Defense Interpreting Services Agreement w/Bertha Ramon-Arteaga

Public Works

j. Maintenance & Upgrade Fees to Cascade Software Systems for Cost Accounting Software
k. Approving A Public Hearing for the Amendment of the 2022-2027 Six-Year Road Program

Purchasing

l. Contract w/FastSigns 280501 for Installing Window Film @ The Administration Building
m. 2nd Amended Contract w/Wave Design Group for Redesign of the Justice Center Front Entrance
n. Contract w/On Scene Medical Services for Pre-Hire Physicals & Drug/Alcohol Testing
o. Consultant Agreement for On-Call Surveying Services w/HLA Engineering & Land Surveying
p. Purchase of Thermoplastic Markings From Traffic Safety Supply for Public Works
q. First Amended Contract w/Public Safety Psychological Services for Evaluations in the Sheriff's Office
r. Interlocal Agreement w/City of West Richland for General Equipment and/or Services
s. First Amendment to Contract w/Continental Door Company for Repairs on Garage Doors
t. Moorage Agreement w/Port of Kennewick & Sheriff's Office to a Maintain Boat Slip @ Clover Island
u. Grant Award & Contract w/WA State Health Care Authority for Opioid Treatment Network @ the Jail

Superior Court

v. Agreement w/WA State Administrative Office of the Courts for Reimbursement of Interpreter Services

Public Comment

None.

Public Hearings

Short Plat Vacation; SPV 2021-005

Greg Wendt & Michelle Cooke presented the Short Plat Vacation; SPV 2021-005 for the creation of two residential lots from Lot 1 of Short Plat 1746 recorded under Auditors File Number 1991-01241. With the creation of the two lots, a 20-foot ingress-egress and utility easement was established on the southern 300 feet of the west 10 feet of Lot 1 and the east 10 feet of Lot 2 of

Short Plat 2831. The parcels are located approximately 930 feet west at the end of Harrington Road in the West Richland area of unincorporated Benton County. The applicant is requesting the vacation of the 20-foot ingress-egress and utility easement that is located on the southern 300 feet of the west 10 feet of Lot 1 of Short Plat 2831 and the southern 300 feet of the east 10 feet of Lot 2 of Short Plat 2831. Ms. Cooke indicated that the Planning Department was recommending approval.

Discussion: Commissioner McKay requested the exact location.

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

MOTION: Commissioner Small moved to approve SPV 2021-005 for the vacation of a 20-foot ingress-egress and utility easement located on the southern 300 feet of the west 10 feet of Lot 1 and the east 10 feet of Lot 2 of Short Plat 2831. Commissioner McKay seconded and upon vote, the motion carried.

Ordinance Amendment; OA 2021-004

Greg Wendt & Michelle Cooke presented Ordinance Amendment; OA 2021-004, an amendment relating to Benton County Code Title 11 zoning, amending the sections relating to uses requiring a conditional use permit; amending the sections relating to allowable uses for wind turbines, solar power generator facility; major, and facilities for power generation, other than nuclear fueled, wind or solar fueled. Additionally, it included some housekeeping changes. The Planning Commission held a public hearing on Nov 30, 2021, to consider the request and voted to forward a recommendation for approval subject to nine (9) findings of fact.

Ms. Cooke indicated that the application included changes to Rural Lands Use 20, the Growth Management Act, Light Industrial District and Heavy Industrial District to be more consistent with State and County land use regulations including the Growth Management Plan and Comprehensive Plan.

Mr. Wendt gave an overview and explained why potential changes are being discussed. He provided the Board a PowerPoint explaining in more detail the following:

- Definitions of:
    - Wind Turbine
    - Wind Turbine Farms
    - Solar Power Generator Facility, Minor
    - Solar Power Generator Facility, Major
- Allowed Uses for:
    - Wind Turbines – no more than one wind turbine per parcel
    - Zoning Districts – proposal to add wind turbine to the light industrial and heavy industrial zoning districts
- Accessory Uses
    - Solar Power Generator Facility, Minor – use of solar panels
    - Zoning District – no changes proposed

- Conditional Uses
  - Solar Power Generator Facility, Major – use of solar panels
  - Zoning Districts: proposal is to remove from GMA AG and RL 20 Zoning Districts
- Conditional Uses
  - Wind Turbine Farms – 2 or more wind turbines on one parcel
  - Zoning Districts: proposal is to remove wind turbine farms from GMA AG & RL 20 Zoning Districts; and add wind turbine farms to light industrial & heavy industrial zoning districts
- Laws & Regulations
  - Growth Management Act – protect agricultural lands & discourage incompatible uses
  - County Comprehensive Plan – protect these areas from encroachment of incompatible uses
  - County's Growth Management Act Agricultural Zoning District – protect agricultural lands of long-term commercial significance
- The allowed, accessory, and conditional use options in the zoning ordinance are to be consistent with the GMA, the Comprehensive Plan and the County's zoning requirements
- By removing the Conditional Use Permit option for commercial solar power & wind farms in GMA AG and Rural Lands 20 Zoning Districts:
  - County would be consistent with the GMA & Benton County Comprehensive Plan
  - GMA AG Zoning District would:
    - protect long-term commercially agricultural lands
    - limit incompatible & non-agricultural uses
    - conserve critical areas & habitat
    - protect visual resources
    - protect rural character
  - Rural Lands 20 Zoning District would:
    - Protect open space

Ms. Cooke entered additional exhibits (BCCH 1.1 through 1.21) into the record, indicated that all public notice requirements were sent out and indicated that it was the recommendation of the Benton County Planning Department that casefile application OA 2021-004 be approved with the suggested nine (9) Findings of Fact.

Commissioner McKay indicated that he did not have any further questions. Commissioner Small clarified that the County could always be superseded by the State. Mr. Wendt confirmed.

Public Testimony

Aimie Berg Pickett (webex), no address, **opposed.** Ms. Berg indicated she was a renewable energy developer and consultant and discussed dual uses which could be considered. She indicated that it would be much better to work locally than through the State mainly due to costs and timelines. She said it would be unfortunate to be forced to go through the State. Ms. Berg further stated that there were benefits using solar energy and there were benefits to local agriculture; native habitat and doing restoration on-site.

Collin Robert, (in person), Yakima WA, **opposed.** Mr. Robert indicated that he was a 4th generation rancher of Robert Ranch and was supportive of the transition to solar energy. He indicated that banning all solar and wind power would hinder landowners in making decisions regarding their property and that each land use should be evaluated on a case-by-case basis.

Janet Grothe, (in person) Innergex Renewable Energy, Manager - Community and Government; Relations, **opposed**. Ms. Grothe stated that her company had more than 30 years' experience and that in July, Innergex reached out to Benton County and business organizations as Innergex was in the early stages of developing a solar energy facility in the Wautoma Valley, in the northwestern portion of Benton County. She stated that collecting county tax would benefit Benton County and that community projects should be considered on its merit and on a case-by-case basis.

Chris Wissel-Tyson – webex; **opposed.** Mr. Tyson indicated that his company supports hybrid solars. He indicated that the ordinance was not technology specific, wanted to be part of the process as notice went out too quickly and solars were good for the economy as well as for private landowners. He asked that the County not to do a blanket ban.

Jens Rasmussen, (person), West Richland, WA, **opposed.** Mr. Rasmussen represents AgriNorthwest and he had three distinct concerns with the amendment: 1) community would be sent to the state instead of having a local process; 2) property owners would be damaged by these restrictions; and 3) the plan did not include local evaluation and process. He stated that the County would be better served by taking a more collaborative approach.

Blake Gilbertson (webex), Oregon, **opposed.** Mr. Gilbertson was working on a project with AgriNorthwest Renewables Project. Mr. Gilbertson asked that the county work to keep local control and review applications on a case-by-case basis so that the County would not lose any economic opportunities and benefits. Mr. Gilbertson spoke about EFSEC and about the contrast between smaller companies vs larger companies going through the State.

Nuno Louzeiro, (in person) Innergex Renewable Energy, Director of Development, **opposed**. Mr. Louzeiro indicated that renewable energy should be cited reasonably and indicated applications should be considered on a case-by-case basis. He indicated that Innergex was in the early stages of development and had invested considerable resources to access suitable sites. Mr. Louzeiro discussed the November 30, 2021 Planning Commission meeting and indicated there was no consideration to the benefits of solar energy. He further indicated that the proposed ordinance would have long term repercussions.

Beverly Heaverlo, (person) Yakima, WA, **opposed.** Ms. Heaverlo indicated that the proposed ordinance is not a once size fits all and indicated the Watcoma location was a remote area. Ms. Heaverlo indicated that banning would be a pre-mature decision. She further stressed that farming was hard any time of the year and this would be a financial hit for farmers and not a fair minded idea. She stated that she would like the County to reconsider and gave a handout.

David Robert, (in person), Grandview, WA, **opposed.** His family has owned Robert Ranch for 100 years; and would like applications be considered on a case-by-case basis. Mr. Robert wished

for more time to have commissioners view the area and see it was an isolated location. He indicated there was opportunity to have solar out there.

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

Discussion: Commissioner Small said he knew farmers who have gone to Olympia and spoken about the financial process farmers go through. Commissioner Small also spoke about the marijuana grows and has tried the approval process on a case-by-case basis. He further mentioned that there is always the option going through the State process for which Benton County would not have the authority. He indicated that doing a case-by-case process would be difficult.

Commissioner McKay discussed growing up on a farm and understood farming circumstances; but indicated that solar and wind power are not consistent resources. He mentioned that even if the County went with a case-by-case basis, applicants could go to EFSEC which would ultimately have the final decision. Commissioner McKay also indicated that at this time, he would be in favor of possibly revisiting in the future as solar is less of an eye soar than windfarms and he was looking out for Benton County's future growth.

Commissioner Delvin indicated that he did not want Benton County to become the dumping site for renewables here in Western Washington. Commissioner Delvin indicated that he understood the plight for farmers and viewed this as a moratorium which could be looked at again in the future. Commissioner Delvin saw this as an opportunity to review our ordinances and identify areas within our region for boundaries to see what the future approach could be. He stated there was time to plan.

MOTION: Commissioner Small moved to adopt the Planning Commission's Findings and Conclusions as its own and approve the proposed amendments relating to renewable energy uses requiring a conditional use permit and amending the sections relating to allowable of Ordinance 611, Ordinance 617 and Ordinance 634 as noted in Planning casefile OA 2021-004. Commissioner McKay seconded and upon vote, the motion carried.

Public Comment - reopened

Shelly Berg discussed the youth mental health emergency being created from all the lockdowns and isolation. She was happy to see the work Benton County and Franklin County were doing on working on a new crisis response facility and asked whether there was going to be a committee for that. Ms. Berg also discussed special ed PTA as she wanted to make sure youths' needs were being met and represented outside of school. Commissioner Delvin confirmed to Ms. Berg that an advisory committee would be created.

Scheduled Business

Request to Extend Temporary Housing Program Navigators in Human Services

Karlee Ainsworth and Tammy McKeirnan came before the Board for approval of continuing funding for two temporary housing program navigators. Ms. McKeirnan indicated that Human

Services is mostly grant funded and they have received many grants for eviction housing and the funds have been expanded which would be defunded if not used. The demand for assistance is growing and the grants can be lost if not disbursed. Ms. McKeirnan requested extending two temporary housing program navigators and adding another housing program navigator through June 30, 2025 or until the grant ends.

Discussion: Commissioner Delvin asked whether some grant money could be spent on more FTEs. Ms. McKeirnan indicated that grants can be used for additional assistance. Ms. McKeirnan indicated that staff still have regular grants to process in addition to the eviction housing grants. Commissioner Delvin suggested that perhaps the Human Services Manager, Kyle Sullivan, evaluate whether additional staff can be used to cover all grants to eliminate staff burn out.

MOTION: Commissioner Small moved to approve the line item transfer to extend the funding for three temporary housing program navigators, positions 1267, 1270 and 1260 through June 30, 2025 or until the Emergency Rental Assistance Grant ends, whichever comes first. Commissioner McKay seconded and upon vote, the motion carried.

Request to Change Assistant Planning Manager to Planning Manager

Greg Wendt came before the Board for approval to change the assistant planning manager to the planning manager. Mr. Wendt indicated that this transfer was a budget neutral plan. He further indicated that the employee currently as the assistant planning manager, Michelle Cooke, has gained more experience and excelled in her duties. Mr. Wendt is recommending this change and Ms. Ainsworth also indicated that HR fully supports this change.

MOTION: Commissioner Small moved to approve the line item transfer changing position 1128 from Assistant Planning Manager to Planning Manager, Grade 8, in the managers salary scale. Commissioner McKay seconded and upon vote, the motion carried.

Other Business

Karlee Ainsworth and Auditor Brenda Chilton (via webex) discussed the long term care employee premium effective January 2022 and Governor Inslee's recent Order halting deduction until April. Because of this recent Governor Order, Auditor Chilton discussed the need for Board direction. Ms. Ainsworth is recommending holding off employee deduction for now. Ms. Chilton needed County direction via a verbal motion included in the minutes. Ms. Chilton discussed there being a gray area on the time frame with no clear direction at this time from the Governor and our Prosecuting Attorney's Office was not giving an opinion at this time. It was requested that the Commissioners suspend the deduction on a month-to-month basis until clear guidance is given.

Administrator MacPherson suggested making a motion suspending the deduction with Human Resources reviewing on a month-to-month basis until April. Commissioner Delvin suggested suspension be done for January and reviewed by the Board at the end of January.

MOTION: Commissioner Small moved to suspend the employee premium for Long Term Care for January. Commissioner McKay seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 10:30 a.m.

Executive Session – Review Qualifications of Applicant for Public Employment

The Board went into executive session at 10:30 a.m. for up to 10 minutes with Karlee Ainsworth and Joshua Shelton to review the qualifications of an applicant for public employment. Also present were Jerrod MacPherson and Marilu Flores.

The Board came out at 10:33 a.m. No decisions were made in executive session.

MOTION: Commissioner McKay moved to approve the Salary Request Form as presented for Ronald Browning. Commissioner Small seconded and upon vote, the motion carried.

The Board went into executive session at 10:34 a.m. for up to 10 minutes with Sheriff Tom Croskrey and Undersheriff Jon Law to review the performance of a public employee. Also present were Jerrod MacPherson and Marilu Flores.

The Board came out at 10:45 a.m. No decisions were made in executive session.

Payroll

Check Date: 12/15/2021

Payroll Draw Checks
Total all funds: $112,587.84
Warrant #: 243450-243452
Direct Deposit #167613-167759

Payroll Draw Deduction Transfer
Total all funds: $19,676.09
Taxes 101211213

Accounts Payable

Check Date: 12/13/2021

PCards #: 1221
Total all funds: $273,039.67

Resolutions

2021-896	Appointments to the Benton County Accessible Community Advisory Committee
2021 897	First Amended Historic Preservation Grant Agreement w/Benton City Revitalization Organization
2021 898	Agreement w/WA Administrative Office of the Courts for Reimbursement of Interpreter Costs

2021 899	Establishing Insurance Benefits Contribution for Non-Bargaining Employees & Elected Officials
2021 900	Establishing Insurance Benefits Contribution for Bi-County Non-Bargaining Employees
2021 901	Three-Year Subscription Renewal for LegalServer From PS Technologies
2021 902	Annual Subscription for NextRequest Public Records Management From SHI International Corp.
2021 903	Superior & District Court Public Defense Interpreting Services Agreement w/Sylvia Garza
2021 904	Superior & District Court Public Defense Interpreting Services Agreement w/Bertha Ramon-Arteaga
2021 905	Maintenance & Upgrade Fees to Cascade Software Systems for Cost Accounting Software
2021 906	Approving A Public Hearing for the Amendment of the 2022-2027 Six-Year Road Program
2021 907	Contract w/FastSigns 280501 for Installing Window Film @ The Administration Building
2021 908	2nd Amended Contract w/Wave Design Group for Redesign of the Justice Center Front Entrance
2021 909	Contract w/On Scene Medical Services for Pre-Hire Physicals & Drug/Alcohol Testing
2021 910	Consultant Agreement for On-Call Surveying Services w/HLA Engineering & Land Surveying
2021 911	Purchase of Thermoplastic Markings From Traffic Safety Supply for Public Works
2021 912	First Amended Contract w/Public Safety Psychological Services for Evaluations in the Sheriff's Office
2021 913	Interlocal Agreement w/City of West Richland for General Equipment and/or Services
2021 914	First Amendment to Contract w/Continental Door Company for Repairs on Garage Doors
2021 915	Moorage Agreement w/Port of Kennewick & Sheriff's Office to a Maintain Boat Slip @ Clover Island
2021 916	Grant Award & Contract w/WA State Health Care Authority for Opioid Treatment Network @ the Jail
2021 917	Agreement w/WA State Administrative Office of the Courts for Reimbursement of Interpreter Services
2021 918	Short Plat Vacation; SPV 2021-005 ~ M Cooke
2021 919	Ordinance Amendment OA 2021-004 ~ G Wendt & M Cooke
2021 920	Line Item Transfer, Fund No. 0108-101, Dept. 560
2021 921	Line Item Transfer, Fund No. 0000-101, Dept. 116

There being no further business before the Board, the meeting adjourned at approximately 10:46 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Canvassing Board Appointment
Presenter:	
Prepared By:	Amanda Hatfield
Reviewed By:	Brenda Chilton

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

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

Background Information

Pursuant to RCW 29A.60.140, the chair of the county legislative body is a member of the canvassing board for canvassing the ballots and returns for elections. An appointment is needed for the upcoming February 8, 2022 Special Election.

Fiscal Impact

None

Recommendation

Chair, Shon Small, sign the letter appointing Shon Small as the member on the canvassing board and to serve on the Benton County Canvassing Board for the upcoming February 8, 2022, Special Election.

Motion

Approve as part of the consent agenda.

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

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

Canvassing Board Appointment

I, Shon Small, Chair of the Benton County Commissioners, hereby designate Shon Small to serve on the Benton County Canvassing Board for the February Special Election to be held on February 8, 2022. He will serve for the timeframe of January 1, 2022 to February 18, 2022.

DATED this 4th day of January, 2022.

_____
Shon Small
Chair, Board of Benton County Commissioners

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/4/22
Subject:	Appt of Randall Bricker to the Kiona Irrigation District
Presenter:	--
Prepared By:	P. Brown
Reviewed By:	M. Flores

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 Commissioners' Office was notified that there was a vacancy for the Director position with the Kiona Irrigation District. The District has recommended the appointment of Randall Bricker to fill the 3 year term.

Fiscal Impact

--

Recommendation

That the Commissioners review the attached letter from Kiona Irrigation District requesting consideration in appointing Randall Bricker to fill the 3 year term.

Suggested Motion

Approve on the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPOINTMENT OF RANDALL BRICKER TO THE KIONA IRRIGATION DISTRICT BOARD OF DIRECTORS

WHEREAS, a vacancy exists for a board member within the Kiona Irrigation District; and

WHEREAS, requests for applications were solicited; and

WHEREAS, the Board of Benton County Commissioners has received a recommendation from the Kiona Irrigation District for Randall Bricker to fill the open position; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby appoints Randall Bricker to fill the term for the position of Director with the Kiona Irrigation District, said term beginning January 1, 2022 and expiring on December 31, 2024.

Dated this ..... day of ....., 20 ....

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

cc: Kiona Irrigation District, Appt. List

P. Brown

KIONA IRRIGATION DISTRICT
P.O. BOX 300
BENTON CITY, WA 99320-0300

RECEIVED
DEC 20 2021
BENTON COUNTY
COMMISSIONERS

November 4, 2021

Benton County Commissioners
P.O. Box 190
Prosser, WA 99350-0190

RE: Election of Director

To Whom it May Concern,

Please be advised in compliance with RCW 87.03.075, one application was filed at the district office by 5:00 P.M. on November 3, 2021 for the position of Board Chairman 2022 – 2024.

Attached is the Declaration of Candidacy received from Mr. Randall Bricker.

He will be declared elected at our November 17, 2021 board meeting. Mr. Bricker is currently filling this board position. He was not opposed in this election.

With your approval Mr. Bricker will begin his three-year term January 1, 2022, which will end on December 31, 2024.

Gaylynn Norman
Accountant/Secretary

CC: Benton County Auditor
Benton County Treasurer
File

DECLARATION OF CANDIDACY
FOR DIRECTOR OF KIONA IRRIGATION DISTRICT

I, Randall Bricker ,declare upon my honor that I am an elector of the Kiona Irrigation District, residing at Benton City, Benton County, State of Washington and that I am legally qualified to assume office. I hereby declare myself for nomination to the office of Director (RCW.87.03.075).

Signature of Candidate

We the under signed, are qualified electors of the Kiona Irrigation District by reason of being at least 18 years of age , a citizen of the United States of America and a resident of the State of Washington and holding title or evidence of title to lands within the District.

We therefore present this petition of nomination of Randall Bricker

for the position of Director of the Kiona Irrigation District for a term of three years beginning January 1st 2022.

SIGNATURES

	NAME	ADDRESS
1.	Ken Bricker	5408 Fern Loop, W.R. WA 99353
2.	Gina Bricker	" " " " " " 3 acres within District
3.	Bill Mast	68911 N. River Road Benton City Wa. 99320
4.	Terry Mast	" " " " " " "
5.	Doug Stutzel	4706 E Hamilton Rd Benton City 99320
6.	Kam McClean	" " " "
7.	Thomas Thoreson	4208 E. Tilstra Rd Bentoncity wa
8.	Tamara Thoreson	" " " "
9.	Brittnee Lommers (Brittnee Lommers)	65110 N 56 PR NE, Benton City, WA
10.	(Sheldon Lommers)	65110 N 56 PR NE, Benton City, WA

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/4/2022
Subject:	Re-Appt of Cynthia Gray to the Benton County Mosquito Control Board
Presenter:	--
Prepared By:	P. Brown
Reviewed By:	M. Flores

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 Commissioners' Office was notified that the two-year term of Cynthia Gray expired on December 31, 2021 to the Benton County Mosquito Control Board, representing District 2. Ms. Gray has expressed an interest in serving an additional two-year term and the Mosquito District is recommending Ms. Gray's re-appointment.

Fiscal Impact

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Recommendation

That the Commissioners consider reappointing Ms. Cynthia Gray for an additional two-year term to the Benton County Mosquito Control Board, representing District 2; said term expiring December 31, 2023.

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REAPPOINTMENT OF CYNTHIA GRAY TO THE BENTON COUNTY MOSQUITO CONTROL BOARD

WHEREAS, the two-year term for Ms. Cynthia Gray will expire on December 31, 2021; and

WHEREAS, Ms. Gray has expressed an interest to be reappointed for an additional two-year term; and

WHEREAS, the Mosquito Control District desires to have Ms. Cynthia Gray be appointed for an additional term to the Benton County Mosquito Control Board representing Benton County Commissioner District No. 2; **NOW, THEREFORE,**

BE IT RESOLVED that Cynthia Gray is hereby reappointed to the Benton County Mosquito Control Board, said term ending on December 31, 2023.

Dated this ..... day of ....., 20 ....

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Attest: .....
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

cc: Mosquito Control Board; file

P. Brown

Benton County Mosquito Control District

RECEIVED
DEC 10 2021
BENTON COUNTY
COMMISSIONERS

December 7, 2021

Benton County Board of Commissioners
Post Office Box 190
Prosser, WA 99350-0190

SUBJECT: Mosquito Control Board Position

Dear Commissioner Small,

I am writing to inform you that the two-year term of Ms. Cynthia Gray as a trustee on the Benton County Mosquito Control Board will expire on December 31, 2021.

Ms. Gray serves as our Board President and has been a valuable asset to the district during her tenure, therefore I recommend that the Benton County Commissioners reappoint Ms. Gray to represent District No. 2 for another term beginning January 1, 2022 and ending December 31, 2023.

Please feel free to contact our office by phone at (509) 967-2414 or by email Angela@MosquitoControl.org if you have any questions.

Thank you for your attention to this matter.

Sincerely,

Angela Beehler
District Manager

Angela Beehler; District Manager
4951 W. Van Giesen Street
West Richland, WA 99353

Phone: (509) 967-2414
Fax: (509) 967-2490
www.MosquitoControl.org

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Execute K3904 Amendment 4 with Health Care Authority for Prevention Services and Benton County Department of Human Services
Presenter:	
Prepared By:	Mari Clark, DHS 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:	**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 purpose of this Fourth Amendment is to decrease the contract amount by $150,000.00 to remove the allocated amount for the Kennewick coalition who is moving funds to their main fiscal agent.

Fiscal Impact

Funding for the services described in this Fourth Amendment is provided by the Health Care Authority. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget, for a maximum program agreement amount of $1,261,918.00

Recommendation

- Sign the Resolution to accept the proposed Fourth Amendment allowing DHS Manager to electronically sign the Fourth Amendment as required by Health Care Authority

Suggested Motion

Consent Agenda

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTING THE FOURTH AMENDMENT TO CONTRACT NUMBER: K3904 BETWEEN WASHINGTON STATE HEALTH CARE AUTHORITY AND BENTON COUNTY DEPARTMENT OF HUMAN SERVICES FOR COMMUNITY PREVENTION WELLNESS INITIATIVE (CPWI) SERVICES

WHEREAS, Washington State Health Care Authority contracts with Benton County Department of Human Services to provide Prevention Services; and

WHEREAS, the purpose of this Fourth Amendment is to decrease the contract amount by $150,000.00 to remove the allocated amount for the Kennewick coalition who is moving funds to their main fiscal agent; and

WHEREAS the grant is for services in both Benton and Franklin Counties. Benton County provides services under this grant to Franklin County through an interlocal agreement; and

WHEREAS, the contract amendment must be submitted digitally and requires an established account and digital signature; NOW, THEREFORE,

BE IT RESOLVED that the Board of County Commissioners approves the contract amendment between Benton County and the Washington State Health Care Authority for the CPWI services in the total amended amount of $1,261,918.00; and

BE IT FURTHER RESOLVED, that the Benton County Department of Human Services Manager be, and hereby is, authorized to digitally sign, on behalf of Benton County, the Community Prevention Wellness Initiative Fourth Amendment, between Washington State Health Care Authority and Benton County; and

BE IT FURTHER RESOLVED, that the Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments necessary for the disbursement of the Community Prevention Wellness Initiative; and

BE IT FURTHER RESOLVED, the term of the attached Third Amendment commences on September 1, 2021 and ends on September 29, 2022.

Dated this.....day of....., 2022

_____
Chairman of Board

_____
Member

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

Attest: _____
Clerk of the Board

Originals: Benton Commissioners, Human Services M. Clark

Washington State Health Care Authority	**CONTRACT AMENDMENT**	HCA Contract No.: K3904 Amendment No.: 4

THIS AMENDMENT TO THE CONTRACT is between the Washington State Health Care Authority and the party whose name appears below, and is effective as of the date set forth below.

CONTRACTOR NAME	**CONTRACTOR doing business as (DBA)**
Benton County	
CONTRACTOR ADDRESS 7102 W OKANOGAN PL., STE 201, KENNEWICK, WA 99336	**CONTRACTOR CONTRACT MANAGER** Name: Mari Clark Email: Mari.Clark@co.benton.wa.us

AMENDMENT START DATE	**AMENDMENT END DATE**	**CONTRACT END DATE**
September 29, 2021	September 29, 2022	September 29, 2022
Prior Maximum Contract Amount	**Amount of Decrease**	**Total Maximum Compensation**
$1,411,918	$150,000	$1,261,918

WHEREAS, HCA and Contractor previously entered into a Contract for CPWI services, and;

WHEREAS, HCA and Contractor wish to amend the Contract pursuant to Section 17 to reduce funding;

NOW THEREFORE, the parties agree the Contract is amended as follows:

1. Section 8, Compensation and Billing, Subsection 8.1, is amended to reflect a decrease in maximum compensation by **$150,000** from **$1,411,918 to $1,261,918**.
2. Attachment 5, Federal Compliance, Certifications, and Assurances, is amended and included herein.
3. Attachment 6, Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form, is attached and incorporated herein.
4. Attachment 7, Substance Abuse and Mental Health Services Administration (SAMHSA) 2021 Award Terms is attached and incorporated herein.
5. Attachment 8, Federal Award Identification for Subrecipients, is amended for funding sources SABG, PFS, and SOR II, and incorporated herein.
6. This Amendment will be effective September 29, 2021 ("Effective Date").
7. All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Contract.
8. All other terms and conditions of the Contract remain unchanged and in full force and effect.

The parties signing below warrant that they have read and understand this Amendment and have authority to execute the Amendment. This Amendment will be binding on HCA only upon signature by both parties.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE DocuSigned by: Rachelle Amerine 71E17FEBBC774E7...	PRINTED NAME AND TITLE Rachelle Amerine Contracts Administrator	DATE SIGNED 11/16/2021

ATTACHMENT 5

Federal Compliance, Certifications, and Assurances

I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: **Billy Reamer.**

a. *Source of Funds SABG: This Contract is being funded partially or in full through Cooperative Contract number* B08TI083486*, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this Contract are identified by the Catalog of Federal Domestic Assistance (CFDA) number 93.959 in the amount of ($40,000). The Contractor or Subrecipient is responsible for tracking and reporting the cumulative amount expended under HCA Contract* ***K3904-4****.*

b. *Period of Availability of Funds SABG: Pursuant to 45 CFR 92.23, Contractor or Subrecipient may charge to the award only costs resulting from obligations of the funding period specified in* B08TI083486 *unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.*

c. *Source of Funds PFS: This Contract is being funded partially or in full through Cooperative Contract number 7U79SP023011, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this Contract are identified by the Catalog of Federal Domestic Assistance (CFDA) number 93.959 in the amount of ($42,183). The Contractor or Subrecipient is responsible for tracking and reporting the cumulative amount expended under HCA Contract* ***K3904-4****.*

d. *Period of Availability of Funds PFS: Pursuant to 45 CFR 92.23, Contractor or Subrecipient may charge to the award only costs resulting from obligations of the funding period specified in 7U79SP023011 unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.*

e. *Source of Funds SOR II: This Contract is being funded partially or in full through Cooperative Contract number H79T1083286, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this Contract are identified by the Catalog of Federal Domestic Assistance (CFDA) number 93.959 in the amount of ($67,817). The Contractor or Subrecipient is responsible for tracking and reporting the cumulative amount expended under HCA Contract* ***K3904-4****.*

f. *Period of Availability of Funds SOR II: Pursuant to 45 CFR 92.23, Contractor or Subrecipient may charge to the award only costs resulting from obligations of the funding period specified in H79T1083286 unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.*

g. *Single Audit Act: This section applies to subrecipients only. Subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management*

and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A Subrecipient who expends $750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.

h. *Modifications: This Contract may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.*

1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
   i. Deviations from the budget and Project plan.
   ii. Change in scope or objective of the Contract.
   iii. Change in a key person specified in the Contract.
   iv. The absence for more than one (1) months or a 25% reduction in time by the Project Manager/Director.
   v. Need for additional funding.
   vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
   vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this Contract.
2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.

i. *Sub-Contracting:* The Contractor or Subrecipient shall not enter into a sub-contract for any of the work performed under this Contract without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the Contract pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.

j. *Condition for Receipt of Health Care Authority Funds:* Funds provided by Health Care Authority to the Contractor or Subrecipient under this Contract may not be used by the Contractor or Subrecipient as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.

k. *Unallowable Costs:* The Contractor or Subrecipient's expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this Contract.

l. *Supplanting Compliance: SABG:* If SABG funds support this Contract, the Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs. (45 CFR section 96.123(a)(10)).

m. *Citizenship/Alien Verification/Determination:* The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

n. *Federal Compliance:* The Contractor or Subrecipient shall comply with all applicable State

and Federal statutes, laws, rules, and regulations in the performance of this Contract, whether included specifically in this Contract or not.

o. *Civil Rights and Non-Discrimination Obligations:* During the performance of this Contract, the Contractor or Subrecipient shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101- 6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) http://www.hhs.gov/ocr/civilrights.

HCA Federal Compliance Contact Information

Federal Grants and Budget Specialist Health Care Policy

Washington State Health Care Authority

Post Office Box 42710

Olympia, Washington 98504-2710

II. **CIRCULARS 'COMPLIANCE MATRIX' -** The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee, **Benton County**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

	OMB CIRCULAR		
ENTITY TYPE	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS
State. Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501		
Non-Profit Organizations and Non-Profit Hospitals			
Colleges or Universities and Affiliated Hospitals			
For-Profit Organizations			

III. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES -** Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) Contracts administered by the Washington State Health Care Authority.

a. **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION :** The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any

Federal Department or agency have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Section 2 of this certification; and have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the Contractor or Subrecipient not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause above certification in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

b. **CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:** The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; Establishing an ongoing drug-free awareness program to inform employees about
   i. The dangers of drug abuse in the workplace;
   ii. The contractor's policy of maintaining a drug-free workplace;
   iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
   iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
2. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (I) above;
3. Notifying the employee in the statement required by paragraph (I), above, that, as a condition of employment under the contract, the employee will—
   i. Abide by the terms of the statement; and
   ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
4. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (III)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
5. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (III) (b), with respect to any employee who is so convicted—
   i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

6. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (I) through (V).

For purposes of paragraph (V) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

Legal Services Manager
WA State Health Care Authority
PO Box 42700
Olympia, WA 98504-2700

c. **CERTIFICATION REGARDING LOBBYING:** Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative Contracts from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative Contract. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative Contract must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative Contracts EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.

2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

3. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative Contracts) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

d. **CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA):** The undersigned (authorized official signing for the contracting organization) certifies that the

statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

e. **CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

   Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

   By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

   The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

   The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

f. **CERTIFICATION REGARDING OTHER RESPONSIBILITY MATTERS**

   1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

   2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

   3. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

   4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as

used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Authority.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, HCA may terminate this transaction for cause or default.

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL:	TITLE:
PLEASE ALSO PRINT OR TYPE NAME:	
ORGANIZATION NAME: (if applicable)	DATE:

ATTACHMENT 6 - Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Required Information about your organization and this contract will be made available on USASpending.gov by HCA as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at https://www.uscontractorregistration.com/.

CONTRACTOR

1. Legal Name: Benton County	2. DUNS Number: 602898884
3. Principle Place of Performance: 7102 W Okanogan Pl., Ste. 201	3a. Congressional District
3b. City: Kennewick	3c. State: WA
3d. Zip+4: 99336-2341	3e. Country
4. Are you registered in CCR (https://www.uscontractorregistration.com/)? ☐YES (skip to page 2. Sign, date and return) ☐NO	

In the preceding fiscal year did your organization:

a. Receive 80% or more of annual gross revenue from procurement federal contracts, Subcontracts, grants, loans, sub-grants, and/or cooperative agreements; **and**

b. $25,000,000 or more in annual gross revenues from federal procurement contracts, Subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**

c. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330

☐ NO (skip the remainder of this section - Sign, date and return)

☐ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).

Name Of Official	Total Compensation
1.	
2.	
3.	
4.	
5.	

Note: "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c) (2))

By signing this document, the Contractor Authorized Representative attests to the information.

Signature of Contractor Authorized Representative	Date

HCA will not endorse the Contractor's sub-award until this form is completed and returned.

FOR HEALTH CARE AUTHORITY USE ONLY

HCA Contract Number: **K3904, Amendment 4**
FAIN: **B08T1083845**
Sub-award Project Description (see instructions and examples below) **CPWI Prevention Services**

Instructions for Sub-award Project Description:
In the first line of the description provide a title for the sub-award that captures the main purpose of the Subrecipients work. Then, indicate the name of the Subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

Example of a Sub-award Project Description:
Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.

ATTACHMENT 7 - Substance Abuse and Mental Health Services Administration (SAMHSA),

2021 Award Terms

By drawing or otherwise obtaining funds as a subawardee or contractor of a non-federal entity drawing or otherwise obtaining funds from SAMHSA, a branch of the United States Department of Health and Human Services (HHS), you agree to the following pass-through terms and conditions.

https://www.samhsa.gov/grants/grants-management/notice-award-noa/standard-terms-conditions

Name	Language
Acceptance of the Terms of an Award	This Subaward is subject to the SAMHSA Fiscal Year 2021 – Award Standard Terms, included directly, or incorporated by reference on the Notice of Award (NoA) support the grant.
Non-Supplanting	Federal award funds must supplement, not supplant, nonfederal funds. All recipients who receive awards under programs that prohibit supplanting by law must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt of expected receipt of federal funds. Block grant funds (SABG and MHBG) will not be used to supplant state funding of alcohol and other drug prevention programs. See 45 CFR § 98.123
Unallowable Costs	All costs incurred prior to the award issue date and costs not consistent with the funding opportunity, 45 CFR Part 75, and the HHS Grants Policy Statement, are not allowable under this subaward.
Marijuana Restrictions	Grant funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. *See, e.g.,* 45 CFR 75.300(a); 21 USC 812(c)(10) and 841. This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substances under the federal law.
Executive Pay	The Consolidated Appropriations Act, 2021 (Public Law 116-260), signed into law on December 27, 2020 restricts the amount of direct salary to Executive Level II of the Federal Executive Pay scale. Effective January 3, 2021, the salary limitation for Executive Level II is **$199,300**.
Promotional Items	SAMHSA grant funds may not be used for Promotional Items. Promotional Items include but are not limited to: Clothing and commemorative items such as pens, mugs/cups, folders/folios, lanyards, and conference bags.
Acknowledgment of Federal Funding at Conferences and Meetings	When a conference is funded by a grant or cooperative agreement, the recipient must include the following statement in all conference materials (including promotional materials, agenda, and internet sites): *Funding for this conference was made possible in part) by (insert grant or cooperative agreement award number) from SAMHSA. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of*

	trade names, commercial practices, or organizations imply endorsements by the U.S. Government.
Rights in Data and Publications	As applicable, recipients agree to the requirements for intellectual property, rights in data, access to research data, publications, and sharing research tools, and intangible property and copyrights as described in 45 CFR 75.322 and the HHS Grants Policy Statement. HCA may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal Award. SAMHSA reserves a royalty-free, nonexeclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
Mandatory Disclosures	Consistent with 45 CFR 75.113, Subrecipients must disclose, in a timely manner, in writing to HCA and the HHS Office of Inspector General (OIG), all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to HCA and the HHS OIG at the following addresses: U.S. Department of Health and Human Services Office of Inspector General ATTN: Mandatory Grant Disclosures, Intake Coordinator 330 Independence Avenue, SW, Cohen Building Room 5527 Washington DC 20201 Fax: (202) 205-0604 (include "Mandatory Grant Disclosures" in subject line or email) MandatoryGranteeDisclosures@oig.hhs.gov Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 USC 3321)
Lobbying Restrictions	Per 45 CFR §75.215, Subrecipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93. U.S.C. > Title 18 > Part I > Chapter 93 > Section 1913, No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his/her request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute as a violation of section 1352 (a) of Title 31.
Drug Free Workplace	The Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. By signing this Contract, you agree that the grantee will provide a drug-free workplace and will comply with the requirement to notify NIH if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR part 182; HHS implementing regulations are

	set forth in 2 CFR part 382.400. All recipients of NIH grant funds must comply with the requirements in Subpart B (or Subpart C if the recipient is an individual) of part 382.
Trafficking Victims Protection Act of 2000 (22 USC 7104(G)), as amended, and 2 CFR Part 175	The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. SAMHSA or HCA may unilaterally terminate this award, without penalty, if a private entity recipient, or a private entity subrecipient, or their employees: a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; b) Procure a commercial sex act during the period of time that the award is in effect; or, c) Use forced labor in the performance of the award or subawards under the award. The text of the full award term is available at 2 C.F.R. § 175.15(b). See http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf
Confidentiality of Alcohol and Drug Abuse Patient Records	The regulations (42 CFR 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is federally assisted in any manner (42 CFR 2.12b). Accordingly, all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR Part 2. The Subrecipient is responsible for assuring compliance with these regulations and principles, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.
Healthy People 2020	Healthy People 2020 is a national initiative led by HHS that set priorities for all SAMHSA programs. The initiative has two major goals: (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities. The program consists of 28 focus areas and 467 objectives. SAMHSA has actively participated in the work groups of all the focus areas and is committed to the achievement of the Healthy People 2020 goals. Healthy People 2010 and the conceptual framework for the forthcoming Healthy People 2020 process can be found online at: http://www.healthypeople.gov/
Accessibility Provisions	Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age, and in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. The HHS Office for Civil Rights also provides guidance on complying with civil rights laws enforced by HHS. Please see: http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see- http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html. Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at https://www.hhs.gov/civil-rights/index.html or call 1-800-368-1019 or TDD 1-800- 537-7697. Also note that it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6.
Legislative Mandates	Certain statutory provisions under P.L. 115-245, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, Division B, Title

	V, Title II, General Provisions limit the use of funds on SAMHSA grants, cooperative agreements, and contract awards. Such provisions are subject to change annually based on specific appropriation language that restricts the use of grant funds. The full text of P.L. 115-245 is available at https://www.congress.gov/bill/115th-congress/house-bill/6157/text?format=txt.
Ad Hoc Submissions	Throughout the project period, SAMHSA may determine that a grant requires submission of additional information beyond the standard deliverables. This information may include, but is not limited to, the following: • Payroll • Purchase orders • Contract documentation • Proof of project implementation

Federal Award Identification for Subrecipients (reference 2 CFR 200.331)
Washington State Opioid Response II (SOR II) Grant

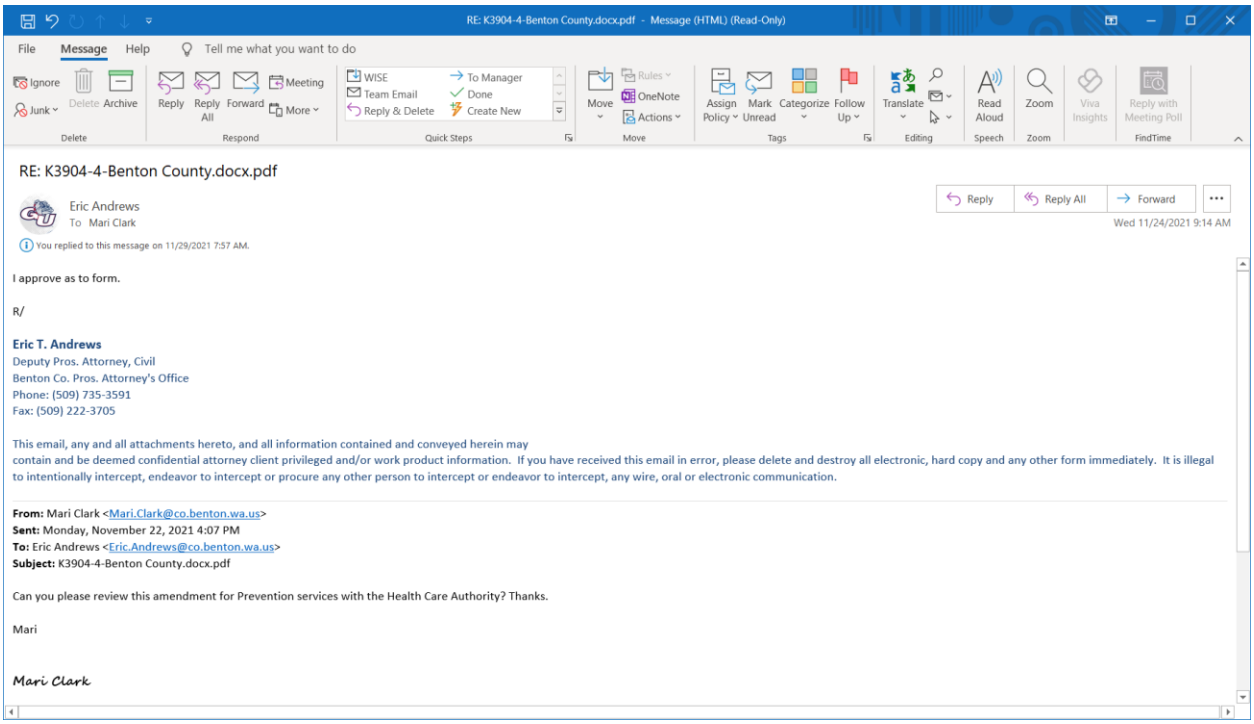
(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Benton County
(ii) Subrecipient's unique entity identifier; (DUNS)	083738997
(iii) Federal Award Identification Number (FAIN);	H79TI083286
(iv) Federal Award Date (see §200.39 Federal award date);	08/9/2021
(v) Subaward Period of Performance Start and End Date;	9/29/2021 – 9/29/2022
(vi) Amount of Federal Funds Obligated by this action;	($67,817)
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	$203,451
(xiii) Total Amount of the Federal Award;	$27,173,792
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Washington State Opioid Response II (SOR II) Grant
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.788
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimus (10%)

Federal Award Identification for Subrecipients (reference 2 CFR 200.331)
Substance Abuse Prevention and Treatment Block Grant

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Benton County
(ii) Subrecipient's unique entity identifier; (DUNS)	602898884
(iii) Federal Award Identification Number (FAIN);	B08TI083486
(iv) Federal Award Date (see §200.39 Federal award date);	10/01/2020 – 09/30/2022
(v) Subaward Period of Performance Start and End Date;	9/29/2021 – 9/29/2022
(vi) Amount of Federal Funds Obligated by this action;	($40,000)
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	$241,814
(viii) Total Amount of the Federal Award;	$37,788,257
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Substance Abuse Prevention and Treatment
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.959 Substance Abuse Prevention and Treatment Block Grant
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimus (10%)

Federal Award Identification for Subrecipients (reference 2 CFR 200.331)
Partnerships for Success 2018

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Benton County
(ii) Subrecipient's unique entity identifier; (DUNS)	083738997
(iii) Federal Award Identification Number (FAIN);	H79SP080980
(iv) Federal Award Date (see §200.39 Federal award date);	9/13/2018
(v) Subaward Period of Performance Start and End Date;	9/29/2021 – 9/29/2022
(vi) Amount of Federal Funds Obligated by this action;	($42,183)
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	$252,711
(xiii) Total Amount of the Federal Award;	$11,300,000 (9/30/18-9/29/23)
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	WA State Strategic Prevention Framework – Partnerships for Success Project
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.243
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimis (10%)


RE: K3904-4-Benton County.docx.pdf - Message (HTML) (Read-Only)
File
Message
Help
Tell me what you want to do
Ignore
Junk
Delete
Archive
Reply
Reply All
Forward
Meeting
More
WISE
Team Email
Reply & Delete
To Manager
Done
Create New
Move
Rules
OneNote
Actions
Assign Policy
Mark Unread
Categorize
Follow Up
Translate
Read Aloud
Zoom
Viva Insights
Reply with Meeting Poll
Delete
Respond
Quick Steps
Move
Tags
Editing
Speech
Zoom
FindTime
RE: K3904-4-Benton County.docx.pdf
Eric Andrews
To Mari Clark
You replied to this message on 11/29/2021 7:57 AM.
Reply
Reply All
Forward
Wed 11/24/2021 9:14 AM
I approve as to form.
R/
Eric T. Andrews
Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705
This email, any and all attachments hereto, and all information contained and conveyed herein may
contain and be deemed confidential attorney client privileged and/or work product information. If you have received this email in error, please delete and destroy all electronic, hard copy and any other form immediately. It is illegal
to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.
From: Mari Clark <Mari.Clark@co.benton.wa.us>
Sent: Monday, November 22, 2021 4:07 PM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>
Subject: K3904-4-Benton County.docx.pdf
Can you please review this amendment for Prevention services with the Health Care Authority? Thanks.
Mari
Mari Clark

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 12/21/2021 BC 01/04/2022
Subject:	Personal Services Contract with Regional Toxicology Services, LLC d/b/a Cordant Health Solutions
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

Benton-Franklin Counties Juvenile Justice Center desires to contract with Regional Toxicology Services, LLC d/b/a Cordant Health Solutions to provide urinalysis testing for the Benton-Franklin Counties Juvenile Justice Center for juveniles under the jurisdiction of the Court. We have recently completed an analysis of several companies and Regional Toxicology Services, LLC d/b/a Cordant Health Solutions can deliver the best pricing and services.

The term of this Contract begins January 1, 2022 and expires on December 31, 2023.

Fiscal Impact

Amount not to exceed $17,000.00. No Supplemental required.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the contract between Regional Toxicology Services, LLC d/b/a Cordant Health Solutions and Benton-Franklin Counties Juvenile Justice Center.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING REGIONAL TOXICOLOGY SERVICES, LLC D/B/A CORDANT HEALTH SOLUTIONS A PERSONAL SERVICES CONTRACT TO PROVIDE URINALYSIS TESTING FOR THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER FOR JUVENILES UNDER JURISDICTION OF THE COURT

WHEREAS, per resolution 2021-233, "County need not advertise or follow a formal competitive bidding procedure for service contracts, but the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost"; and

WHEREAS, the Benton-Franklin Counties Juvenile Justice Center Administrator recommends entering into a Personal Services Contract with Regional Toxicology Services, LLC d/b/a Cordant Health Solutions; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington and by the Board of Franklin County Commissioners, Franklin County Washington the Boards concur with the Juvenile Justice Administrator's recommendation and hereby award the Personal Service Contract to Regional Toxicology Services, LLC d/b/a Cordant Health Solutions in an amount not to exceed $17,000.00; and

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

BE IT FURTHER RESOLVED, the term of the attached Contract commences January 1, 2022 and expires on December 31, 2023.

DATED this ___day of _____ 2022

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-Cordant 1-Juvenile

R. Garcia

BENTON and FRANKLIN COUNTIES
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between Benton County, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Regional Toxicology Services, LLC d/b/a Cordant Health Solutions,** a corporation organized under the laws of the State of Washington with its principal offices at **12015 East 46th Avenue, Suite 220, Denver, Colorado 80239** (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 - Benton-Franklin Counties Scope of Services and Pricing Schedule**

2. DURATION OF CONTRACT

The term of this Contract shall begin on **January 1, 2022** 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 urinalysis testing to juvenile required to provide urinalysis. A detailed description of the services to be performed and supplies provided by the CONTRACTOR is set forth in **Exhibit A**, "Benton-Franklin County Pricing Schedule", which is attached hereto and incorporated herein by reference.

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

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

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

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

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: Amanda Gibbs, Vice President
Regional Toxicology Services, LLC
d/b/a Cordant Health Solutions
12015 E. 46th Ave., Ste. 220
Denver, CO 80239
Phone: (928) 440-6288 x6288
Email: AGibbs@cordanths.com

b. For Counties: Darryl Banks, Administrator
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 222-2316
Email: darryl.banks@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid in accordance to **Exhibit A**. A detailed description of the compensation to be paid by the COUNTIES is set forth in **Exhibit A**, which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed Seventeen Thousand Dollars ($17,000.00).

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

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

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 COUNTIES, the COUNTIES may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

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 COUNTIES.

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 COUNTIES.

7. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES and its officers, officials, employees and agents, from and against any and all third-party claims, actions, suits, liability, 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 directly from the services rendered by CONTRACTOR pursuant to this agreement.

Despite the above, in no event shall Contractor be obligated to indemnify defend and save harmless the Counties its officers, officials, employees, contractors, agents to the extent that any action claim or loss occurs or results, in whole or in part, from the acts or omissions of the Counties its officers, officials, employees, contractors, agents, or third parties.

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

this Section 7 shall survive termination and expiration of this Contract.

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington, workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury

(including death) by accident or disease, which arises out of or in connection with the performance of this Contract. 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 and employers liability.

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

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

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

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section **7.**

The Commercial General Liability policy covers liability assumed in an insured contract, but only to the extent that the underlying claim is covered by the policy, i.e. bodily injury and property damage as defined in the policy. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

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

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

d. **Other Insurance Provisions:**

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

2. The CONTRACTOR'S will provide a copy of the additional insured provisions.

3. 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.

4. The CONTRACTOR shall furnish separate certificates and endorsement for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

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

indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTIES shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

6. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section **8(a)**, shall be written on a claims made 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. Waiver of subrogation is not available for Professional Liability policy.

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 as applicable, and 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 284-15 WAC.

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

2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Counties' Contract Representative referenced in Section 4.b.

3. All written notices under this Section **8** and notice of cancellation or change of required insurance coverages shall be mailed to the Counties' Contract Representative referenced in Section 4. b.

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

9. TERMINATION

a. Either party may terminate this Contract upon giving thirty (30) days written notice by certified mail to the other party. In that event, the COUNTIES shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of termination notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTIES may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of

termination sent by the COUNTIES to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTIES, the COUNTIES may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTIES shall pay the CONTRACTOR only for the costs of services accepted by the COUNTIES, in accordance with the Compensation Section of this Contract.

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, such consent shall not be unreasonably withheld of the COUNTIES.

b. Notwithstanding the foregoing, Contractor may assign this Agreement without consent to its affiliate, where the assigning party must unconditionally guarantee the assignee's performance and where the Affiliate must be under the same majority ownership as the Contractor.

c. The foregoing shall not apply to any work to be performed by an affiliate of CONTRACTOR, where affiliate means any corporation, firm, limited liability company, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with CONTRACTOR.

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

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 COUNTIES. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

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

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

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

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

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 COUNTIES 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 COUNTIES 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, or 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. CONTRACTOR retains ownership of its data, and other materials created prior to and during this Agreement, regardless if used in the fulfillment of its obligations under this Agreement. However, CONTRACTOR gives COUNTIES full authorization to use reports created under this contract in any way the COUNTIES see fit and upon termination of this contract, CONTRACTOR shall immediately delivery to COUNTIES' all reports completed under the contract, up until the date of termination. The COUNTIES' 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 COUNTIES upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTIES.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION AND VENUE

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

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in as determined by the Washington Administrative Office of the Courts.

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section **4** of this Contract. Notice shall be deemed to be given three (3) days following the date of mailing, or immediately, if personally served.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections **7** and **17**); extended reporting period requirements for professional liability insurance (Section **8(a)**); inspection and keeping of records and books (Section **14**); litigation hold notice (Section **26**); Public Records Act (Section **27**) and confidentiality (Section **19**).

26. LITIGATION HOLD NOTICE

In the event the COUNTIES learn of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section **14** of this Contract

may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Section **14**.

27. PUBLIC RECORDS ACT

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

The parties specifically certify that the provisions contained within Section 8 are mutually negotiated.

Regional Toxicology Services, LLC d/b/a Cordant Health Solutions	**Benton-Franklin Counties Juvenile Justice Center**
Amanda Gibbs 12/6/2021	Darryl Banks 12-13-21
Amanda Gibbs **Date** **Vice President**	**Darryl Banks** **Date** **Juvenile Court Administrator**
BENTON COUNTY APPROVAL Approved as to Form: 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: 12/6/21 Jennifer Johnson, Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____

Exhibit A

Effective Date: _____

Cordant Health Solutions™

Benton-Franklin Counties Juvenile Justice Center
5606 W. Canal Place, Ste. 106
Kennewick, WA 99336

Tacoma Laboratory

Contact: Troy Grall Phone: 509-737-2779 E-Mail: troy.grall@co.benton.wa.us Fax: 509-736-2718

SCOPE OF SERVICES & PRICING SCHEDULE

The attached Price Schedule replaces and supersedes any prior price schedule or agreement between your organization and Cordant Health Solutions, and terminates all prior price schedules, price lists, or other agreements, effective immediately upon your receipt of this schedule. Going forward, all samples received by Cordant for testing from your organization will be subject to this Price Schedule.

The pricing in this Proposal is based on assumptions which impact Cordant's costs and operational efficiencies, and is subject to change:

Volume per month: 28 samples
FedEx Pickup Frequency: 1 x Week (on-call)
Positivity Rate: 64%

Lab Testing: Urine

URINE: *LAB SCREEN PLUS AUTOMATIC CONFIRMATION**- **Automatic confirmations will be conducted on ALL positive drugs at NO additional charge.**

Check Desired Panels (note: only selected panels will be setup on account)	DESCRIPTION (Please circle desired drugs)	PRICE PER TEST
☐	**5 Drug Panel:** Amp/Meth, Benz, Coc, Opi, THC	**$17.15**
☐	**6 Drug Panel:** Amp/Meth, Benz, Coc, Opi, THC, Fent	**$17.40**
☐	**Individual Direct Confirmations/Reconfirmations:** Amp/Meth, Benz, Coc, Opi, THC, Fent	**$21.50 per drug confirmed**
☐	EtG/Ets Add-on	**$5.00**

Lab Testing - Oral Fluid

ORAL FLUID: *LAB SCREEN PLUS CONFIRMATION-* **confirmations can be automatic or ordered upon request – additional confirmation charge applies**

Check Desired Panels (note: only selected panels will be setup on account)	DESCRIPTION/PRODUCT NUMBER	PRICE PER TEST
☐	**5 Panel Oral Fluid:** Amp/Meth, Benz, Coc, Opi, THC	**$31.80**

ORAL FLUID: *Collection Device*

DESCRIPTION*	PRICE PER DEVICE
Quantisal Oral Fluid Collection Device	**$0.00 (included in test price)**

**These devices are sold in boxes of 25*

Additional Services

COURT REPRESENTATION AND TESTIMONY

DESCRIPTION	FEES
In-person (includes travel, a daily meal per-diem and hotel costs not to exceed the County and state rates, and any other related travel cost)	$700/day + travel
Telephonic	No Charge
Skype or video-conferencing	No Charge
Litigation Packet	$75.00

Cordant SENTRY™

EVIDENCE BASED SUBSTANCE ABUSE MANAGEMENT PROGRAM
Web-based randomization
Local telephone line for clients to call into daily
Call log reports date, time, phone # and caller ID
Electronic chain of custody
Real-time test results
Non-compliance alerts and reports
Full customization and on-going support of SENTRY and all features

**IMPORTANT NOTE: A screened positive result is considered presumptive. A small percentage of screen only positive results will not confirm by an alternative method. Therefore, for the protection of all involved parties, no punitive action should take place without the donor being afforded the opportunity to have positive screen result(s) confirmed by GC/MS, GC, or LC/MS/MS.*

Property of Cordant Health Solutions - Confidential

SERVICES/SUPPLIES INCLUDED

GC/MS & LC/MS/MS Confirmation:
Cordant utilizes GC/MS (Gas Chromatography / Mass Spectrometry) and LC/MS/MS (Liquid Chromatography double Mass Spectrometry) as our confirmation methods providing the most definitive and accurate results.

Quantitation:
Included on all GC/MS & LC/MS/MS confirmed positives unless otherwise specified.

Adulterant Test:
Cordant offers a full adulterant test: pH, Oxidants, Specific Gravity and Uric Acid, as requested, at additional charge. Creatinine is automatically run on every urine specimen to ensure validity of the sample.

Specimen storage in Tacoma:
Negative specimens are held for 7 days.
Positive specimens are held for 60 days.

Provided Specimen Collection & Transport Supplies:

- Specimen Container with Temperature Strip
- Specimen Security Bag
- FedEx Supplies

Specimen Transport: FedEx or Courier (select locations) pick-ups Monday through Friday with next day delivery to Cordant Health Solutions * *A FedEx surcharge may apply when shipping less than 5 samples per bag or fewer pickup days can be chosen to help reduce your price.*

ELECTRONIC TEST RESULTS:
Secure Online web portal through our standard web results portal or SENTRY. Results can also be delivered via fax, web, or e-mail. We provide results within a 24-48 hour turn-around time (not including weekends and holidays). We pride ourselves on providing quality test results within the fastest turn around times in the industry.

Confirmed positive test results for common substances are typically provided within 48-72 hours after receipt of specimens by the laboratory. Negative screen results are reported within twenty-four to forty-eight (24-48) hours of receipt by the laboratory. On average, Cordant Health Solutions Laboratory delivers over 40% of confirmed positive results on common substances on the same day as receipt of specimen, with the balance reported the following day. Results are noted individually as positive or negative.

Property of Cordant Health Solutions - Confidential

TURNAROUND TIME (TAT):
Upon receipt at laboratory:

Urine
- *Negative results are reported within 24 hours – 48 hours.*
- *Positives are reported within 48 – 72 hours.*

Oral Fluid
- *Negative results reported within 24 - 48 hours.*
- *Positive results available within 48 - 72 hours.*

BILLING: All orders for testing to be performed by Cordant will be billed at the pricing set forth on the most recently transmitted Price Schedule, and will be subject to Cordant's Terms and Conditions, available at https://cordantsolutions.com/terms/ which may be updated from time to time at Cordant's sole discretion.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 12/21/2021 BC 01/04/2022
Subject:	Award the Limited Public Works Project with Clearwater Tech, LLC dba Roto-Rooter Service
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

Benton and Franklin Counties Juvenile Justice Center has an immediate need to repair pipes and replace drain pipe in the Detention facility. The Juvenile Administrative Financial Services Manager solicited quotes from the MRSC Vendor list to provide plumbing repairs and replacement, to commence on the last day signed and expires on April 30, 2022.

The Juvenile Administrative Financial Services Manager reviewed the quotes and recommends Clearwater Tech, LLC, dba Roto-Rooter Service to provide plumbing repair and replacement services, as they were the lowest bidder.

Fiscal Impact

Amount not to exceed $5,000.00 to be paid out of Current Expense Dept. 172 Facilities Budget. No supplemental required.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the resolution to award the Limited Public Works Project for plumbing services to Clearwater Tech, LLC dba Roto-Rooter Service.

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 COUNTY, WASHINGTON;

IN THE MATTER OF AWARDING LIMITED PUBLIC WORKS PROJECT TO CLEARWATER TECH, LLC DBA ROTO-ROOTER PLUMBING SERVICE FOR PLUMBING SERVICES FOR THE DETENTION FACILITY AT THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

WHEREAS, per Resolution 2021-233 section 4.3.1 Limited Public Works Projects "with an estimated cost less than fifty thousand dollars ($50,000) may be conducted pursuant to the small public works or limited public works process"; and

WHEREAS, Benton-Franklin Counties Juvenile Justice Center has an immediate need to repair copper pipe and drain pipe replacement in the Detention facility; and

WHEREAS, quotes were solicited for plumbing services by the Facilities Supervisor using the Benton County MRSC Small Works Roster and received quotes from:

1. Clearwater Tech, LLC dba Roto-Rooter Service, Kennewick, WA, UBI 603254301, quote $1,713.13 WSST not included
2. Riggle Plumbing, Inc., Kennewick, WA, UBI 601510406, quote $4,039 WSST not included
3. BnB Mechanical, LLC, Kennewick, WA, UBI 603608253, quote $3,000 WSST not included

WHEREAS, the Administrative Services Finance Manager of the Benton-Franklin Juvenile Justice Center reviewed the quotes for completeness and recommends awarding the limited public works project to Clearwater Tech, LLC dba Roto-Rooter Service; **NOW, THEREFORE**

BE IT RESOLVED, that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners hereby concurs with the Administrative Services Finance Manager's recommendation of awarding the limited public works project to Clearwater Tech, LLC dba Roto-Rooter Service in an amount of $5,000, plus WSST; and

BE IT FURTHER RESOLVED, the attached contract shall begin on the last date signed and expire on April 30, 2022.

DATED this _____ day of _____ 2022
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-Roto-Rooter Service, 1-Juvenile

R. Garcia

BENTON-FRANKLIN COUNTIES
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 and Franklin County, a political subdivision with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Clearwater Tech, LLC dba Roto-Rooter Service**, a corporation organized under the laws of the State of Washington with its principal offices at 801 South Steptoe, Kennewick, Washington 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 - Quote Received November 23, 2021; and
b. Exhibit B - Washington State Prevailing Wage Rates for Public Works Contracts

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on **April 30, 2022**. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide copper pipe repair and drain pipe replacement for the Benton-Franklin Juvenile Justice Center Detention facility located at 5606 W. Canal Drive, Kennewick, Washington. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Repair and Replacement Quote", which is attached hereto and incorporated herein by reference.

b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTIES of that fact and shall coordinate with COUNTIES 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 COUNTIES for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.

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

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

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

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

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

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

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:	Clinton Spears
Address:	801 South Steptoe Kennewick, WA 99336
Phone:	(509) 783-7311
Email:	office@rotorooterwa.net

b. For COUNTIES:

Name:	Darryl Banks, Administrator
Address:	5606 W. Canal Place, Suite 106 Kennewick, WA 99336
Phone:	(509) 222-2316
Email:	Darryl.Banks@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid as set forth in Exhibit A, "Repair and Replacement Quote", which is attached hereto and incorporated herein by reference, plus W.S.S.T.

b. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed Five Thousand Dollars ($5,000.00) plus W.S.S.T.

c. The CONTRACTOR shall have received training on the requirements related to public works and prevailing wage or, have completed three (3) or more public works projects and have had a valid business license in Washington for three (3) or more years and exempt from required training in RCW 39.04.350.

d. 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 COUNTIES' 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 COUNTIES' Contract Representative. No final payment will be made until the affidavit is provided. COUNTIES

require that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with https://secureaccess.wa.gov/.

e. The CONTRACTOR may invoice the COUNTIES for filing fees paid to the Washington State Department of Labor and Industries for filing one Statement of Intent to Pay Prevailing Wages per Contract and one Affidavit of Wages Paid per Contract.

f. 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 COUNTIES 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 COUNTIES 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 COUNTIES' 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 COUNTIES. The COUNTIES shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTIES shall authorize payment when the work billed is accepted by the COUNTIES and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) days after receiving the invoice.

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 COUNTIES.

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 COUNTIES.

8. HOLD HARMLESS AND INDEMNIFICATION

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

Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTIES by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTIES to CONTRACTOR for performance of this Contract.

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 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 COUNTIES 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 COUNTIES shall be excess and not contributory to CONTRACTOR'S insurance policies.

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

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

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

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

of the requirements stated herein.

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract 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 COUNTIES and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days prior written notice to the COUNTIES. Any insurance or self-insurance maintained by the COUNTIES 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 COUNTIES' 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 COUNTIES' 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-Franklin Counties Risk Manager at the following addresses: 5606 West Canal Drive, Suite 106, Kennewick, WA 99336.

10. PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish Benton and Franklin COUNTIES with a Performance Bond and Labor and Materials Payment Bond, in addition to the 5% being withheld for retainage, with sufficient sureties acceptable to Benton and Franklin Counties, 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 COUNTIES 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 COUNTIES 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 COUNTIES. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

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

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

d. 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 COUNTIES' Contract Representative or designee.

13. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the COUNTIES 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 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 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 COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determine in its sole discretion that such termination is in the best interests of the COUNTIES. The COUNTIES may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTIES shall pay the CONTRACTOR for 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 COUNTIES pursuant to this Contract or by law.

b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines in its sole discretion that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail

to the COUNTIES. In that event, the COUNTIES shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTIES pursuant to this Contract or by law.

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B, which is attached hereto and incorporated herein by reference, shall be paid to all employees, agents, subcontractors, and sub-subcontractors who do any work for the CONTRACTOR on this project. The CONTRACTOR shall ensure that all subcontractors or sub-subcontractors sign an agreement to pay these same wages and that the signed agreement is submitted to the COUNTIES 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 COUNTIES 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 COUNTIES' Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTIES' Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

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 COUNTIES.

21. ENTIRE AGREEMENT

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

22. NOTICES

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

23. SEVERABILITY

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

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

to such statutory provision.

24. LITIGATION HOLD NOTICE

In the event the COUNTIES learn 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 COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend any regularly scheduled purge schedule.

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

26. SURVIVABILITY

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

27. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTIES or acquired by the COUNTIES in performance of this Contract, except upon the prior written consent of the COUNTIES 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.

- This section was intentionally left blank -

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

The parties specifically certify that the provisions contained within Section 8 are mutually negotiated.

Clearwater Tech, LLC dba Roto-Rooter Service	Benton-Franklin Counties Juvenile Justice Center
12/2/21 Clinton Spears Date Manager	12-13-21 Darryl Banks Date Juvenile Court Administrator
BENTON COUNTY APPROVAL Approved as to Form: Stephen Hallstrom, Deputy Prosecuting Attorney Date By: Name: Title: Date: Attest: Clerk of the Board:	**FRANKLIN COUNTY APPROVAL** Approved as to Form: 12/6/21 Jennifer Johnson, Civil Deputy Prosecuting Attorney Date By: Name: Title: Date: Attest: Clerk of the Board:

Exhibit A

Contact Us

Hello, these are your estimates

Copper pipe repair

Your Price
$815.84

Accept Now

Drain pipe replacement

Your Price
$897.29

View

Summary

Turn off building water system and drain down the overhead piping in the ceiling of the administration offices.

Cut out leaking 1-1/2" copper 90^0 elbow and short adjacent pipe sections.

Provide and install a new 1-1/2" copper 90^0elbow and adjacent pipe sections.

Turn the water back on and check for leaks.

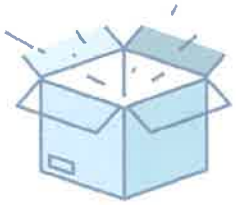
Clean up work area.

TCPL11

Your Price
$711.23

Water Line Repairs; Plumbing

Misc500



Prevailing Wage Intent to Pay Fee

Your Price
$40.00

Subtotal	$751.23
Tax	$64.61
Total	**$815.84**

Exhibit B

State of Washington
Department of Labor & Industries

Prevailing Wage Section - Telephone 360-902-5335
PO Box 44540, Olympia, WA 98504-4540

Washington State Prevailing Wage

The PREVAILING WAGES listed here include both the hourly wage rate and the hourly rate of fringe benefits. On public works projects, worker's wage and benefit rates must add to not less than this total. A brief description of overtime calculation requirements are provided on the Benefit Code Key.

Journey Level Prevailing Wage Rates for the Effective Date: 11/24/2021

County	Trade	Job Classification	Wage	Holiday	Overtime	Note	*Risk Class
Benton	Plumbers & Pipefitters	Journey Level	$86.69	6Z	1Q		View
Franklin	Plumbers & Pipefitters	Journey Level	$86.69	6Z	1Q		View

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2021
Subject:	Award Professional Services Agreement to Susan Henwood
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 is legally obligated to provide public defense services to parties involved in dependency termination of parental rights and certain other civil matters in Benton County Juvenile Court. The contracts with the current team of attorneys who handle these cases will expire on December 31, 2021. After a review of contract performance and other due diligence, it appears appropriate to award contracts to:

Diana Anderson
Susan Henwood
Kathleen Moreno
Michelle Trombley

Fiscal Impact

None beyond budgeted

Recommendation

Execute contracts as proposed.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY SUSAN HENWOOD TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT FOR DEPENDENCY TERMINATION OF PARENTAL RIGHTS AND OTHER CIVIL CASES

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

WHEREAS, the current agreement with Susan Henwood ("Attorney") is set to expire on December 31, 2021; and

WHEREAS, Attorney is qualified to provide Services and interested in renewing her agreement with County for such Services; and

WHEREAS, a proposed professional services agreement with Attorney for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services agreement with attorney Susan Henwood, contract number BCJC2223SDH001, to provide public defense services in Benton County Juvenile Court for dependency termination of parental rights and other civil cases, for the time period from 01/01/22 through 12/31/23, with compensation of $3,313.68 per month 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, Susan Henwood
Copy – Auditor, S Godinez

E. Hsu

DocuSign Envelope ID: 9191660B-A923-4195-A198-A16C3F288D2D

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT (DEPENDENCY CASELOAD)

CONTRACT SUMMARY			
Contract Type	**Juvenile – Dependency**		
Contract Number	**BCJC2223SDH001**	**Contract Holder**	**Susan Henwood**
WSBA #	**33843**	**Effective Dates**	**January 1, 2022 to December 31, 2023**
Caseload Cap	**30**	**Compensation**	**$3,313.68**

THIS AGREEMENT is entered into by and between **Susan Henwood**, attorney at law, Washington State Bar Association # **33843** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions ("County"), for and on behalf of the Benton County Superior Court, Juvenile Division.

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

A. The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively "Civil Proceedings") in the Juvenile Division of the Benton County Superior Court (the "Juvenile Court Division" or "Juvenile Court").

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.

C. While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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

DocuSign Envelope ID: 9191660B-A923-4195-A198-A16C3F288D2D

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2022,** and shall continue thereafter through and including **December 31, 2023**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **1030 N Center Parkway, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **(509) 366-8078 and (509) 222-2223**, respectively; and Attorney's current office/work e-mail address is **nsndhenwood@gmail.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or

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disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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(c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or

(d) Any crime of dishonesty or deception.

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

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

d. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDMs with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, and to

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periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County' monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.
- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest. *Provided, however, that in the case of criminal defense cases, Benton County agrees that it shall make all reasonable efforts to procure the services*

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of other attorneys who more regularly provide such criminal defense services to handle such cases and shall only appoint Attorney on such cases as a last resort.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only) per year. The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review

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and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

Reserved

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Juvenile Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Juvenile Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

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hearings, motions, trials, disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-adjudication reviews.

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person) or otherwise as soon thereafter as reasonably possible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. **MONTHLY COMPENSATION.**

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation to Attorney shall be $3,313.68 (aggregated between Benton and Franklin Counties) as full and complete compensation for the services to be provided pursuant to this Agreement (other than such other compensation as specified in the remainder of this Section 12).

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c. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of $300 per full day and $150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

g. In any case where Attorney is appointed to represent a Child and a) the Child is the person who initially filed the petition for dependency; and b) the Child is regarded as the Petitioner for purposes of Attorney's representation and the proceedings in the case ("Qualifying Case"), Attorney shall be paid an additional case premium of $850 given the particular complexities of serving in that role. *This case premium for Qualifying Cases is payable directly by Benton County for Qualifying Cases filed and pending in Benton County Juvenile Court, and this case premium shall not be included in the compensation to be split between Benton & Franklin Counties.*

h. In any case where Attorney is appointed, on a conflict basis, to provide criminal defense representation to a Youth, where one or more of the charges in the case is a Class A felony, then Attorney shall be paid an additional one-time flat-fee premium of $850.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. *Attorney is not required to accept appointments to any homicide cases.* If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **$65.00 per hour** up to a maximum aggregate amount of $5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

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b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, 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. **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 directly related to a juvenile client's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

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

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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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and

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non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court

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and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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

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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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other

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panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the PDMs) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select,

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and contract with another qualified attorney to replace and succeed Attorney in representing persons in Juvenile Court.

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement are, for whatever reason, determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

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performance, and/or injunctive relief, and may register a judgment in Benton or Franklin 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 or Franklin County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@co.benton.wa.us

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

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

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments

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required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

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

Attorney		**Benton County** **Office of Public Defense** ***Approving as to form and content***	
DocuSigned by: Susan Henwood 6B265C452F7C42F...	12/20/2021	DocuSigned by: Eric Hsu F80F38017789473...	12/20/2021
Susan Henwood	**Date**	**Eric Hsu**	**Date**

BENTON COUNTY APPROVAL

By: _____

Name: _____
Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

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EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County ("Counties") are obligated by law to provide indigent defense services ("Services") in Benton and Franklin County Juvenile Court to affected children in dependency cases ("Cases"); and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost…."; and

WHEREAS, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders ("Defenders") to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of $2,858.38 (for 30 case contracts) and $5,777.12 (for 60 case contracts) total per month ("Total Compensation"), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center ("JJC") accurately reflects the proportional caseload of Cases for each County**;** and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

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necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of $2,858.38 for 30 case contracts and $5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board	Chairman of the Board
Chairman Pro-Tem	**Chairman Pro-Tem**
Member Constituting the Board of County **Commissioners, Benton County** ***Washington***	Member Constituting the Board of County **Commissioners, Franklin County** ***Washington***
Attest:	**Attest: . . . . . .**

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Clerk of the Board

Clerk of the Board

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Amendment of public defense professional services agreement with Branden Landon
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 Branden Landon ("Attorney") for public defense services in Benton County Superior Court by way of a professional services agreement (executed through Resolution #2020-860 (the "Contract").

Because of attorney departure, it has become necessary to amend the professional services agreement with Attorney by converting agreement to a juvenile public defense professional services agreement.

The proposed amendment accomplishes this.

Fiscal Impact

None

Recommendation

Recommend approving the proposed amendment to the professional services agreement with Branden Landon, converting agreement to a juvenile public defense professional services agreement.

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 PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY BRANDEN LANDON TO PROVIDE FOR CONVERTING AGREEMENT TO A JUVENILE PUBLIC DEFENSE PROFESSIONAL SERVICES AGREEMENT

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

WHEREAS, County has been contracting with attorney Branden Landon ("Attorney") to provide Services by way of a professional services agreement ("Agreement"); and

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of attorney departure; and

WHEREAS, it is therefore appropriate to amend the Agreement with Attorney to provide for converting agreement to a juvenile public defense professional services agreement; **NOW, THEREFORE**

BE IT RESOLVED that the public defense professional services agreement with attorney Branden Landon, previously executed by and through Resolution #2020-860, to provide for converting agreement to a juvenile public defense professional services agreement, contract number BCJC2223BDL001, for the time period of 1/1/22 through 12/31/23, with compensation of $7,145.00 per month plus other allowable expenses, premiums and fees as detailed, is hereby amended as proposed 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, Branden Landon E. Hsu
Copy – Auditor, S Godinez

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AMENDED

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

BCJC2223BDL001

CONTRACT SUMMARY			
Contract Type	Monthly		
Contract Number	BCJC2223BDL001	**Contract Holder**	Branden D. Landon
WSBA #	55433	**Effective Dates**	Jan 1, 2022 – Dec 31, 2023
Caseload Cap	**235**	**Compensation**	**$7,145 per month**
Assigned Court	**Juvenile Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation paid to:	Betancourt Law, PLLC		
Contract Slot Identifier JCF-2			

THIS AGREEMENT previously entered into by and between **Branden Landon,** attorney at law, Washington State Bar Association #55433 ("Attorney"), dba Betancourt Law, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court, executed by and through Resolution #2020-860.

IS HEREBY AMENDED BY REPLACING IT IN ITS ENTIRETY BY THE FOLLOWING:

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 juveniles charged with criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to juveniles subject to criminal charges in Juvenile Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2022,** and shall continue thereafter through and including **December 31, 2023**, 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

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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 (or has access to) an office adequate and appropriate for the practice of law at **1355 Columbia Park Trail, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **(509) 317-8184 and (509) 293-4057**, respectively; and Attorney's current office/work e-mail address is **landon.branden@gmail.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, area 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-Franklin Counties Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense

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services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or

(iv) Any crime of dishonesty or deception.

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

From time to time, County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train Attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorney's contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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d. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or is contemplating entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to juveniles accused of crimes in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDM, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

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5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- Any criminal matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Juvenile Court **not including Class A Felony matters (until Attorney is qualified to be appointed such matters).**
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any diversion referral consultation and/or diversion revocation proceeding.
- Any material witness or truancy matter (limited to those truancy matters scheduled on first-appearance dockets).
- Any misdemeanor or gross misdemeanor filed directly in Juvenile Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Juvenile Court.
- Any case or matter returned to Juvenile Court from any higher court.
- Any other type of Juvenile Court case or matter (regardless whether criminal-based or civil-based) in which another Juvenile Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court for Benton County (e.g., Juvenile Court civil defense panel attorney) is unable to handle due to a conflict of interest.
- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs.
- **Attorney shall be appointed, and shall only accept appointments for, cases filed in Benton County Juvenile Court under this Agreement. If Attorney accepts appointments for any other jurisdiction, including Franklin County Juvenile Court, such appointments will not fall under the purview of this Agreement, will not be eligible for compensation, and will not count toward caseload limits in this Agreement.**

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of

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adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows: In the event of termination of this Agreement at the election of either party by providing ninety (90) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM and JCA with accurate documentation identifying Attorney's then-existing Juvenile Court caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM and JCA contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM and JCA with updated Caseload Information sixty (60) days prior to the effective date of Agreement termination and again at thirty (30) days prior to said termination date. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination, except for the following matters in which Attorney's continuing representation of the client shall be limited to sixty (60) days following the termination date:

(i) Any civil-based matter,

(ii) Any deferred disposition matter,

(iii) Any matter involving a juvenile terminated from Drug Court,

(iv) Any matter involving a juvenile for whom a warrant has been issued,

(v) Special Sex Offender Disposition Alternative Revocation hearings,

(vi) Chemical Dependency Disposition Alternative Revocation Hearings, and/or

(vii) Any case where personal service is not affected within thirty (30) days of the date of the notice of termination.

7. **NUMBER OF APPOINTMENTS.** During each calendar year during the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent juveniles in Juvenile Court up to a maximum of **235 total case equivalents per calendar year** (proratable for any partial calendar year).

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The parties agree that, in the interests of caseload continuity and the proper representation of the public defense clients, Attorney shall assume the entire residual caseload of attorney Michelle Alexander, the holder of the juvenile public defense contract whose contract will essentially be assumed by Attorney. The assumption of caseload shall be effective January 1, 2022.

8. **CASE EQUIVALENTS.**

a. For the sole and exclusive purpose of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions of this paragraph 8 shall apply, but such provisions are not intended to constitute, and do not constitute, any type of "weighting system" adopted by the County for purposes of Attorney's above-referenced certifications of compliance with the Defense Standards adopted by the Supreme Court, and such provisions shall not be used or relied upon by Attorney in any way for such reasons or any similar purposes.

- All criminal cases (including Class A felony cases or cases that require a declination hearing) shall count as one (1) case equivalent.
- An appointment to a dependency case shall count as five (5) case equivalents per year.
- An appointment on a mental or alcohol commitment shall count as one-third (1/3) of a case equivalent.
- An appointment on a Child In Need of Services (CHINS), Alternative Residential Placement (ARP), or a Youth at Risk Petition (YARP) shall count as two-thirds (2/3) of a case equivalent.
- An appointment to a Termination of Parental Rights case shall count as five (5) case equivalents per year. Provided, that if County, at any time, in its sole discretion, feels that counting Termination of Parental Rights cases as case equivalents may result in insufficient caseload resources to handle anticipated criminal caseloads, then County may, for any one or more Termination of Parental Rights cases, disregard the case equivalents for said cases and, instead, compensate Attorney in the amount of $1,659 per Termination of Parental Rights case per year.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the JCA or PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

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

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent.

d. Throughout the term of this Agreement, the Legal Process Unit shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the JCA, PDM and Attorney on a monthly basis. Attorney shall have the burden of proof in the event that Attorney disagrees with any such records, and Attorney must notify the Legal Process Unit Supervisor in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed and relied upon as being fully accurate.

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Juvenile Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Juvenile Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person) or otherwise as soon thereafter as reasonably possible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

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c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services under this Agreement, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of $341.87 per mixed-caseload case as a flat fee (regardless of whether the case is a felony or misdemeanor). However, for the mutual convenience of the parties, this compensation shall be paid in monthly equal payments of $6,695 based on Attorney's selected maximum caseload. This monthly payment shall be paid regardless of whether Attorney's actual annual caseload reaches the stated maximum caseload or not.

All compensation shall be payable to: Betancourt Law, PLLC since Attorney AN ASSOCIATE with that firm.

b. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

c. Attorney shall be paid additional compensation for the following, in the stated amounts:

Description	**Additional Compensation**
Truancy or At-Risk Youth Dockets	$450 per docket
Trial Per Diem	$300 per day or $150 per half day
Recurring Assignment as "Attorney of the Week"	$450 per month
Cases assigned in excess of maximum caseload (only if attorney affirmatively agrees to the assignment(s) and confirms that Attorney would remain in compliance with Public Defense Standards	$475 per felony case and $225 per misdemeanor or gross misdemeanor case
Class A felony appointment	$875 per case (regardless of how many Class A felony charges there are in the case)

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

Attorney's monthly compensation for "Attorney of the Week" assignment shall be automatically added to Attorney's recurring monthly compensation.

All other additional compensation shall only be paid upon Attorney properly submitting an invoice and Claim for Compensation in the manner and form prescribed by the Benton County Office of Public Defense.

13. **HOMICIDE AND DECLINATION CASE COMPENSATION.** Homicide cases are appointed to the Juvenile Court Criminal Defense Panel members on a rotational basis. Additionally, appointed serious felony matters may be subject to discretionary declination proceedings at the choosing of the prosecutor. Attorney shall receive additional compensation for appointments to homicide cases in any degree at the rate of **$65.00 per hour** up to a maximum aggregate amount of $5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity). Attorney shall receive additional compensation for cases for which Attorney must prepare for a declination hearing at the rate of **$65 per hour** up to a maximum of $2,000 per case exclusive of the declination hearing itself (which is paid as a trial per diem) and starting from the time when Attorney learns of the need to prepare for declination proceedings.

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Unless otherwise agreed in writing, time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDM that descriptively sets forth and details the total number of hours (documented and stated in one-tenth ($1/10^{th}$) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, 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. **COSTS AND EXPENSES.**

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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 recognize, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to a juvenile client's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County (or either of them). All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the

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expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and their elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of their elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, 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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per

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claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

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

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

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c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), the PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDM and JCA.

a. Upon receiving such complaint, the JCA/PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court relating to the appointment of substitute legal counsel for any person(s)

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court

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order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDM which shall not be unreasonably withheld) to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed

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basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDM, JCA and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. The selection of a substitute attorney shall be subject to the PDM's approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

(iv)

In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the

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sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

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

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton-Franklin County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@co.benton.wa.us

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

c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the

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manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

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

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

35. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that Attorney's performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely (including providing BCOPD with, upon request, metrics data that it cannot easily obtain without Attorney's reporting. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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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
F89F38017780472...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 12/16/2021

DocuSigned by:
Branden Landon
55BB6A113417496...

Branden Landon, WSBA 55433
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:
Angel Betancourt
44EE6B482C0E456...

Angel Betancourt, WSBA 49091
I am a principal with signing authority for Betancourt Law, PLLC. I acknowledge and understand that the above-referenced Attorney, who is an associate with my firm, is about to enter into a public defense agreement with Benton County. I consent to this agreement and 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.

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EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

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

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

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

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

Attorney acknowledgment:

Docusigned by:
Branden Landon
55BB6A113417496...

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2021
Subject:	Award Professional Services Agreement to Diana Anderson
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 is legally obligated to provide public defense services to parties involved in dependency termination of parental rights and certain other civil matters in Benton County Juvenile Court. The contracts with the current team of attorneys who handle these cases will expire on December 31, 2021. After a review of contract performance and other due diligence, it appears appropriate to award contracts to:

Diana Anderson
Susan Henwood
Kathleen Moreno
Michelle Trombley

Fiscal Impact

None beyond budgeted

Recommendation

Execute contracts as proposed.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DIANA ANDERSON TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT FOR DEPENDENCY TERMINATION OF PARENTAL RIGHTS AND OTHER CIVIL CASES

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

WHEREAS, the current agreement with Diana Anderson ("Attorney") is set to expire on December 31, 2021; and

WHEREAS, Attorney is qualified to provide Services and interested in renewing her agreement with County for such Services; and

WHEREAS, a proposed professional services agreement with Attorney for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services agreement with attorney Diana Anderson, contract number BCJC2223DLA001, to provide public defense services in Benton County Juvenile Court for dependency termination of parental rights and other civil cases, for the time period from 01/01/22 through 12/31/23, with compensation of $3,313.68 per month 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, Diana Anderson
Copy – Auditor, S Godinez

E. Hsu

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT (DEPENDENCY CASELOAD)

CONTRACT SUMMARY			
Contract Type	**Juvenile – Dependency**		
Contract Number	**BCJC2223DLA001**	**Contract Holder**	**Diana Anderson**
WSBA #	**18297**	**Effective Dates**	**January 1, 2022 to December 31, 2023**
Caseload Cap	**30**	**Compensation**	**$3,313.68**

THIS AGREEMENT is entered into by and between **Diana Anderson**, attorney at law, Washington State Bar Association # **18297** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions ("County"), for and on behalf of the Benton County Superior Court, Juvenile Division.

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

A. The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively "Civil Proceedings") in the Juvenile Division of the Benton County Superior Court (the "Juvenile Court Division" or "Juvenile Court").

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.

C. While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **January 1, 2022,** and shall continue thereafter through and including **December 31, 2023**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **PO Box 6082, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **(509) 783-3748 and (509) 783-8754**, respectively; and Attorney's current office/work e-mail address is **andersonlaw@fastmail.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or

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disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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(c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or

(d) Any crime of dishonesty or deception.

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

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

d. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDMs with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, and to

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periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County' monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.
- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest. *Provided, however, that in the case of criminal defense cases, Benton County agrees that it shall make all reasonable efforts to procure the services*

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of other attorneys who more regularly provide such criminal defense services to handle such cases and shall only appoint Attorney on such cases as a last resort.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only) per year. The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review

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and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

Reserved

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Juvenile Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Juvenile Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

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hearings, motions, trials, disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-adjudication reviews.

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person) or otherwise as soon thereafter as reasonably possible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. **MONTHLY COMPENSATION.**

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation to Attorney (aggregated between Benton & Franklin Counties) shall be $3,313.68 as full and complete compensation for the services to be provided pursuant to this Agreement (other than such other compensation as specified in the remainder of this Section 12).

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c. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of $300 per full day and $150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

g. In any case where Attorney is appointed to represent a Child and a) the Child is the person who initially filed the petition for dependency; and b) the Child is regarded as the Petitioner for purposes of Attorney's representation and the proceedings in the case ("Qualifying Case"), Attorney shall be paid an additional case premium of $850 given the particular complexities of serving in that role. *This case premium for Qualifying Cases is payable directly by Benton County for Qualifying Cases filed and pending in Benton County Juvenile Court, and this case premium shall not be included in the compensation to be split between Benton & Franklin Counties.*

h. In any case where Attorney is appointed, on a conflict basis, to provide criminal defense representation to a Youth, where one or more of the charges in the case is a Class A felony, then Attorney shall be paid an additional one-time flat-fee premium of $850.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. *Attorney is not required to accept appointments to any homicide cases.* If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **$65.00 per hour** up to a maximum aggregate amount of $5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

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b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, 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. **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 directly related to a juvenile client's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

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

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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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and

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non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court

and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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

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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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other

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panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the PDMs) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select,

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and contract with another qualified attorney to replace and succeed Attorney in representing persons in Juvenile Court.

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement are, for whatever reason, determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

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performance, and/or injunctive relief, and may register a judgment in Benton or Franklin 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 or Franklin County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@co.benton.wa.us

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

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

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments

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required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

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

Attorney		**Benton County Office of Public Defense** *Approving as to form and content*	
DocuSigned by: Diana Anderson DBB484C7B8A44EB...	12/20/2021	DocuSigned by: Eric Hsu F80F38017789473...	12/20/2021
Diana Anderson	**Date**	**Eric Hsu**	**Date**

BENTON COUNTY APPROVAL

By: _____

Name: _____
Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

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EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County ("Counties") are obligated by law to provide indigent defense services ("Services") in Benton and Franklin County Juvenile Court to affected children in dependency cases ("Cases"); and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost…."; and

WHEREAS, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders ("Defenders") to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of $2,858.38 (for 30 case contracts) and $5,777.12 (for 60 case contracts) total per month ("Total Compensation"), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center ("JJC") accurately reflects the proportional caseload of Cases for each County**;** and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

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necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of $2,858.38 for 30 case contracts and $5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board	Chairman of the Board
Chairman Pro-Tem	**Chairman Pro-Tem**
Member Constituting the Board of County **Commissioners, Benton County** ***Washington***	Member Constituting the Board of County **Commissioners, Franklin County** ***Washington***
Attest:	**Attest: . . . . . .**

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Clerk of the Board

Clerk of the Board

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2021
Subject:	Award Professional Services Agreement to Kathleen Moreno
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 is legally obligated to provide public defense services to parties involved in dependency termination of parental rights and certain other civil matters in Benton County Juvenile Court. The contracts with the current team of attorneys who handle these cases will expire on December 31, 2021. After a review of contract performance and other due diligence, it appears appropriate to award contracts to:

Diana Anderson
Susan Henwood
Kathleen Moreno
Michelle Trombley

Fiscal Impact

None beyond budgeted

Recommendation

Execute contracts as proposed.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY KATHLEEN MORENO TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT FOR DEPENDENCY TERMINATION OF PARENTAL RIGHTS AND OTHER CIVIL CASES

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

WHEREAS, the current agreement with Kathleen Moreno ("Attorney") is set to expire on December 31, 2021; and

WHEREAS, Attorney is qualified to provide Services and interested in renewing her agreement with County for such Services; and

WHEREAS, a proposed professional services agreement with Attorney for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services agreement with attorney Kathleen Moreno, contract number BCJC2223KLM001, to provide public defense services in Benton County Juvenile Court for dependency termination of parental rights and other civil cases, for the time period from 01/01/22 through 12/31/23, with compensation of $6,627.36 per month 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, Kathleen Moreno
Copy – Auditor, S Godinez

E. Hsu

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT (DEPENDENCY CASELOAD)

CONTRACT SUMMARY			
Contract Type	**Juvenile – Dependency**		
Contract Number	**BCJC2223KLM001**	**Contract Holder**	**Kathleen Moreno**
WSBA #	**15725**	**Effective Dates**	**January 1, 2022 to December 31, 2023**
Caseload Cap	**60**	**Compensation**	**$6,627.36**

THIS AGREEMENT is entered into by and between **Kathleen Moreno**, attorney at law, Washington State Bar Association # **15725** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions ("County"), for and on behalf of the Benton County Superior Court, Juvenile Division.

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

A. The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively "Civil Proceedings") in the Juvenile Division of the Benton County Superior Court (the "Juvenile Court Division" or "Juvenile Court").

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.

C. While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **January 1, 2022,** and shall continue thereafter through and including **December 31, 2023**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **1030 N Center Parkway, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **(509) 528-8464 and (509) 222-2223**, respectively; and Attorney's current office/work e-mail address is **klmoreno@charter.net**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or

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disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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(c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or

(d) Any crime of dishonesty or deception.

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

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

d. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDMs with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, and to

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periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County' monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.

- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest. *Provided, however, that in the case of criminal defense cases, Benton County agrees that it shall make all reasonable efforts to procure the services*

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of other attorneys who more regularly provide such criminal defense services to handle such cases and shall only appoint Attorney on such cases as a last resort.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **60** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only) per year. The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review

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and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

Reserved

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Juvenile Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Juvenile Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

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hearings, motions, trials, disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-adjudication reviews.

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person) or otherwise as soon thereafter as reasonably possible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. **MONTHLY COMPENSATION.**

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation to Attorney shall be $6,627.36 (aggregated between Benton and Franklin Counties) as full and complete compensation for the services to be provided pursuant to this Agreement (other than such other compensation as specified in the remainder of this Section 12).

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c. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of $300 per full day and $150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

g. In any case where Attorney is appointed to represent a Child and a) the Child is the person who initially filed the petition for dependency; and b) the Child is regarded as the Petitioner for purposes of Attorney's representation and the proceedings in the case ("Qualifying Case"), Attorney shall be paid an additional case premium of $850 given the particular complexities of serving in that role. *This case premium for Qualifying Cases is payable directly by Benton County for Qualifying Cases filed and pending in Benton County Juvenile Court, and this case premium shall not be included in the compensation to be split between Benton & Franklin Counties.*

h. In any case where Attorney is appointed, on a conflict basis, to provide criminal defense representation to a Youth, where one or more of the charges in the case is a Class A felony, then Attorney shall be paid an additional one-time flat-fee premium of $850.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. *Attorney is not required to accept appointments to any homicide cases.* If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **$65.00 per hour** up to a maximum aggregate amount of $5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

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b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth ($1/10^{th}$) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, 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. **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 directly related to a juvenile client's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

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

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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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and

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non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court

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and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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

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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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other

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panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the PDMs) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select,

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and contract with another qualified attorney to replace and succeed Attorney in representing persons in Juvenile Court.

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement are, for whatever reason, determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

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performance, and/or injunctive relief, and may register a judgment in Benton or Franklin 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 or Franklin County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@co.benton.wa.us

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

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

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments

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required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

Attorney		**Benton County** **Office of Public Defense** ***Approving as to form and content***	
DocuSigned by: Kathleen Moreno D65DABEFC53148F...	12/20/2021	DocuSigned by: Eric Hsu F80F38017789473...	12/20/2021
Kathleen Moreno	**Date**	**Eric Hsu**	**Date**

BENTON COUNTY APPROVAL

By: _____

Name: _____
Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

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EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County ("Counties") are obligated by law to provide indigent defense services ("Services") in Benton and Franklin County Juvenile Court to affected children in dependency cases ("Cases"); and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost…."; and

WHEREAS, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders ("Defenders") to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of $2,858.38 (for 30 case contracts) and $5,777.12 (for 60 case contracts) total per month ("Total Compensation"), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center ("JJC") accurately reflects the proportional caseload of Cases for each County**;** and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

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necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of $2,858.38 for 30 case contracts and $5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board	Chairman of the Board
Chairman Pro-Tem	**Chairman Pro-Tem**
Member Constituting the Board of County **Commissioners, Benton County** ***Washington***	Member Constituting the Board of County **Commissioners, Franklin County** ***Washington***
Attest:	**Attest: . . . . . .**

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Clerk of the Board

Clerk of the Board

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2021
Subject:	Award Professional Services Agreement to Michelle Trombley
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 is legally obligated to provide public defense services to parties involved in dependency termination of parental rights and certain other civil matters in Benton County Juvenile Court. The contracts with the current team of attorneys who handle these cases will expire on December 31, 2021. After a review of contract performance and other due diligence, it appears appropriate to award contracts to:

Diana Anderson
Susan Henwood
Kathleen Moreno
Michelle Trombley

Fiscal Impact

None beyond budgeted

Recommendation

Execute contracts as proposed.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY MICHELLE TROMBLEY TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT FOR DEPENDENCY TERMINATION OF PARENTAL RIGHTS AND OTHER CIVIL CASES

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

WHEREAS, the current agreement with Michelle Trombley ("Attorney") is set to expire on December 31, 2021; and

WHEREAS, Attorney is qualified to provide Services and interested in renewing her agreement with County for such Services; and

WHEREAS, a proposed professional services agreement with Attorney for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed professional services agreement with attorney Michelle Trombley, contract number BCJC2223MTT001, to provide public defense services in Benton County Juvenile Court for dependency termination of parental rights and other civil cases, for the time period from 01/01/22 through 12/31/23, with compensation of $3,313.68 per month plus other allowable expenses, premiums, and fees as detailed, is hereby approved and executed on behalf of Benton County.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

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

E. Hsu

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT (DEPENDENCY CASELOAD)

CONTRACT SUMMARY			
Contract Type	**Juvenile – Dependency**		
Contract Number	**BCJC2223MTT001**	**Contract Holder**	**Michelle Trombley**
WSBA #	**42912**	**Effective Dates**	**January 1, 2022 to December 31, 2023**
Caseload Cap	**30**	**Compensation**	**$3,313.68**

THIS AGREEMENT is entered into by and between **Michelle Trombley**, attorney at law, Washington State Bar Association # **42912** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivisions ("County"), for and on behalf of the Benton County Superior Court, Juvenile Division.

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

A. The County has the legal responsibility to provide legal services to children who are parties to dependency proceedings (RCW Chapter 13.34/26.44, as now existing or as may be amended/recodified) and/or termination proceedings (RCW Chapter 13.34, as now existing or as may be amended/recodified) (collectively "Civil Proceedings") in the Juvenile Division of the Benton County Superior Court (the "Juvenile Court Division" or "Juvenile Court").

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons in Civil Proceedings and contested family law matters, and desires to contract with the County to provide legal services to indigent children subject to Civil Proceedings in the Juvenile Court Division.

C. While Benton & Franklin Counties do not jointly provide public defense services, the two Counties have entered into an agreement for the provision of public defense services on Civil Proceedings using the same group of attorneys. This group of attorneys will each be offered separate public defense contracts for each county pursuant to a joint resolution (attached as Exhibit A) that will provide for a specific way that compensation will be paid by each county and that will further provide that the caseloads of each contract attorney will be a mixed caseload with cases from each county, with a total, as listed in Section 7 below, representing the grand total of the combined cases from each county.

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 **January 1, 2022,** and shall continue thereafter through and including **December 31, 2023**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **7135 Hood Pl, Kennewick, WA 99336**; Attorney's current local office telephone and fax numbers are **(509) 204-3121 and (888) 522-6045**, respectively; and Attorney's current office/work e-mail address is **trombleylaw@outlook.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, area 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 Public Defense Manager, the Benton County Prosecuting Attorney, and the Benton County Juvenile Court Administrator ("JCA").

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 ("Supreme Court").

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County have an obligation to provide competent and effective legal counsel to juveniles subject to proceedings in Juvenile Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or

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disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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(c) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other state or federal statute; and/or

(d) Any crime of dishonesty or deception.

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

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

d. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDMs with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

e. Attorney recognizes and acknowledges that Attorney is required by Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to juveniles, and to

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periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County' monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

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. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplate entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide defense services to persons subject to Civil Proceedings in Juvenile Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the JCA, the PDMs, and any attorneys hired and employed by the County ("Staff Defenders") to provide criminal defense services to persons accused of crimes in Juvenile Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Staff Defenders (collectively the "Juvenile Court Criminal Defense Panel"). The JCA and/or the PDMs shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent juveniles (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Juvenile Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent juveniles on any of the following types of matters:

- All Civil Proceedings under the jurisdiction of the Juvenile Court.

- Any other type of Juvenile Court Division case or matter (regardless of whether criminal based or civil based) in which another Juvenile Court Civil Defense Panel Member and/or a Juvenile Court Criminal Defense Panel Member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court is unable to handle due to a conflict of interest. *Provided, however, that in the case of criminal defense cases, Benton County agrees that it shall make all reasonable efforts to procure the services*

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of other attorneys who more regularly provide such criminal defense services to handle such cases and shall only appoint Attorney on such cases as a last resort.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of adjudication, dismissal of all charges, or a change of plea and entering of a disposition. Provided, however, that if a case is re-tried for any reason, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of dispositions and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such program and is ordered to show cause why their participation in such program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 below.

In the event that Attorney desires to terminate this Agreement, or decides, upon natural expiration of this Agreement, not to renew, then Attorney shall provide ninety (90) days written notice of such intent. In the case of termination by such notice, or if County terminates the agreement by providing notice to Attorney, Attorney shall have no further responsibilities to appointed clients pursuant to this Agreement past the effective date of the termination. In the case of natural expiration of this Agreement, if Attorney fails to provide written notice of desire not to renew at least ninety (90) days prior to the actual expiration date, then Attorney shall nevertheless continue to represent appointed clients until 90 days has elapsed from the date when the written notice of nonrenewal is provided even if a portion of of the 90 day period extends past the effective date of the expiration. If a portion of this 90 day period extends past the effective date of the expiration, then Attorney shall be entitled to a pro-rated compensation for the period of continued representation that extends past the effective date of expiration.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments to represent children in Civil Proceedings to a floating caseload maximum of **30** open cases pending at any given time (representing a grand total of the mixed Civil Proceedings caseload from both Benton and Franklin Counties) and shall additionally accept up to 10 Juvenile Court criminal conflict cases (from Benton County only) per year. The date of court appointment shall determine the calendar year in which each individual Juvenile Court criminal conflict case is to be counted.

Throughout the term of this Agreement, the Legal Process Unit of the Juvenile Justice Center shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Legal Process Unit shall provide copies of such records to the PDMs and Attorney on a monthly basis. Upon receipt of such records on a monthly basis, Attorney shall certify the accuracy of such records and return them to the Legal Process Unit within ten (10) business days or shall, if necessary, dispute the accuracy of the records. In the event that Attorney disputes the accuracy of such records, Attorney shall bear the burden of providing evidence of such inaccuracy and of the appropriate count(s). The obligation to review

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and sign off on the accuracy of records on a monthly basis is an affirmative and express obligation of Attorney under this Agreement and, pursuant to Section 12g. below, Attorney's compensation may be withheld until Attorney comes into compliance with this obligation.

8. **CASE EQUIVALENTS.**

Reserved

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Juvenile Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Juvenile Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Juvenile Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

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

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hearings, motions, trials, disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-adjudication reviews.

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person) or otherwise as soon thereafter as reasonably possible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible paper/electronic copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

12. **MONTHLY COMPENSATION.**

a. Benton and Franklin Counties have entered into an agreement, memorialized in the bi-county resolution attached as Exhibit A ("Cost-Sharing Resolution"), designating the allocation of responsibility for paying monthly compensation for the services contemplated by this agreement. Each month, County shall pay Attorney its share of the total monthly compensation using the calculation formula set out in the Cost Sharing Resolution, with Franklin County being responsible for the remainder. Compensation shall be payable on the last business day of each month for services rendered during that month.

b. The total monthly compensation to Attorney shall be $3,313.68 (aggregated between Benton and Franklin Counties) as full and complete compensation for the services to be provided pursuant to this Agreement (other than such other compensation as specified in the remainder of this Section 12).

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c. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. If the termination date falls mid-way through a given month, then the Attorney shall be compensated on a pro-rated basis for the days of the month up to and including the effective date of termination.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum.

e. Attorney shall also receive additional compensation for trials actually held in the amount of $300 per full day and $150 per partial day with trials extending past noon being regarded as a full day and those that are completed before noon considered a partial day.

f. The compensation to be paid is specifically contingent upon Attorney's compliance with reporting requirements stated in Section 7 above and if Attorney fails to certify caseload reports as required on a monthly basis, then compensation may be withheld and delayed until such time as Attorney comes into compliance with the obligations therein.

g. In any case where Attorney is appointed to represent a Child and a) the Child is the person who initially filed the petition for dependency; and b) the Child is regarded as the Petitioner for purposes of Attorney's representation and the proceedings in the case ("Qualifying Case"), Attorney shall be paid an additional case premium of $850 given the particular complexities of serving in that role. *This case premium for Qualifying Cases is payable directly by Benton County for Qualifying Cases filed and pending in Benton County Juvenile Court, and this case premium shall not be included in the compensation to be split between Benton & Franklin Counties.*

h. In any case where Attorney is appointed, on a conflict basis, to provide criminal defense representation to a Youth, where one or more of the charges in the case is a Class A felony, then Attorney shall be paid an additional one-time flat-fee premium of $850.

13. **HOMICIDE CASE COMPENSATION.** Homicide cases are appointed to the qualified Juvenile Court Criminal Defense Panel members on a rotational basis. *Attorney is not required to accept appointments to any homicide cases.* If Attorney accepts a homicide case appointment, Attorney shall receive additional compensation at the rate of **$65.00 per hour** up to a maximum aggregate amount of $5,000.00 per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDMs that descriptively sets forth and details the total number of hours (documented and stated in one-tenth ($1/10^{th}$) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, 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. **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 directly related to a juvenile client's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDMs for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDMs in writing pursuant to pre-approval process established by the PDMs and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the appropriate PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the appropriate PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class A felony matters hereunder in Juvenile Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Juvenile Court appoint one of the other Juvenile Court Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Juvenile Court Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Juvenile Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Juvenile Court (or designee) would have the ultimate and inherent discretion and power to do so.

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

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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 their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Juvenile Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and

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non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the JCA (or another employee/representative of the County's Juvenile Justice Center), either PDM (or another employee/representative of the County's Office of Public Defense), or the Juvenile Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDs and JCA.

a. Upon receiving such complaint, the JCA/PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense'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 juvenile clients 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 JCA/PDM have the right to periodically ask, without limitation, the Juvenile Court

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and/or other attorneys and/or persons previously represented by Attorney to provide an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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

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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, 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, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Juvenile Court through a public agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of such decision as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Juvenile Court Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other

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panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the respective PDMs on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Juvenile Court Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney (subject to pre-approval of such attorney by the PDMs which shall not be unreasonably withheld) to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the PDMs) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be strictly liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDMs and JCA with written notice of such event within five (5) business days of Attorney being called up so that the PDMs, JCA and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. The selection of a substitute attorney shall be subject to the PDMs' approval and such approval shall not be unreasonably withheld. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the JCA/PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select,

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and contract with another qualified attorney to replace and succeed Attorney in representing persons in Juvenile Court.

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement are, for whatever reason, determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

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performance, and/or injunctive relief, and may register a judgment in Benton or Franklin 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 or Franklin County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

Darryl Banks, Juvenile Justice Center Administrator
Benton County Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336

jjcnotices@co.benton.wa.us

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

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

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments

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required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

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

Attorney		**Benton County** **Office of Public Defense** ***Approving as to form and content***	
DocuSigned by: Michelle Trombley 20E796471D174F3...	12/20/2021	DocuSigned by: Eric Hsu F80F38017789473...	12/20/2021
Michelle Trombley	**Date**	**Eric Hsu**	**Date**

BENTON COUNTY APPROVAL

By: _____

Name: _____
Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

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EXHIBIT A – COST-SHARING BI-COUNTY RESOLUTION

(an executed version of this resolution is available upon request)

BI-COUNTY RESOLUTION

BENTON COUNTY RESOLUTION NO. _____
FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

& FRANKLIN COUNTY, WASHINGTON.

IN THE MATTER OF ESTABLISHING A PROCESS TO EQUITABLY DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON & FRANKLIN COUNTIES.

WHEREAS, Benton County and Franklin County ("Counties") are obligated by law to provide indigent defense services ("Services") in Benton and Franklin County Juvenile Court to affected children in dependency cases ("Cases"); and

WHEREAS, per Benton County resolution 2012-677, "….The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost…."; and

WHEREAS, for efficiency, talent retention, and resource reasons, Counties desire to jointly use a group of six contract defenders ("Defenders") to provide Services but wish to separately contract with each Defender for the caseloads of each respective County; and

WHEREAS, the Counties agree to compensate each Defender in the amount of $2,858.38 (for 30 case contracts) and $5,777.12 (for 60 case contracts) total per month ("Total Compensation"), for Services, with each County paying their proportionate share of Compensation based on their proportion of Cases filed; and

WHEREAS, Counties believe that the official record of the number of dependency cases filed in each County as maintained by the Juvenile Justice Center ("JJC") accurately reflects the proportional caseload of Cases for each County**;** and

WHEREAS, the Counties agree that each County will contract with Defenders such that the monthly compensation to be paid by each County to each Defender is to be determined each year using caseload data provided by the Juvenile Department; and

WHEREAS, the Counties agree that other than the cost allocation procedures governed by this resolution the Benton & Franklin Counties Juvenile Justice Administration and the respective Offices of Public Defense for each County, shall be free to assign Cases to Defenders as

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necessary and appropriate, without regard to the number and county origin of cases assigned to any one or more Defender;

NOW THEREFORE, be it resolved that the Counties shall endeavor to, through their respective Offices of Public Defense, contract separately for the same public defenders to provide legally mandated public defense services to affected children in dependency cases to all such cases filed in Benton & Franklin Counties Juvenile Court; and

BE IT FURTHER RESOLVED that the Counties agree that the total monthly compensation that each contract public defender should receive, when their separate public defense contracts with each County are aggregated, shall initially be the sum of $2,858.38 for 30 case contracts and $5,777.12 for 60 case contracts ("Total Compensation"), which shall be increased for years 2017 and 2018 at the same rate as the Cost of Living Increase approved for bi-county employees at the Benton & Franklin Counties Juvenile Justice Center, and then increased thereafter with the mutual agreement of the Counties;

The parties further agree that no later than August 1st of each calendar year after 2016, the contributions of each County for the Total Compensation of contract defender services for the coming fiscal year shall be determined in accordance with the following formula:

1. For each year, the costs shall be split between the Counties in proportion to the ratio of Juvenile Dependency Action cases filed in each County to which Defenders are assigned by the court to represent children, averaged over the five year period ending with the second calendar year prior to the year for which the ratio is being established (e.g., the 2011-2015 filings would be used for the 2017 ratio calculation). The records as to numbers of cases filed to be used for this calculation shall be obtained from the Juvenile Department to be compiled from caseload assignment reports verified by the Defenders to whom the cases were assigned (as required by their contracts). For the period October 1, 2016 through December 31, 2016, the ratio for cost allocation shall be 61.9% Benton County and 38.1% Franklin County.
2. The definition of Juvenile Dependency Actions shall be any dependency or termination of parental rights cases filed in the Benton Superior Court's Juvenile Division where a public defender is appointed to represent a child.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board	Chairman of the Board
Chairman Pro-Tem	**Chairman Pro-Tem**
Member Constituting the Board of County **Commissioners, Benton County** ***Washington***	Member Constituting the Board of County **Commissioners, Franklin County** ***Washington***
Attest:	**Attest: . . . . . .**

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Clerk of the Board

Clerk of the Board

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Amendment of public defense professional services agreement with Michelle Alexander
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 Michelle Alexander ("Attorney") for public defense services in Benton County Superior Court by way of a professional services agreement (executed through Resolution #2021-460 (the "Contract").

Because of caseload needs, it has become necessary to amend the professional services agreement with Attorney by converting agreement to a "full, monthly compensated agreement".

The proposed amendment accomplishes this.

Fiscal Impact

None

Recommendation

Recommend approving the proposed amendment to the professional services agreement with Michelle Alexander, converting agreement to a "full, monthly compensated agreement".

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 PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY MICHELLE ALEXANDER TO PROVIDE FOR CONVERTING AGREEMENT TO A "FULL, MONTHLY COMPENSATED AGREEMENT"

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

WHEREAS, County has been contracting with attorney Michelle Alexander (“Attorney”) to provide Services by way of a professional services agreement (“Agreement”); and

WHEREAS, it has become necessary to modify the nature of the Services provided by Attorney because of caseload needs; and

WHEREAS, it is therefore appropriate to amend the Agreement with Attorney to provide for converting agreement to a "full, monthly compensated agreement"; **NOW, THEREFORE**

BE IT RESOLVED that the public defense professional services agreement with attorney Michelle Alexander, previously executed by and through Resolution #2021-460, to provide for converting agreement to a "full, monthly compensated agreement", contract number BCSC2122MMA-001, for the time period of 5/21/21 through 12/31/23, with compensation of $8,458.33 per month plus other allowable expenses, premiums and fees as detailed, is hereby amended as proposed on behalf of Benton County.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

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

E. Hsu

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AMENDED

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

BCSC2122MMA-001

CONTRACT SUMMARY			
Contract Type	Monthly		
Contract Number	BCSC2122MMA-001	**Contract Holder**	Michelle Alexander
WSBA #	29291	**Effective Dates**	05/21/21 to 12/31/23
Caseload Cap	**145**	**Compensation**	**$8,458.33 per Month $700 per case**
Assigned Court	**Superior Court**	**Compensation Structure**	**By the case but paid monthly**
Contract Slot Identifier SCF-3			

THIS AGREEMENT previously entered into by and between **Michelle Alexander,** attorney at law, Washington State Bar Association #29291 ("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 AS FOLLOWS:

Effective December 1, 2021 until December 31, 2021:

a) The caseload capacity for 2021 as a whole shall be increased by 10 cases. Compensation for those 10 cases shall be in the amount of $700 as a flat fee plus other additional compensation as provided in the underlying Agreement.

b) It is expressly intended that Attorney is to assume the residual caseload of outgoing public defense contract attorney Branden Landon ("Landon Cases"). The work on Landon Cases will almost all be done from January 1, 2022 onward but, for continuity, convenience of clients (and to minimize repetitive unproductive court appearances), and judicial efficiency, some of the reassignment of Landon Cases will take place during Superior Court criminal dockets during the month of December, 2021 ("Early Reassignment"). The parties agree that cases reassigned to Attorney pursuant to Early Reassignment shall not count as compensable 2021 cases (pursuant to the preceding paragraph) and shall, instead, be counted toward Attorney's 2022 caseload capacity and tally.

All other provisions in the underlying Agreement shall remain in full force and effect.

Effective January 1, 2022:

All other provisions in the underlying Agreement shall remain in full force and effect except for the following amendments:

1. **AGREEMENT TERM.** This Agreement shall be extended until December 31, 2023.

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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 **145 total cases per calendar year** (proratable for any partial calendar year).

12. **COMPENSATION.**

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 $8,458.33, based on Attorney's selected caseload.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provisional representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial

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is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

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f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum

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of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts

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relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

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

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indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

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

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

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(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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

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

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

19. **TERMINATION.**

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (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, 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

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terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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

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

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

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

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

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

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

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the

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parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

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

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

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

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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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
F80F38017789473...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 12/20/2021

DocuSigned by:
Michelle Alexander
0A02090F4E05432...

Michelle Alexander, WSBA 3500
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

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EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

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

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

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

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

Attorney acknowledgment:

DocuSigned by:
Michelle Alexander
6A82090F4E65452...

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Early termination of public defense agreement with Rebecca Lemons
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 Rebecca Lemons ("Attorney") for public defense services in Benton County District Court (executed through Resolution #2020-936). The agreement provides that either party may terminate the agreement early, with or without cause, simply by written notice with a requisite notice period.

Attorney has provided such notice of early termination, by way of a written notice dated December 9, 2021. The proposed resolution acknowledges this notice and sets March 9, 2022 as the final effective date of the early termination, pursuant to the provisions of the agreement.

Fiscal Impact

None

Recommendation

Recommend approving proposed resolution which acknowledges the early termination notice tendered by attorney Rebecca Lemons on December 9, 2021 and sets March 9, 2022 as the final effective date of the termination.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ACKNOWLEDGING THE EARLY TERMINATION NOTICE OF ATTORNEY REBECCA LEMONS, AN ATTORNEY HOLDING A PUBLIC DEFENSE AGREEMENT, RESOLUTION 2020-936 IN BENTON COUNTY DISTRICT COURT

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court; and

WHEREAS, attorney Rebecca Lemons ("Attorney") has been providing public defense services in Benton County District Court pursuant to a public defense agreement with Benton County; and

WHEREAS, the said public defense agreement provides for either party to provide notice of early agreement termination; and

WHEREAS, Attorney has, in fact, provided notice of early agreement termination in a notice dated December 9, 2021 (attached as Exhibit "A"); and

WHEREAS, pursuant to Attorney's public defense agreement, the notice, as provided, will result in a final effective date of March 9, 2022, with certain post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in said public defense agreement; **NOW, THEREFORE**

BE IT RESOLVED that the District Court public defense agreement with attorney Rebecca Lemons, executed by and through Resolution 2020-936, is hereby terminated at the request of Attorney, pursuant to Attorney's Notice of Early Termination dated December 9, 2021 with a final effective termination date of March 9, 2022 and with post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in attorney Rebecca Lemons's public defense agreement.

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, Rebecca Lemons
Copy – Auditor, S Godinez

E. Hsu

** EXHIBIT A **

LAW OFFICE OF RACHEL CORTEZ
6 E. ALDER ST., STE. 307
WALLA WALLA, WASHINGTON 99362
http://www.cortezlawoffice.com

(509) 876-4186– TEL.
(509) 876-4161 – FAX

RACHEL CORTEZ
REBECCA J. LEMONS
ATTORNEYS AT LAW

December 9, 2021

Eric Hsu
Public Defense Manager
Benton County Office of Public Defense

Dear Mr. Hsu,

I am writing to give the required 90-days' notice to terminate my contract. My last date would be March 9th 2022 unless we can agree for the termination of the contract to be sooner. The office that I currently work for has done some restructuring with contracts and in order to comply with caseload standards as a public defender it is necessary for me to drop my conflict contract with Benton County. The restructuring is expected to take effect on January 1, 2022.

I greatly appreciate the County allowing me to serve as the public defender for the last 3 years. I have greatly enjoyed the contract and it does pain me to leave as I truly enjoyed it.

Sincerely,

Rebecca J. Lemons
Attorney at Law

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Early termination of public defense agreements with Jennifer Azure (multiple)
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 Jennifer Azure ("Attorney") for public defense services in Benton County Superior and Juvenile Courts (by and through Resolutions 2021-478; 2018-454; and 2021-544). Since attorney Azure has received a judicial appointment to the District Court bench, she has provided early notice of termination for all of the referenced agreements, circumventing the otherwise applicable contractual notice provisions. The notice was dated November 23, 2021, and provided for a final termination date of November 30, 2021.

Fiscal Impact

None

Recommendation

Recommend approving proposed resolutions which acknowledges the early agreement termination notice tendered by attorney Jennifer Azure for multiple agreements, on November 23, 2021 and sets November 30, 2021 as the final effective date of the termination

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ACKNOWLEDGING THE EARLY TERMINATION NOTICE OF ATTORNEY JENNIFER AZURE, AN ATTORNEY HOLDING A PUBLIC DEFENSE AGREEMENT, RESOLUTION 2021-478 IN BENTON COUNTY SUPERIOR COURT

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court; and

WHEREAS, attorney Jennifer Azure ("Attorney") has been providing public defense services in Benton County Superior Court pursuant to a public defense agreement with Benton County; and

WHEREAS, the said public defense agreement provides for either party to provide notice of early contract termination; and

WHEREAS, Attorney has, in fact, provided notice of early agreement termination in a notice dated November 23, 2021 (attached as Exhibit "A"); and

WHEREAS, pursuant to Attorney's public defense agreement, the notice, as provided, will result in a final effective date of November 30, 2021, with certain post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in said public defense agreement; **NOW, THEREFORE**

BE IT RESOLVED that the Superior Court public defense agreement with attorney Jennifer Azure, executed by and through Resolution #2021-478, is hereby terminated at the request of Attorney, pursuant to Attorney's Notice of Early Termination dated November 23, 2021 with a final effective termination date of November 30, 2021 and with post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in attorney Jennifer Azure's public defense agreement.

BE IT FURTHER RESOLVED that because of attorney Azure's appointment as a Judge to the District Court bench, it is necessary to dispense with the otherwise applicable contractual notice period.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Jennifer Azure
Copy – Auditor, S Godinez

E. Hsu

** EXHIBIT A **

Denise Gerry

From: Eric Hsu
Sent: Tuesday, December 14, 2021 2:19 PM
To: Denise Gerry
Subject: Jenn Azure - no comp in Dec. I'll try to get termination resolution done today

ERIC HSU
Benton County Public Defense Manager

From: Eric Hsu
Sent: Tuesday, November 23, 2021 4:57 PM
To: Jennifer Azure <jennifer@azurelawoffice.com>
Subject: RE: [EXTERNAL] Notice

And we can settle any comp that's due on the residual case by court order instead of contract.

ERIC HSU
Benton County Public Defense Manager

From: Jennifer Azure <jennifer@azurelawoffice.com>
Sent: Tuesday, November 23, 2021 4:51 PM
To: Eric Hsu <Eric.Hsu@co.benton.wa.us>
Subject: Re: [EXTERNAL] Notice

Yes please. I do have one kid case that MAY go to trial on 12/8/21. It has been pending for several years so I hate to hand it off if it doesn't resolve on the 30th. Thoughts?

> **From:** Eric Hsu <Eric.Hsu@co.benton.wa.us>
> **Date:** Tuesday, November 23, 2021 at 4:21 PM
> **To:** Jennifer Azure <jennifer@azurelawoffice.com>
> **Subject:** RE: [EXTERNAL] Notice
>
> Hi Jenn. Can you confirm that, based on your scheduled swearing-in, the last day for your contract should be November 30?
>
> Thanks!
>
> Eric
>
> **ERIC HSU**
> Benton County Public Defense Manager

> **From:** Jennifer Azure <jennifer@azurelawoffice.com>
> **Sent:** Wednesday, November 10, 2021 9:00 AM
> **To:** Eric Hsu <Eric.Hsu@co.benton.wa.us>
> **Subject:** Re: [EXTERNAL] Notice

That works for me! I have Lomalynda on today and Mark Clark so I am going to ask to have them reassigned as they are both waiting on 10.77's. Also as an FYI, I got an email from Dr. Lord-Flynn that he was in a car accident and is recovering so a little bit behind right now. Sounds ok but bumps and bruises.

On Nov 10, 2021, at 8:52 AM, Eric Hsu <Eric.Hsu@co.benton.wa.us> wrote:

Thanks! So with Caleb we just reassigned cases as they came up on the docket and then group-reassigned the rest. That way if anything unexpectedly resolves at the next court date we can account for that.

Should we plan to do that for the remaining two Thursday dockets you have before being sworn in? If there are cases that aren't scheduled for court this month we can reassign it now.

From: Jennifer Azure <jennifer@azurelawoffice.com>
Sent: Wednesday, November 10, 2021 8:21 AM
To: Eric Hsu <Eric.Hsu@co.benton.wa.us>
Subject: Re: [EXTERNAL] Notice

Here are my open cases. Silva is going to MHC today, Orozco is going to MHC today and Johnson is going to Veteran's court today. Lomalynda is awaiting 10.77 and so is Clark (on his FC case) Thanks! Jenn

---

From: Eric Hsu <Eric.Hsu@co.benton.wa.us>
Date: Wednesday, November 10, 2021 at 8:07 AM
To: Jennifer Azure <jennifer@azurelawoffice.com>
Subject: Re: [EXTERNAL] Notice

Good morning (again)

Do you have this spreadsheet in Excel format you can share with us so we can work with the data a bit easier? Thanks!

From: Jennifer Azure <jennifer@azurelawoffice.com>
Sent: Tuesday, November 2, 2021 5:04 PM
To: Eric Hsu <Eric.Hsu@co.benton.wa.us>
Subject: Re: [EXTERNAL] Notice

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Thanks

Eric

ERIC HSU
Benton County Public Defense Manager

-----Original Message-----
From: Jennifer Azure <jennifer@azurelawoffice.com>
Sent: Tuesday, November 2, 2021 3:44 PM
To: Eric Hsu <Eric.Hsu@co.benton.wa.us>; Jill Malat <jill.malat@ocla.wa.gov>; larry ziegler <opd1@co.franklin.wa.us>; Darryl Banks <Darryl.Banks@co.benton.wa.us>
Subject: [EXTERNAL] Notice

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Good afternoon,
It is with great excitement, but also great sadness that I put my notice in for my caseloads with both Benton and Franklin Counties. I was appointed this afternoon to the Benton County District Court Bench. I am trying to determine dates, but wanted to provide everyone with as much notice as possible. I thank you each for the opportunities you have provided to me over the last many years.
Thanks, Jenn

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Early termination of public defense agreements with Jennifer Azure (multiple)
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 Jennifer Azure ("Attorney") for public defense services in Benton County Superior and Juvenile Courts (by and through Resolutions 2021-478; 2018-454; and 2021-544). Since attorney Azure has received a judicial appointment to the District Court bench, she has provided early notice of termination for all of the referenced agreements, circumventing the otherwise applicable contractual notice provisions. The notice was dated November 23, 2021, and provided for a final termination date of November 30, 2021.

Fiscal Impact

None

Recommendation

Recommend approving proposed resolutions which acknowledges the early agreement termination notice tendered by attorney Jennifer Azure for multiple agreements, on November 23, 2021 and sets November 30, 2021 as the final effective date of the termination

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ACKNOWLEDGING THE EARLY TERMINATION NOTICE OF ATTORNEY JENNIFER AZURE, AN ATTORNEY HOLDING A PUBLIC DEFENSE AGREEMENT FOR UNIFORM GUARDIANSHIP ACT CASES, RESOLUTION 2021-544 IN BENTON COUNTY SUPERIOR COURT

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court; and

WHEREAS, attorney Jennifer Azure ("Attorney") has been providing public defense services in Benton County Superior Court for Uniform Guardianship Act cases ("UGA") pursuant to a public defense agreement with Benton County; and

WHEREAS, the said public defense agreement provides for either party to provide notice of early contract termination; and

WHEREAS, Attorney has, in fact, provided notice of early agreement termination in a notice dated November 23, 2021 (attached as Exhibit "A"); and

WHEREAS, pursuant to Attorney's public defense agreement, the notice, as provided, will result in a final effective date of November 30, 2021, with certain post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in said public defense agreement; **NOW, THEREFORE**

BE IT RESOLVED that the Superior Court public defense agreement for UGA cases with attorney Jennifer Azure, executed by and through Resolution #2021-544, is hereby terminated at the request of Attorney, pursuant to Attorney's Notice of Early Termination dated November 23, 2021 with a final effective termination date of November 30, 2021 and with post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in attorney Jennifer Azure's public defense agreement.

BE IT FURTHER RESOLVED that because of attorney Azure's appointment as a Judge to the District Court bench, it is necessary to dispense with the otherwise applicable contractual notice period.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Jennifer Azure
Copy – Auditor, S Godinez

E. Hsu

** EXHIBIT A **

Denise Gerry

From: Eric Hsu
Sent: Tuesday, December 14, 2021 2:19 PM
To: Denise Gerry
Subject: Jenn Azure - no comp in Dec. I'll try to get termination resolution done today

ERIC HSU
Benton County Public Defense Manager

From: Eric Hsu
Sent: Tuesday, November 23, 2021 4:57 PM
To: Jennifer Azure <jennifer@azurelawoffice.com>
Subject: RE: [EXTERNAL] Notice

And we can settle any comp that's due on the residual case by court order instead of contract.

ERIC HSU
Benton County Public Defense Manager

From: Jennifer Azure <jennifer@azurelawoffice.com>
Sent: Tuesday, November 23, 2021 4:51 PM
To: Eric Hsu <Eric.Hsu@co.benton.wa.us>
Subject: Re: [EXTERNAL] Notice

Yes please. I do have one kid case that MAY go to trial on 12/8/21. It has been pending for several years so I hate to hand it off if it doesn't resolve on the 30th. Thoughts?

> **From:** Eric Hsu <Eric.Hsu@co.benton.wa.us>
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> **Subject:** RE: [EXTERNAL] Notice
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> Hi Jenn. Can you confirm that, based on your scheduled swearing-in, the last day for your contract should be November 30?
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> Eric
>
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> Benton County Public Defense Manager

> **From:** Jennifer Azure <jennifer@azurelawoffice.com>
> **Sent:** Wednesday, November 10, 2021 9:00 AM
> **To:** Eric Hsu <Eric.Hsu@co.benton.wa.us>
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On Nov 10, 2021, at 8:52 AM, Eric Hsu <Eric.Hsu@co.benton.wa.us> wrote:

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Subject: Re: [EXTERNAL] Notice

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Date: Wednesday, November 10, 2021 at 8:07 AM
To: Jennifer Azure <jennifer@azurelawoffice.com>
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Thanks, Jenn

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Early termination of public defense agreements with Jennifer Azure (multiple)
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 Jennifer Azure ("Attorney") for public defense services in Benton County Superior and Juvenile Courts (by and through Resolutions 2021-478; 2018-454; and 2021-544). Since attorney Azure has received a judicial appointment to the District Court bench, she has provided early notice of termination for all of the referenced agreements, circumventing the otherwise applicable contractual notice provisions. The notice was dated November 23, 2021, and provided for a final termination date of November 30, 2021.

Fiscal Impact

None

Recommendation

Recommend approving proposed resolutions which acknowledges the early agreement termination notice tendered by attorney Jennifer Azure for multiple agreements, on November 23, 2021 and sets November 30, 2021 as the final effective date of the termination

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ACKNOWLEDGING THE EARLY TERMINATION NOTICE OF ATTORNEY JENNIFER AZURE, AN ATTORNEY HOLDING A PUBLIC DEFENSE AGREEMENT, RESOLUTION 2018-454 IN BENTON COUNTY JUVENILE COURT

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Juvenile Court; and

WHEREAS, attorney Jennifer Azure ("Attorney") has been providing public defense services in Benton County Juvenile Court pursuant to a public defense agreement with Benton County; and

WHEREAS, the said public defense agreement provides for either party to provide notice of early agreement termination; and

WHEREAS, Attorney has, in fact, provided notice of early agreement termination in a notice dated November 23, 2021 (attached as Exhibit "A"); and

WHEREAS, pursuant to Attorney's public defense agreement, the notice, as provided, will result in a final effective date of November 30, 2021, with certain post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in said public defense agreement; **NOW, THEREFORE**

BE IT RESOLVED that the Juvenile Court public defense agreement with attorney Jennifer Azure, executed by and through Resolution #2018-454, is hereby terminated at the request of Attorney, pursuant to Attorney's Notice of Early Termination dated November 23, 2021 with a final effective termination date of November 30, 2021 and with post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in attorney Jennifer Azure's public defense agreement.

BE IT FURTHER RESOLVED that because of attorney Azure's appointment as a Judge to the District Court bench, it is necessary to dispense with the otherwise applicable contractual notice period.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Jennifer Azure
Copy – Auditor, S Godinez

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COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022 **Memo Date: December**
Subject:	Appointment of Lorna Zaback to the Planning Commission
Presenter:	
Prepared By:	Donna Hutchinson
Reviewed By:	Greg Wendt

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

Mr. Curtis Wills has resigned his position on the Planning Commission leaving a vacancy which can be filled from Commissioner District #3. Ms. Lorna Zaback is from District 3 and has indicated her desire to serve the County by appointment to the Planning Commission. She would be appointed to fill the vacancy with the unfulfilled term expiring on July 1, 2023.

Fiscal Impact

None

Recommendation

It is the recommendation of the Planning Staff that the Board of County Commissioners sign the resolution appointing Ms. Zaback to the Planning Commission to fulfill the unexpired term from Commissioner District #3 expiring on July 1, 2023.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING RE: APPOINTMENT OF LORNA ZABACK TO FULFILL THE VACANCY FROM COMMISSIONER DISTRICT 3 ON THE BENTON COUNTY PLANNING COMMISSION.

WHEREAS, Benton County Ordinance No. 86 (as amended by Ordinance No. 181), adopted pursuant to RCW 36.70, provides for a seven-member County Planning Commission; and,

WHEREAS, RCW 36.70.080 provides for appointment of Planning Commission members by the Chairman of the Board of County Commissioners, upon approval of a majority of the Board, from nominations by individual board members, said appointment to result in equal representation among the Commissioner Districts; and,

WHEREAS, Curtis Wills within the third Commissioner's District, submitted his resignation from the Benton County Planning Commission, thereby creating a vacancy on the Planning Commission; and,

WHEREAS, Lorna Zaback from Commissioner District Three has agreed to accept an appointment to the Planning Commission to fill the vacancy created by Mr. Wills' resignation; NOW, THEREFORE,

BE IT RESOLVED that the Chairman of the Board of Benton County Commissioners appoints Ms. Zaback to the Benton County Planning Commission, with her term expiring July 1, 2023.

Dated this 4th day of January 2022.

_____
Chairman of the Board

_____
Member

_____
Member

Attest _____
Clerk of the Board

Constituting the Board of
County Commissioners of
Benton County Washington

GW/djh

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PUBLIC SAFETY SALES TAX FUND NUMBER 0148101, DEPARTMENT NUMBER 115 TO 136.

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Non-Departmental to Office of Public Defense Dept Nbr: 115 to 136

Fund Name: Public Safety Sales Tax Fund Nbr: 0148101

TRANSFER FROM: Dept 115

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.320	4103	Professional Services	$21,000
TOTAL			$21,000

TRANSFER TO: Dept 136

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
515.919.	4103	Professional Services	$15,000
515.950.	4102	Contract Services	$6,000
TOTAL			$21,000

Explanation:

To appropriate funding for Juvenile contract increases, an interpreter contract increase, and a new interpreter contract.

Prepared by: Linda Ivey Date: 13-Dec-2021

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PUBLIC SAFETY TAX FUND NUMBER 0148101 DEPARTMENT NUMBER 121

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Katie Gillies

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Sheriff Patrol Dept Nbr: 121

Fund Name: Public Safety Tax Fund Nbr: 0148101

TRANSFER FROM: **Dept.** 0148101.121 TRANSFER TO: **Dept.** 0148101.121

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.210	1467	Deputy Sheriff PST	$12,535	521.210	1953	Deputy	$12,535
521.210	1368	Community Service Lieutenant	40,000	521.210	1925	Overtime	$75,000
521.210	1386	Records Clerk	35,000				
TOTAL			$87,535	TOTAL			$87,535

Explanation:

Adjusting salary line to reflect two months salary that should have been assigned toa different line. 1953 deputy line was distributed into two clerk lines. The balance in 1953 should be zero. Moving Funds from under spent salary lines to cover current and projected overtime due to staffing shortages in 2021, homicides and SIU Investigations.

Prepared by: Katie Gillies Date: 12/8/21

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Professional Services Agreement between Benton County and Ideal Option, PLLC
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Ryan Lukson; Chief Souza; Lt. Combs; Purchasing Dept.

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
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Summary / Background Information

Per Resolution 2021-916 dated December 21, 2021, the Board of Benton County Commissioners accepted the grant award from Washington State Health Care Authority for the purpose of Mediation Assisted Treatment for Opioid Treatment Networks within the Benton County Jail and authorized the Chairman's signature on the Professional Services Contract No. K5680.

Benton County has contracted with Ideal Option, PLLC over the last few years for the purpose of Medication Assisted Treatment for Opioid Treatment Networks within the Benton County Jail.

The Benton County Corrections Department would like to continue that relationship with Ideal Option, PLLC and the Chief of Corrections recommends entering into another agreement with Ideal Option, PLLC for a term commencing January 1, 2022 through December 31, 2022, for an agreement not to exceed $380,011.

Fiscal Impact

Said expenditures shall be paid from the approved 2021-2022 Department 120 budget.

Recommendation

Approve the attached Resolution and Professional Services Agreement between Benton County and Ideal Option, PLLC for the Medication Assisted Treatment program for an Agreement not to exceed $380,011.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT BETWEEN BENTON COUNTY AND IDEAL OPTION, PLLC FOR THE PURPOSE OF MEDICATION ASSISTED TREATMENT FOR OPIOID TREATMENT NETWORKS WITHIN THE BENTON COUNTY JAIL

WHEREAS, per Resolution 2021-916 dated December 21, 2021, the Board of Benton County Commissioners, Benton County, Washington accepted the grant award from Washington State Health Care Authority for the purpose of Mediation Assisted Treatment (MAT) for Opioid Treatment Networks (OTN) within the Benton County Jail and authorized the Chairman's signature on the Professional Services Contract No. K5680; and

WHEREAS, the Benton County Corrections Department (BCCD) had originally identified Ideal Option, PLLC as a MAT site, who has a network of providers throughout Benton County, as well as in the other Washington cities from which BCCD house contract inmates; and

WHEREAS, the Chief of Corrections would like to continue the relationship with Ideal Option, PLLC and recommends entering into another agreement with Ideal Option, PLLC for a term commencing January 1, 2022 and terminating December 31, 2022, for a contract amount not to exceed $380,011; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, concurs with the recommendation and hereby approves the Professional Services Agreement between Benton County and Ideal Option, PLLC to provide Medication Assisted Treatment for the Benton County Jail for a contract amount not to exceed $380,011.00; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman's signature on the attached Professional Services Agreement between Benton County and Ideal Option, PLLC; and

BE IT FURTHER RESOLVED, the term of the attached agreement commences January 1, 2022 and shall terminate December 31, 2022.

Dated this _____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Orig: BCCD
cc: Auditor, S. Godinez, Procurement, Ideal Option, PLLC

Prepared by: L. Small

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "**Agreement**") is effective January 1, 2022 by and between Benton County, Washington, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY") and Ideal Option PLLC, a professional limited liability company with its principal offices at 8514 W Gage Blvd., Suite G, Kennewick, WA 99336 ("**Ideal Option**"). County and Ideal Option are sometimes referred to in this Agreement individually as "Party" or, collectively, as the "Parties."

WHEREAS, Washington State Health Care Authority (**HCA**), Division of Behavioral Health and Recovery (**DBHR**) was recently awarded funding from the federal Substance Abuse and Mental Health Services Administration (SAMHSA), entitled State Opioid Response II (**SOR-II**); and

WHEREAS, County has received a grant from HCA to establish Opioid Treatment Networks ("**OTN(s)**") for the purpose of creating a strong treatment and recovery support referral network and increase access to and utilization for Medication for Opioid Use Disorder (MOUD) care, as described below, within the Benton County Jail and facilitate referrals to community providers, and

WHEREAS, Ideal Option is an addiction medicine practice that is qualified, experienced, knowledgeable, available, and willing to participate in the treatment and recovery support referral network and to provide the services set forth in this Agreement; and

WHEREAS, County wishes to contract with Ideal Option to create and operate an OTN within the Benton County Jail; and

NOW, THEREFORE, in consideration of the mutual promises contained in and the mutual benefits contemplated by this Agreement, County and Ideal Option agree as follows:

1. **Services.** Ideal Option, through its qualified employees, shall provide the services and deliverables set forth in Exhibit A, attached hereto and incorporated herein ("Services"). In addition, other than the obligations of the County set forth in Section 3 cited herein, Ideal Option agrees to perform all duties and obligations on behalf of the County set forth in the attached Exhibit D. Furthermore, the parties expressly agree that Ideal Option is required to follow the terms and conditions set forth in Exhibit D when providing services to patients, clients, or persons seeking assistance, including but not limited to the following terms in Exhibit D: (a) identification of funding sources; (b) DUNS number and zip code +4 of subcontractor; (c) determination of eligible clients; (d) payment or reimbursement arrangement; (e) termination of a subcontract shall be grounds for a fair hearing for the service applicant or a grievance for the recipient if similar services are immediately available in the County; (f) informing service applications and recipients of their right to a grievance in the case of a denial or termination of service and/or failure to act upon a request for services with reasonable promptness; (g) audit requirements in compliance with OMB 2, Part 200, Subpart F (A-133); (h) authorizing County to conduct an inspection of any and all subcontractor facilities where services are provided; (i) requiring Subcontractor to perform background checks on its employees and independent contractors used to perform the services; (j)

representation and warranty that Subcontractor is not or has not been debarred or suspended by any state or the federal government; (k) Business Associate Agreement in compliance with the requirements of HIPAA; (l) protection of the Confidential Information and restrictions on the providing and sharing of data; and (m) identifying unallowable uses of federal funds.

2. **Definitions.** The definitions below have the following meanings as used in this Agreement and attached exhibits.

2.1. "Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, source code or object code, or County, HCA or State security information.

2.2. Medications for Opioid Use Disorder" or "MOUD" means the use of FDA-approved opioid agonist medications (e.g., methadone, buprenorphine products including buprenorphine/naloxone combination formulations and buprenorphine mono-product formulations) for the maintenance treatment of opioid use disorder and the use of opioid antagonist medication (e.g., naltrexone products including extended-release and oral formulations) to prevent relapse to opioid use.

3. **County's Obligations Under This Agreement.** County shall be responsible for the following:

3.1. Providing a safe therapeutic environment in which Ideal Option personnel are able to provide MOUD services on a regular basis.

3.2. Monitoring and ensuring MOUD is initiated by the OTN no later than January 1, 2022.

3.3. Ensuring Ideal Option is working in coordination with County and community providers to meet the terms, goals and project deliverables of HCA 3300 including, without limitation, participation in regularly scheduled leadership meetings and educational and technical assistance opportunities.

3.4. Ensuring policies and procedures are in place to mitigate medication diversion with respect to County personnel.

3.5. Performing outreach efforts within the jail, especially to tribal members/communities, ethnic/racial minority communities, gay/lesbian/bi-sexual/transgender communities, individuals with a disability.

3.6. Assigning a Contract Manager who shall have ultimate responsibility and final authority for the administration of this Agreement and who shall be the principal point of contact for Ideal Option for all business matters, performance matters, and administrative activities.

4. **Compensation**. For Services provided under this Agreement, County shall pay Ideal Option for services provided pursuant to Exhibit C, attached hereto and incorporated herein, subject to the following:

4.1. Upon receipt of a monthly invoice, monthly status report, and monthly Contact log and Tracking Sheet, Ideal Option shall be paid the amounts indicated in Exhibit C, which is attached hereto and made a part hereof.

4.1.1. Monthly status report must include documentation about progress made toward the goals of the project. Monthly documentation should be emailed to Lt. Josh Combs, or his designee.

4.1.2. Monthly report and Contact log and Tracking Sheet are due by the second Wednesday of the month following the month in which services were provided, starting second Wednesday of February 2022.

4.2. Monthly payments shall be made within forty-five (45) days following County's receipt of Ideal Option's invoice. Such invoices must describe and document a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type.

4.3. All invoices will be reviewed by County's contract manager, Lt. Josh Combs, or his/her designee prior to payment. Invoices shall be sent to:

Benton County Corrections Department
Attn: Accounts Payable
7122 W Okanogan Place, Bldg. B
Kennewick, WA 99336
Jailadminsupport@co.benton.wa.us

4.4. Day-to-day expenses related to performance under this Agreement, including but not limited to travel, lodging, meals, and incidentals, will not be reimbursed to Ideal Option.

5. **Events of Default**. In the event Ideal Option is in default under this Agreement, County shall have no further obligation to make any payment except for Services already performed by Ideal Option in accordance with the terms of this Agreement. Ideal Option shall immediately repay to County any amounts prepaid to it by County, but unearned by Ideal Option hereunder. In the event that any amount due from the County is more than sixty (60) days past due, Ideal Option may suspend services and/or terminate this Agreement.

6. **Term; Termination**. The term of this Agreement shall commence on January 1, 2022, (the "Effective Date"), and shall expire on December 31, 2022, unless sooner terminated pursuant to the provisions set out below. This Agreement may be terminated in the following events:

6.1. Mutual written agreement of Ideal Option and County.

6.2. Immediately, at County' option, upon: Ideal Option's refusal or inability to perform the terms of this Agreement, or dissolution of Ideal Option.

6.3. On ten (10) days written notice in the event of any material breach of this Agreement, and the failure of the Party in breach to remedy such breach within five (5) days after receiving written notice of the existence of the breach.

6.4. Upon sixty (60) days advance written notice, with or without cause.

6.5. Immediately on written notice for cause, which shall include the institution of proceedings against Ideal Option that could lead to conviction of any of its officers of a crime or Ideal Option's engaging in actions jeopardizing the health and safety of patients.

6.6. Immediately, by either Party, if the other Party files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, which is not dismissed within sixty (60) days, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

6.7. On five (5) days written notice if the Health Care Authority terminates HCA 3300.

6.8. In the event of termination for whatever reason, County shall be liable only for payment in accordance with the terms of this Agreement for Services rendered prior to the effective date of termination.

7. **Independent Contractor**. Ideal Option is an independent contractor. Nothing in this Agreement shall be construed to create an employer-employee relationship between County and Ideal Option, between County and Ideal Option employees, or to create a relationship of joint ventures, partners, or any relationship other than one of independent parties contracting for their own benefit. County shall have no right or power to control or direct the manner or method by which Ideal Option fulfills its obligations under this Agreement, except as set forth herein Ideal Option shall be fully responsible to ensure that all services provided by it under this Agreement are rendered in a manner consistent with the standards governing such services and in accordance with reasonable standards of care.

7.1 Ideal Option reserves the right to partner with other Independent Contractors to help ensure the services are performed under this grant. Any costs associated with these contractors are

the sole responsibility of Ideal Option. In addition, these Independent Contractors shall be required to follow all terms and conditions of this Contract, including but not limited to Exhibit D.

8. **Federal Tax Form 1099**. As required by law, County shall provide Ideal Option with a Federal Tax Form 1099 indicating payment to Ideal Option of compensation, remuneration or other fixed or determinable income in amounts annually aggregating Six Hundred Dollars ($600.00) or more.

9. **Insurance**. Ideal Option shall at its sole expense, maintain in effect at all times during the performance of work, insurance coverage with limits not less than those set forth below and issued by an insurance company or companies authorized to do business in the state of Washington:

9.1. **Commercial General Liability Insurance**. Including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than $3 million per occurrence/$5 million general aggregate.

9.2. **Business Automobile Liability**. In the event that Services delivered under this Agreement involve the use of vehicles, either owned, hired, or non-owned by Ideal Option, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

9.3. **Professional Liability Errors and Omissions**. A policy with coverage of not less than $3 million per claim/$6 million general aggregate.

9.4. **Privacy Breach Response Insurance**. Ideal Option must maintain insurance during the term of this Agreement and for three (3) years following its termination, to cover any and all costs incurred in connection with the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information including:

9.4.1. Computer forensics assistance to assess the impact of the breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with HIPPA breach notification requirements.

9.4.2. Notification and call center services for individuals affected by a breach.

9.4.3. Breach resolution and mitigation services for affected individuals, including fraud prevention, credit monitoring and identity theft assistance.

9.4.4. Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

9.5. Ideal Option will at all relevant times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable.

9.6. The insurance required must name HCA and the state of Washington as additional insureds under any Commercial General and/or Business Automobile Liability policy. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Ideal Option. Ideal Option must provide written notice of such to County and HCA within one (1) business day of Ideal Option's receipt of such notice. Failure to buy and maintain the required insurance may, at County's option, result in termination of this Agreement. Upon request, Ideal Option must submit to County a certificate of insurance that outlines the coverage and limits defined in this Insurance section. Ideal Option shall furnish evidence in the form of a Certificate of Insurance that insurance will be provided within 15 days of this Agreement's effective date.

10. **Criminal Background Screening**. Ideal Option shall ensure completion of a criminal history background check pursuant to RCW 43.43.832, RCW 43.43.834, RCW 43.20A.710 and Chapter 388-06 WAC, or its successor, for all current and prospective employees, volunteers, and subcontractors, who may have unsupervised access to children or vulnerable adults under this Agreement. Ideal Option shall assist in obtaining additional state or national criminal history and/or child abuse/neglect history, if requested by County or HCA. Ideal Option shall ensure that no employee, volunteer or subcontractor, including those provisionally hired pursuant to RCW 43.43.832(7) has unsupervised access to children or vulnerable adults service under this Agreement until a full and satisfactory background check is completed and documentation qualifying the individual for unsupervised access is returned to Ideal Option. The County reserves the right to interview Ideal Option's employees, or subcontractor employees as part of the security background process.

11. **Warranty**. Ideal Option expressly warrants to County that all services provided under this Agreement will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar circumstances and all materials and equipment furnished under this Agreement, if any, will be new, unless otherwise specified, and of good quality, free from all faults and defects and in conformance with requirements of this Agreement. Services not conforming to these requirements may be considered defective. If, within ninety (90) days of completion of the Services or such longer time period as may be prescribed by law or by the terms of any special warranty set forth in this Agreement, Services are found to be defective or not in accordance with the Agreement, Ideal Option shall correct it promptly after receipt of notice from County to do so.

12. **Indemnification/Duty to Cooperate**. Ideal Option shall defend, indemnify and hold County, its directors, officers, agents, and employees harmless 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 Ideal Option or its subcontractors or their property upon or in the proximity of the property of the County. Without limiting the generality of the foregoing, Ideal Option shall indemnify, defend and hold harmless County from allegations that County is vicariously liable for negligent acts of Ideal Option. County shall defend, indemnify, and hold Ideal Option harmless from any and all claims for loss or liability arising out of or related to any alleged act or omission by County employees. Ideal Option specifically and expressly waives its immunity and limitation of liability under any industrial insurance, RCW 51, or other employee benefit act of any jurisdiction that otherwise would be applicable in the defense of such claim, and Ideal Option acknowledges that this waiver was mutually negotiated in accordance with RCW 4.24.115. In the event of an incident involving the performance of Services that could lead to a potential liability, Ideal Option agrees to work cooperatively with County in its investigation and mitigation efforts and Ideal Option shall make its employees available to County immediately. Ideal Option shall not take any action to obstruct County' investigation efforts. A breach of this Section shall be a material breach of the Agreement giving County the right, at its option, to terminate the Agreement.

13. **HHS / Comptroller General Access to Records.** If services valued at over ten thousand dollars ($10,000.00) per year will be provided under the terms of the Agreement and §42 USC §1395x(v)(1)(I), as amended, and any written regulations pursuant thereto (Section 1861 (v)(1)(I) of the Social Security Act) is applicable to this Agreement, this Section shall apply to both Parties. In accordance with the Omnibus Reconciliation Act of 1980, each Party agrees that their books and records will be available to the Secretary of Health and Human Services and the Comptroller General of the United States, or their duly authorized representatives, for four (4) years after termination of this Agreement. (Ideal Option agrees to retain all such books and records for not less than six (6) years after termination.) In the event that any of the services to be performed under this Agreement are performed by any subcontractor of either Party at a value or cost of $10,000.00 or more over a 12-month period, such Party shall assure said subcontractor complies with the provisions of the Omnibus Reconciliation Act of 1980.

14. **Change in Status.** In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Ideal Option will notify County of the change. Ideal Option must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

15. **Conversion.** In the event that any payment made to Ideal Option hereunder is determined by the Parties or a court, an instrumentality of the federal or any state or local government agency, a body having the power to exercise disciplinary authority over one or more of the Parties, or the Office of the Attorney General, to be improper for any reason, or are found to threaten the tax exempt status of County then, if capable of reformation, this Agreement shall be reformed by agreement of the Parties negotiating in good faith so as not to violate any such law or be improper for any reason. If the Parties are unable to agree on the terms of such reformation, they shall engage in mediation in good faith at the request of either Party, with Washington Arbitration and Mediation Services, Inc. (or other such mediation service or mediator as the Parties shall mutually agree).

16. **Confidential Information Protection**.

16.1. Ideal Option acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of Confidential Information. Ideal Option agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this Agreement and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Ideal Option agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

16.2. County reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Ideal Option through this Agreement.

16.3. Violation of this section by Ideal Option may result in termination of this Agreement and demand for return of all Confidential Information, monetary damages, or penalties.

17. **Works Made for Hire.** Ideal Option acknowledges that any written materials, photographs, drawings, mixed media, or other visual or graphic representations in any form or format, including digital media, film, audio or any other form of expression, produced by Ideal Option at the request of County, shall constitute "works made for hire" and as such shall be deemed to be the property of County, free and clear of any claim of any kind or nature by Ideal Option or Ideal Option's heirs, successors or assigns. To the extent that any such item shall, for any reason, be deemed by a court of competent jurisdiction to be partially or completely owned by Ideal Option, Ideal Option hereby authorizes County and its heirs, successors and assigns to utilize such item(s) together with any derivative works in any manner within County' sole and absolute discretion, for a period of fifty (50) years, on a worldwide basis.

18. **Equal Employment Opportunity Obligations.** During the performance of this Agreement, Ideal Option will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual preference, marital status, age, national origin, physical or mental handicap, disabled veteran or veteran status or any other reason prohibited by law.

19. **Debarment / Sanctions List**. Ideal Option represents and warrants to County that Ideal Option and all personnel providing services to County under this Agreement, as applicable, have not been placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. § 1320a(7), have not been excluded from government contracts by the General Services Administration ("GSA") and have not been convicted of a felony or any crime relating to healthcare. Further, if during any term of this Agreement, Ideal Option is placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, Ideal Option immediately will notify County in writing of the event and such notice shall contain reasonably

sufficient information to allow County to determine the nature of the sanction, exclusion or conviction. County will have the right to terminate this Agreement immediately by written notice to Ideal Option if Ideal Option is placed on the sanctions list, banned from government contracts by GSA or convicted of a felony or any crime relating to healthcare.

20. **Entire Agreement; Modifications**. This Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior contracts, agreements, understandings, and discussions, whether oral or written. Ideal Option acknowledges that it has relied solely on the covenants and representations set forth in this Agreement and no others. This Agreement may only be modified by a written document signed by the Party against whom enforcement is sought. No waiver of any provision of this Agreement shall be valid unless in writing and signed by or on behalf of the person waiving such provision, and no such waiver when executed shall constitute a waiver of any further failure to comply fully with this Agreement.

21. **Exhibit(s).** The following exhibits are incorporated into this Agreement as if set forth fully. In the event of any conflict between the terms of this Agreement and its Exhibits, the terms of the Agreement shall control.

Exhibit A - Services Description
Exhibit B - OTN Positions and Job Descriptions
Exhibit C - Compensation and Fund Allocation
Exhibit D - Professional Services Contract between HCA and the County
Exhibit E – Qualified Service Organization / Business Associate Agreement

22. **Governing Law & Venue**. This Agreement shall be governed by and construed under the laws of the State of Washington. In the event of any court action which may be allowed by this Agreement, the venue of such shall be in the Superior Court of Benton County, Washington, unless the Parties shall otherwise agree.

23. **Contact**. Each Party shall appoint a Contract Manager to facilitate the Services contemplated by this Agreement. Each Party's Contract Manager is authorized to receive notices regarding the Services rendered under this Agreement. Each Party's initial Contract Manager is designated below their respective signatures below. Either Party may change its representative by designating a new representative and providing contact information in writing to the other Party.

24. **Severability.** If any provision of this Agreement or its application to any person or circumstance is held unenforceable, the remainder of this Agreement, or the application of the provision to other persons or circumstances, shall not be affected, provided, that the essential purpose of this Agreement is not thereby adversely affected or prevented.

25. **Use of Name**. Neither Party may use the name, logo or any identifying symbol of the other Party in connection with the services to be provided under this Agreement without the other Party's express prior permission, which may be given or withheld for any reason. Any permission granted under this Section shall be revoked automatically upon the expiration or termination of this Agreement.

26. **Electronic Delivery/Counterparts**. This Agreement may be executed by electronic or hard-copy signature and in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of executed copies of this Agreement by facsimile, scanner/e-mail or other electronic transmission will constitute effective execution and delivery of this Agreement for all purposes. Signatures of the Parties transmitted by such methods will be treated in all respects as having the same effect as an original signature.

Signature Page to Follow

IN WITNESS THEREOF, the Parties hereto have executed this Agreement or caused it to be extended in their names and on their behalf by their respected representatives thereunto duly authorized.

Benton County:		**Ideal Option PLLC**:	
By: Print Name:	Jerome Delvin, Chairman	By: Print Name:	Sandy Becker
Title:	Benton County Commissioner	Title:	CFO
Date:		Date:	12/17/2021
	Benton County's Contact		Ideal Option's Contact:
Contract Manager:	Information: Lt. Josh Combs,	Contract Manager:	Yuki Yang
Address:	7122 W Okanogan Place, Bldg. B Kennewick, WA 99336	Address:	8514 W Gage Blvd Ste G Kennewick, WA 99336
Telephone:	(509) 735-6555 Ext. 3347	Telephone:	877-522-1275 or (206) 419 - 8805
Facsimile:		Facsimile:	
Email Address: Copy to Email:	Joshua.Combs@co.benton.wa.us Lisa.Small@co.benton.wa.us	E-mail address:	yukiyang@idealoption.net
		Ideal Option's EIN (or UBI)	45-5513274

Approved as to Form:

Ryan J Lukson, Civil DPA

EXHIBIT A
DESCRIPTION OF SERVICES, DELIVERABLES, MEASURES AND WORK SPECIFICATIONS

Ideal Option ("Ideal Option") shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Ideal Option shall be responsible for the following:

- Use a coordinated team approach to provide intensive services by developing an OTN capable of providing at least two Food and Drug Administration (FDA)-approved MOUD medications (at least one agonist and one antagonist).
- Initiate/induct or maintain persons with Opioid Use Disorder (OUD) on MOUD.
- Provide warm hand-offs to network/community providers, including Opioid Treatment Programs (OTPs), Office-Based Opioid Treatments (OBOTs), Federally Qualified Health Centers (FQHCs), behavioral health providers, and primary care providers utilizing MOUD.
- Satisfactory completion of all Government Performance and Results Act of 1993 (**GPRA**) data collection requirements.
- Maintain participant log of all persons receiving MOUD.
- Ensure prescribing capacity to maintain MOUD services.
- Respond to all data requests from state and federal partners.
- Demonstrate an adequate staffing model to meet OTN needs.
- Participate in all Technical Assistance (TA) and training opportunities provided by DBHR, HCA, RDA, and the University of Washington Alcohol and Drug Abuse Institute (UW-ADAI).
- Possess the ability to refer individuals with OUD for any ancillary services necessary to address their holistic recovery needs.
- Securing and maintaining release-of-information forms that meet federal confidentiality regulations and allow the sharing of patient information between initiation sites and community providers and with HCA for the purpose of program monitoring and performance evaluation.
- Participate in a minimum of six (6) Tobacco Treatment phone calls during the contract period provided by the Department of Health as further outlined under section 2.16 of Exhibit D.
- Attend a DBHR Contract Manager approved Contingency Management Training. Provide evidence of sending a minimum of (2) persons to the training prior to September 29, 2022. Listed under section 2.15 of Exhibit D.
- The following services may be provided by Ideal Option to OTN patients, and actual expenses shall be reimbursed by the County up to the limits established in Exhibit C.

- Providing Contingency Management Services to OTN patients as needed and in keeping with the above training provided by DBHR.
- Provide transportation vouchers to participants as necessary to retain patients in outpatient treatment.
- Manage and provide Gift Cards for GPRA follow-up survey participants.

Core Components of an OTN

The OTN model builds on the four important components of the MOUD model of care: 1) FDA-approved medications for OUD; 2) provider and community educational interventions; 3) coordination/integration of SUD treatment and other medical/psychological needs; and 4) psychosocial services/interventions.[1]

The focus of the OTN is to foster the development of a network of service providers that incorporates and supports the use of MOUD as a core component of OUD recovery. OTNs consist of at least one Local MOUD Treatment Site provider who accepts Initiation Site transfers. In addition, OTNs should:

- **Assign staff to perform the appropriate functions as defined in Exhibit B**
- Build, strengthen, and maintain referral relationships between Initiation Site and Local MOUD Treatment Site(s).
- Facilitate warm hand-offs to Local MOUD Treatment Site(s) to maintain MOUD continuity.
- Provide for more MOUD services among individuals at highest risk of overdose and death (jails, correction facilities, detoxification facilities, emergency departments).
- Work collaboratively with Tribes to address their OUD needs.
- Reduce the risk of morbidity and mortality for incarcerated individuals through OUD and tobacco cessation services.
- Develop networks with community resources to address behavioral health treatment and recovery support needs.
- Bring MOUD initiation, referral, and retention to the individual prior to his or her transfer to Local MOUD Treatment Site, ensuring MOUD capacity is maintained at both the Initiation and Local MOUD Treatment Site(s).
- Embrace low-barrier buprenorphine service model.[2]
- Develop a medication diversion prevention plan for the OTN.
- Providing both agonist and antagonist MOUD medications (on-site or in relationship with a pharmacy) in order to facilitate initial inductions.

[1] https://effectivehealthcare.ahrq.gov/sites/default/files/pdf/opioid-use-disorder_technical-brief.pdf

[2] The goal of a low-barrier model is for individuals with OUD to meet with a service provider and start medication at their first appointment, when clinically appropriate.

Data Collection Requirements

OTNs should have staff collect data on all individuals receiving services at the Initiation Site (and subsequent MOUD services received). The data collection consists of multiple participant interviews and a participant log. Initiation Sites are responsible for ensuring data collection for individuals prior to and after warm hand-offs, including coordination of data collection with Local MOUD Treatment Sites staff.

Participant interviews are based on the Government Results and Performance Act (GPRA) *Client Outcome Measures Tool*. OTN staff will conduct face-to-face interviews, (telephone/virtual interviews are permitted if approved by the project evaluator), compile answers, and enter the results into the data portal provided by the project evaluator. OTN staff should collect survey data at three points for each individual served:

- **Intake:** GPRA Baseline interview is to be completed as soon as possible with every individual who begins MOUD at a facility in your network.
- **Six-month follow-up:** completed one month before to two months after the scheduled follow-up date—regardless of individual discharge status. OTNs failing to complete 80 percent of follow-up surveys must submit corrective action plans and demonstrate improved performance.
- **Discharge:** to be completed within 15 days for all individuals leaving treatment. *Administrative discharges* (without interviews) are required for those lost to follow-up. Online training, and survey templates will be provided to OTNs; project evaluation staff will provide OTN staff with technical assistance as needed.

Participant Log: To facilitate data collection and future evaluation efforts, OTNs will be required to compile a participant log—provided by project evaluators—including identifiers and treatment start dates. OTN staff will enter data into the relevant section of the RDA data portal.

EXHIBIT B
OTN POSITIONS AND JOB DESCRIPTIONS

NURSE CARE MANAGER

ROLE: OTN Nurse Care Manager (NCM)

SUPERVISED BY:

SUPERVISES: OTN Care Navigator and OTN Data Collection Coordinator (Coordinator)

FLSA STATUS: Exempt

Purpose of Position: The NCM's primary responsibilities is to provide medical support to the prescribing physicians or other waived practitioners.

Essential Functions: Duties of the NCM will include, but are not limited to:

- Performs individual patient screening
- Medication for Opioid Use Disorder (MOUD) Education
- Assisting with MOUD inductions
- Takes patient vital signs and charts appropriately
- Conducts patient drug testing
- Lab work
- Provides medical assessments to patients
- Performs patient Charting
- Works closely and collaboratively with physicians to provide care planning to patients
- Conducts patient stabilizations
- Observation and Maintenance
- Ongoing coordination of follow up care
- Facilitates relapse prevention initiatives
- Support for individual's self-management
- Complies with national PHI laws including HIPAA and 42 CFR Part 2
- Maintains continual sustained attendance
- Works cooperatively with others as part of the Ideal Option team

Competencies:

- Ability to communicate effectively with patients and adapt to individual needs
- Ability to type 50 words per minute
- Ability to communicate within the organization, to patients, and members of the community
- Analysis, problem solving, and decision making
- Ethical conduct

Preferred Education Requirements:

- High School Diploma or GED
- Bachelor's degree in Nursing, BSN
- 1-5 years of healthcare related experience preferred

This job description is intended to convey information essential to understanding the scope of this position and it is not intended to be an exhaustive list of skills, efforts, duties, responsibilities or working conditions associated with the position.

CARE NAVIGATOR

ROLE: OTN Care Navigator

SUPERVISED BY: OTN Nurse Care Manager

SUPERVISES: NA

FLSA STATUS: Exempt

Purpose of Position: This role works under general direction of the OTN Nurse Care Manager in providing MOUD services to individuals in need of care and as a part of the Ideal Option team.

Essential Functions: Duties of the OTN Care Navigator will include, but are not limited to:

- Expedites enrollments into Medicaid as necessary
- Conducts patient screenings, assessments, and evaluations
- Provides education, and coordination referrals for MOUD
- Participates in data collection requirements and facilitates referrals for infectious disease screening
- Coordinates patient housing needs
- Works in conjunction with the community on employment services
- Participates in withdrawal management services
- Coordinates transportation
- Maintains referral network for OUD or behavioral health counseling and provides a warm hand-off to MOUD provider upon individuals transfer from any current treatments
- Complies with national PHI laws including HIPAA and 42 CFR Part 2
- Maintains continual sustained attendance
- Works cooperatively with others as part of the Ideal Option team

Competencies:

- Ability to communicate effectively with patients and adapt to individual needs
- Strong written and verbal communication
- Ability to type 50 words per minute
- Ability to communicate within the organization, to patients, and members of the community
- Analysis, problem solving, and decision making
- Ethical conduct

Preferred Education Requirements:

- High School Diploma or GED
- Bachelor's degree Social Work or Healthcare Administration
- 1-5 years of healthcare related experience recommended

This job description is intended to convey information essential to understanding the scope of this position and it is not intended to be an exhaustive list of skills, efforts, duties, responsibilities or working conditions associated with the position.

DATA COLLECTION COORDINATOR

ROLE: OTN Data Collection Coordinator (Coordinator)

SUPERVISED BY: OTN Nurse Care Manager (NCM)

SUPERVISES: NA

FLSA STATUS: Exempt

Purpose of Position: The Coordinator is responsible for managing all data collection activities and serves as the liaison between project evaluators. The Coordinator must become competent in all aspects of GPRA data collection required for this project (including completion of SAMHSA GRPA training) and be available and responsive to project evaluators.

Essential Functions: Duties of the OTN Data Collection Coordinator will include, but are not limited to:

- Ensuring data collection for individuals prior to and after warm hand-offs, including coordination of data collection and Local MOUD Treatment Sites staff.
- Collect survey data at three points for each individual served:
  - **Intake**: GPRA Baseline interview is to be completed as soon as possible with every individual who begins MOUD at a facility in your network.
  - **Six month follow up:** Completed one month follow up surveys to two months after the scheduled follow update- regardless of individual discharge status.
  - **Discharge:** to be completed within 15 days for all individuals leaving treatment. Administrative discharges (without interviews) are required for those lost to follow up.
  - facilitate data collection and future evaluation efforts on participant logs,
  - including identifiers and treatment start dates.
  - enter data into the relevant section of the RDA data portal.
- Complies with national PHI laws including HIPAA and 42 CFR Part 2
- Maintains continual sustained attendance
- Works cooperatively with others as part of the Ideal Option team

Competencies:

- Ability to communicate effectively with patients and adapt to individual needs
- Effective verbal and written communication ability
- Ability to type 50 words per minute
- Ability to communicate within the organization, to patients, and members of the community
- Analysis, problem solving, and decision making
- Ethical conduct

Preferred Education Requirements:

- High School Diploma or GED

- Bachelor’s degree in Social Work
- 1-5 years of healthcare related experience recommended

This job description is intended to convey information essential to understanding the scope of this position and it is not intended to be an exhaustive list of skills, efforts, duties, responsibilities or working conditions associated with the position.

INTAKE COORDINATOR MEDICAL ASSISTANT

ROLE: Medical Assistant-Certified
SUPERVISED BY: Nurse Care Manager
FLSA CLASSIFICATION: Non-Exempt

PURPOSE OF POSITION: The Jail MAT Medical Assistant-Certified is responsible for providing administrative and medical support to ensure efficient operation of Benton County MAT clinic. This position supports providers, Nurse Care Manager, Care Navigator, Transitional Care Coordinator, and patients/inmates through a variety of tasks related to patient care, clinic maintenance, and communication with IO staff in Benton County MAT clinic including dosing. The goal is to complete all activities accurately, with high quality and in a timely manner.

ESSENTIAL FUNCTIONS: The following functions have been determined by Ideal Option to be essential to the successful performance of this position which includes but is not limited to:

- Check patients in for MAT clinic
- Confirms/enters patient's demographics
- Obtains signed consents to release of medical records and treatment contract from the patient/inmate
- Assist patient/inmate with paperwork as needed
- Obtains vital signs
- Administers dosings
- Complies with national PHI laws including HIPAA and 42 CFR Part 2
- Maintains continual sustained attendance
- Works cooperatively with others and as part of the Ideal Option team
- Occasional travel
- Other projects and duties as assigned

Competencies:

- High School Diploma or GED
- Maintain MA-C licensing through the state/agency
- Maintain BLS/CPR certification
- Ability to type 50 words per minute
- Strong computer skills
- Strong vocabulary, spelling, and punctuation
- Ability to communicate effectively with patients/inmates and adapt to individual needs
- MA-C required

Minimum Requirements:

- High School Diploma or GED and MA-Certified

EXHIBIT C
COMPENSATION AND FUND ALLOCATION
JANUARY 1, 2022 – DECEMBER 31, 2022

				Annual		
Personnel	**FTE%**	**Hourly**	**Monthly Salary**	**Salary Only**	**Benefits**	**Total**
Prescriber	0.2	$ 72.11	$ 2,499.81	$ 29,998	$ 7,229	$ 37,226
Nurse Care Manager (RN)	0.5	$ 40	$ 3,466.67	$ 41,600	$ 9,356	$ 50,956
Care Navigators (CN)	1.5	$ 25	$ 6,500.00	$ 78,000	$ 12,531	$ 90,531
Data Collection Coordinators	1.5	$ 25	$ 6,500.00	$ 78,000	$ 12,531	$ 90,531
Intake Coordinator (MA)	1.0	$ 25	$ 4,333.33	$ 52,000	$ 8,354	$ 60,354
Personnel Subtotal						**$ 329,598**
Drug Testing*-						**$ 7,000**
Contingency Management Training						$ 3,000
Contingency Management - GPRA						$ 1,725
Contingency Management - Proviso						$ 33,333
Contingency Management - SOR II						$ 1,755
Transportation Vouchers						$ 3,600
Contingency Total						**$ 43,413**
Total Contract Amount						**$380,011.00**

*Drug testing of patients will be completed as ordered by the treating medical provider and will be compensated at $25 per each test up to a total annual compensation of $7,000.

Contingency Management Funding is allocated in accordance with Section 2.10 through 2.13 of Exhibit D – Schedule A: Statement of Work.

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Exhibit D

Washington State Health Care Authority	**PROFESSIONAL SERVICES CONTRACT for Opioid Treatment Network**	HCA Contract Number: K5680 Resulting from Solicitation Number (If applicable: NA Contractor/Vendor Contract Number:

THIS CONTRACT is made by and between Washington State Health Care Authority, (HCA) and **County of Benton**, (Contractor).

CONTRACTOR NAME		CONTRACTOR DOING BUSINESS AS (DBA)		
County of Benton		**Benton County Corrections Department**		
CONTRACTOR ADDRESS | Street		City	State	Zip Code
620 Market Street		**Prosser**	**WA**	**99350-1300**
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR E-MAIL ADDRESS		
Scott Souza, Chief of Corrections	**(509) 786-5600**	**Scott.Souza@co.benton.wa.us**		
Is Contractor a Subrecipient under this Contract? ☒YES ☐NO		CFDA NUMBER(S): 93.788	FFATA Form Required ☒YES ☐NO	

HCA PROGRAM	HCA DIVISION/SECTION
State Opioid Response	DBHR/SUD Treatment
HCA CONTACT NAME AND TITLE Megan Fowler, State Opioid Response Treatment Manager	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE Olympia, WA 98504
HCA CONTACT TELEPHONE (360) 725-2019	HCA CONTACT E-MAIL ADDRESS Megan.fowler@hca.wa.gov

CONTRACT START DATE	CONTRACT END DATE	TOTAL MAXIMUM CONTRACT AMOUNT
September 30, 2021	September 29, 2022	$649,208.00

PURPOSE OF CONTRACT:
To create a strong treatment and recovery support referral network and increase access to and utilization of MOUD care.

The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
	Jerome Delvin, Chairman Benton County Commissioner	12/21/2021
HCA SIGNATURE DocuSigned by: Annette Schuffenhauer 4F259FCAF7C2450...	PRINTED NAME AND TITLE Annette Schuffenhauer Chief Legal Officer	DATE SIGNED 12/22/2021

Approved as to Form
Ryan Lukson
Ryan J Lukson, Civil DPA

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RESOLUTION 2021 916

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A GRANT AWARD AND PROFESSIONAL SERVICES CONTRACT NO. K5680 BETWEEN WASHINGTON STATE HEALTH CARE AUTHORITY AND BENTON COUNTY FOR THE PURPOSE OF OPIOID TREATMENT NETWORK WITHIN THE BENTON COUNTY JAIL

WHEREAS, per Resolution 2020-1002 the Board of Benton County Commissioners accepted the grant award from Washington State Health Care Authority (HCA) for a maximum amount of $615,875 for the Medication for Opioid Use Disorder (MOUD) services provided to inmates within the Benton County Jail, with a term commencing September 30, 2020 and continuing through September 29, 2021; and

WHEREAS, HCA provided notice of award to Benton County Corrections Department (BCCD) along with the attached Professional Services Contract No. K5680 for MOUD services with a maximum amount of $649,208 to be paid to Benton County; and

WHEREAS, the Chief of Corrections recommends accepting the grant funding to keep this important program going within the jail; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby accepts the grant award from Washington State Health Care Authority for a maximum amount of $649,208 for the performance of work as further outlined in the attached Professional Service Contract between Benton County and Health Care Authority; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman or Chairman Pro-Tem to sign the attached Professional Service Contract No. K5680 between Benton County and Washington State Health Care Authority; and

BE IT FURTHER RESOLVED, the term of the attached contract commences September 29, 2021 and shall continue through September 29, 2022.

Dated this 21st day of December, 2021.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest: Marilou Flores
Clerk of the Board

Orig: BCCD
cc: Auditor, S. Godinez, Purchasing Dept., HCA

Prepared by: L. Small

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Contract #K5680 for Opioid Treatment Services

The state of Washington, acting by and through the Health Care Authority (HCA), seeks client services for a strong treatment and recovery support referral network and increase access to and utilization of MOUD Services; and

WHEREAS, client services are exempt from competitive solicitation (RCW 39.26.125(6)) and **County of Benton** (Contractor) seeks to provide such services.

HCA has determined that entering into a Contract with **County of Benton** will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, HCA awards to **County of Benton** this Contract, the terms and conditions of which will govern Contractor's providing to HCA a strong treatment and recovery support referral network and increase access to and utilization of MOUD Services.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

1. STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

2. DEFINITIONS

"Authorized Representative" means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

"Breach" means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

"Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

"Business Days and Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Centers for Medicare and Medicaid Services" or **"CMS"** means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

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"CFR" means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at http://www.ecfr.gov/cgi-bin/ECFR?page=browse.

"**Community**" means an approved geographic area within school district boundaries, or within High School Attendance Areas (HSAA) and their feeder schools.

"Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

"Contract" means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

"**Contractor**" means County of Benton, its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

"Covered entity" means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

"Data" means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

"Effective Date" means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

"**Encrypt**" means to encode confidential information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.

"Fiscal/Program Requirements" means the Supplementary Instructions and Fiscal Policy Standards for Reimbursable Costs as used by HCA, located at: https://www.hca.wa.gov/billers-providers-partners/prior-authorization-claims-and-billing/provider-billing-guides-and-fee-schedules#t.

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"HCA Contract Manager" means the individual identified on the cover page of this Contract who will provide oversight of the Contractor's activities conducted under this Contract.

"Health Care Authority" or **"HCA"** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

"OMB" means the Office of Management and Budget of the executive office of the president of the United States.

"Overpayment" means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

"Proprietary Information" means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"**Protected Health Information**" or **"PHI"** means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

"RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: http://apps.leg.wa.gov/rcw/.

"Statement of Work" or **"SOW"** means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

"Subcontractor" means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term "Subcontractor" means subcontractor(s) of any tier.

"Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency. As in 45 C.F.R. 75.2, or any successor or replacement to such definition, for any federal award from HHS; or 2 C.F.R. 200.93, or any successor or replacement to such definition, for any other federal award. See OMB circular a-133 for additional details.

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"USC" means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at http://uscode.house.gov/

"WAC" means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: http://app.leg.wa.gov/wac/.

3. SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;

3.1.2 Use of professional judgment;

3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;

3.1.4 Conformance with HCA directions regarding the delivery of the services;

3.1.5 Timely, accurate and informed communications;

3.1.6 Regular completion and updating of project plans, reports, documentation and communications;

3.1.7 Regular, punctual attendance at all meetings; and

3.1.8 Provision of high quality services.

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

3.2 TERM

3.2.1 The initial term of the Contract will commence on September 30, 2021 and continue through September 29, 2022, unless terminated sooner as provided herein.

3.2.2 This Contract may be extended in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

3.2.3 Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not

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pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

3.3 COMPENSATION

3.3.1 The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is $649,208.00, and includes any allowable expenses.

3.3.2 Federal funds disbursed through this Contract were received by HCA through OMB Catalogue of Federal Domestic Assistance (CFDA) Number: 93.788, SAMHSA Center for Substance Abuse Treatment, 1H79TI083286-01, Washington State Opioid Response II (SOR II) Grant. Contractor agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 2: *Federal Compliance, Certification and Assurances*, attached.

3.4 INVOICE AND PAYMENT

3.4.1 Invoice System

a. The Contractor must submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by HCA. Consideration for services rendered will be payable upon receipt of properly completed invoices submitted to megan.fowler@hca.wa.gov.

b. Invoices must be submitted only once per month and must include the HCA Contract number in the subject line of the email

c. Submit invoices for costs due and payable under this Contract that were incurred prior to the expiration date within ninety (90) days of the date services were provided

d. Additional requirements as outlined in Schedule A: Statement of Work

3.5 CONTRACTOR AND HCA CONTRACT MANAGERS

3.5.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.

3.5.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to

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accept or reject the services provided and must approve Contractor's invoices prior to payment.

3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR Contract Manager Information		Health Care Authority Contract Manager Information	
Name:	Scott Souza	Name:	Megan Fowler
Title:	Chief of Corrections	Title:	State Opioid Response Treatment Manager
Address:	7122 W Okanogan Pl. Bldg. B, Kennewick, WA 99336	Address:	Health Care Authority 626 8th Avenue SE Olympia, WA 98504
Phone:	(509) 222-3787	Phone:	(360) 725-2019
Email:	Scott.souza@co.benton.wa.us	Email:	Megan.fowler@hca.wa.gov

3.6 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person,via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

3.6.1 In the case of notice to the Contractor:

Scott Souza, Chief of Corrections
Benton County Corrections Department
7122 W Okanogan Place, Bldg. B
Kennewick, WA 99336

3.6.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
Post Office Box 42702
Olympia, WA 98504-2702
CONTRACTS@hca.wa.gov

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3.6.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

3.6.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.7 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

3.7.1 Applicable Federal and State of Washington statutes and regulations;

3.7.2 Recitals

3.7.3 Special Terms and Conditions;

3.7.4 General Terms and Conditions;

3.7.5 Attachment 1: Confidential Information Security Requirements;

3.7.6 Attachment 2: *Federal Compliance, Certifications and Assurances;*

3.7.7 Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form;

3.7.8 Attachment 4: SAMHSA Award Terms;

3.7.9 Schedule A(s): Statement(s) of Work;

3.7.10 Exhibit A: Definitions Specific to Special Terms;

3.7.11 Exhibit B: 15 CLAS Principals; and

3.7.12 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.8 INSURANCE

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

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3.8.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1 million per occurrence/$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

3.8.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

3.8.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than $1 million per claim/$2 million general aggregate.

3.8.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

3.8.5 The Contractor certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provde certificates of insurance to that effect to HCA upon request.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

3.8.6 Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:

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3.8.6.1 Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.

3.8.6.2 Notification and call center services for individuals affected by a Breach.

3.8.6.3 Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.

3.8.6.4 Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

The policy must be maintained for the term of this Agreement and three (3) years following its termination.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

4.3 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4.4 ASSIGNMENT

4.4.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.36, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment,

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transfer or delegation in contravention of this Subsection 4.4.1 of the Contract will be null and void.

4.4.2 HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

4.4.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.5 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

4.6 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.7 CONFIDENTIAL INFORMATION PROTECTION

4.7.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).

4.7.2 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).

4.7.3 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination

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of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

4.7.4 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

4.8 CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets).

4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

4.9.1 Contractor must notify the HCA Privacy Officer (PrivacyOfficer@hca.wa.gov) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.

4.9.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.

4.9.3 If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:

4.9.3.1 HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.

4.9.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA

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reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).

4.9.3.3 Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.

4.9.4 Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.

4.9.5 Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

4.10 CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

4.11 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.12 DEBARMENT

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

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4.13 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

4.13.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

4.13.2 A party's request for a dispute resolution must:

4.13.2.1 Be in writing;

4.13.2.2 Include a written description of the dispute;

4.13.2.3 State the relative positions of the parties and the remedy sought;

4.13.2.4 State the Contract Number and the names and contact information for the parties;

4.13.3 This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.14 ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.43 *Warranties*.

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4.15 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

4.15.1 This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

4.15.2 To comply with the act and be eligible to enter into this Contract, Contractor must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If Contractor does not already have one, a DUNS® number is available free of charge by contacting Dun and Bradstreet at www.dnb.com.

4.15.3 Information about Contractor and this Contract will be made available on www.uscontractorregistration.com by HCA as required by P.L. 109-282. HCA's Attachment 3: *Federal Funding Accountability and Transparency Act Data Collection Form*, is considered part of this Contract and must be completed and returned along with the Contract.

4.16 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.17 FUNDING WITHDRAWN, REDUCED OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

4.17.1 Terminate this Contract pursuant to Section 4.40.3, *Termination for Non-Allocation of Funds*;

4.17.2 Renegotiate the Contract under the revised funding conditions; or

4.17.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.

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4.17.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

4.17.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.

4.17.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

4.18 GOVERNING LAW

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.19 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 *Confidential Information Protection* and Section 4.9 *Confidentiality Breach-Required Notification*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

4.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

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4.21 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

4.22 LEGAL AND REGULATORY COMPLIANCE

4.22.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

4.22.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

4.22.3 Failure to comply with any provisions of this section may result in Contract termination.

4.23 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.24 NO THIRD-PARTY BENEFICIARIES

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

4.25 NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

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4.26 OVERPAYMENTS TO CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13 *Disputes.*

4.27 PAY EQUITY

4.27.1 Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

4.27.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.

4.27.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.

4.27.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.

4.27.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

4.28 PUBLICITY

4.28.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.

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4.28.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.29 RECORDS AND DOCUMENTS REVIEW

4.29.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].

4.29.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.

4.29.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.30 REMEDIES NON-EXCLUSIVE

The remedies provided in this Contract are not exclusive, but are in addition to all other remedies available under law.

4.31 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

4.32 RIGHTS IN DATA/OWNERSHIP

4.32.1 HCA and Contractor agree that all data and work products (collectively "Work Product") produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and will be owned by HCA.

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Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

4.32.2 If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

4.32.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.

4.32.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

4.32.5 Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

4.32.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

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4.33 RIGHTS OF STATE AND FEDERAL GOVERNMENTS

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

4.34 SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

4.35 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.36 SUBCONTRACTING

4.36.1 Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.

4.36.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

4.36.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.

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4.36.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.

4.36.5 HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

4.37 SUBRECIPIENT

4.37.1 General

If the Contractor is a subrecipient (as defined in 45 CFR 75.2 and 2 CFR 200.93) of federal awards, then the Contractor, in accordance with 2 CFR 200.501 and 45 CFR 75.501, shall:

4.37.1.1 Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

4.37.1.2 Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

4.37.1.3 Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

4.37.1.4 Incorporate OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;

4.37.1.5 Comply with any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any successor or replacement Circular or regulation;

4.37.1.6 Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, and any successor or replacement Circular or regulation; and

4.37.1.7 Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go

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to http://ojp.gov/about/offices/ocr.htm for additional information and access to the aforementioned Federal laws and regulations.)

4.37.2 Single Audit Act Compliance

If the Contractor is a subrecipient and expends $750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor will procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor will:

4.37.2.1 Submit to the Authority contact person the data collection form and reporting package specified in OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

4.37.2.2 Follow-up and develop corrective action for all audit findings; in accordance with OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, prepare a "Summary Schedule of Prior Audit Findings."

4.37.3 Overpayments

4.37.3.1 If it is determined by HCA, or during the course of a required audit, that Contractor has been paid unallowable costs under this or any Program Agreement, Contractor will refund the full amount to HCA as provided in Section 4.26 *Overpayments to Contractors*.

4.38 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

4.39 TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

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4.40 TERMINATION

4.40.1 TERMINATION FOR DEFAULT

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

4.40.2 TERMINATION FOR CONVENIENCE

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days' written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.40.3 TERMINATION FOR NONALLOCATION OF FUNDS

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.40.4 TERMINATION FOR WITHDRAWAL OF AUTHORITY

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In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.40.5 TERMINATION FOR CONFLICT OF INTEREST

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

4.41 TERMINATION PROCEDURES

4.41.1 Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

4.41.2 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

4.41.3 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

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4.41.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;

4.41.3.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;

4.41.3.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

4.41.3.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;

4.41.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;

4.41.3.6 Complete performance of any part of the work that was not terminated by HCA; and

4.41.3.7 Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

4.42 WAIVER

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

4.43 WARRANTIES

4.43.1 Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.

4.43.2 Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

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4.43.3 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

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Attachment 1

Confidential Information Security Requirements

1. Definitions

In addition to the definitions set out in Section 2 of this Contract K5680 for Opioid Treatment Network Services, the definitions below apply to this Attachment.

a. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.

   i. Passwords for external authentication must be a minimum of 10 characters long.

   ii. Passwords for internal authentication must be a minimum of 8 characters long.

   iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.

b. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).

c. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.

d. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.

f. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

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g. "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. Confidential Information Transmitting

a. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (http://csrc.nist.gov/publications/PubsSPs.html). This includes transmission over the public internet.

b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

a. Data at Rest:

i. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

ii. Data stored on Portable/Removable Media or Devices:

- Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.

- HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:

1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;

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

3. Keeping devices in locked storage when not in use;

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4. Using check-in/check-out procedures when devices are shared;

5. Maintain an inventory of devices; and

6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.

b. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

4. Confidential Information Segregation

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

a. The HCA Confidential Information must be kept in one of the following ways:

i. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or

ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or

iii. in a database that will contain only HCA Data; or

iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or

v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.

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

5. Confidential Information Shared with Subcontractors

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

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6. Confidential Information Disposition

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (http://csrc.nist.gov/publications/PubsSPs.html).

a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

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ATTACHMENT 2
Federal Compliance, Certifications, and Assurances

I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: **Megan Fowler**.

a. *Source of Funds* **SOR II**: This Contract is being funded partially or in full through Cooperative Contract number **1H79TI083286-01**, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this Contract are identified by the Catalog of Federal Domestic Assistance (CFDA) number 93.788 in the amount of **$649,208.00** The Contractor or Subrecipient is responsible for tracking and reporting the cumulative amount expended under HCA Contract **K5680.**

b. *Period of Availability of Funds **SOR II***: Pursuant to 45 CFR 92.23, Contractor or Subrecipient may charge to the award only costs resulting from obligations of the funding period specified in **1H79TI083286-01** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.

c. *Single Audit Act:* This section applies to subrecipients only. Subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR200.501 and 45 CFR 75.501. A Subrecipient who expends $750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.

d. *Modifications:* This Contract may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.

1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
   i. Deviations from the budget and Project plan.
   ii. Change in scope or objective of the Contract.
   iii. Change in a key person specified in the Contract.
   iv. The absence for more than one (1) months or a 25% reduction in time by the Project Manager/Director.
   v. Need for additional funding.
   vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
   vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this Contract.
2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.

e. *Sub-Contracting:* The Contractor or Subrecipient shall not enter into a sub-contract for any

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of the work performed under this Contract without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the Contract pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.

f. *Condition for Receipt of Health Care Authority Funds:* Funds provided by Health Care Authority to the Contractor or Subrecipient under this Contract may not be used by the Contractor or Subrecipient as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.

g. *Unallowable Costs:* The Contractor or Subrecipient's expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this Contract.

h. *Supplanting Compliance: SABG:* If SABG funds support this Contract, the Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs. (45 CFR section 96.123(a)(10)).

i. *Citizenship/Alien Verification/Determination:* The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

j. *Federal Compliance:* The Contractor or Subrecipient shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this Contract, whether included specifically in this Contract or not.

k. *Civil Rights and Non-Discrimination Obligations:* During the performance of this Contract, the Contractor or Subrecipient shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101- 6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) http://www.hhs.gov/ocr/civilrights.

HCA Federal Compliance Contact Information

Federal Grants and Budget Specialist Health Care Policy

Washington State Health Care Authority

Post Office Box 42710

Olympia, Washington 98504-2710

II. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary

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recipient of federal funds and then follow the funds to the sub-awardee, **County of Benton**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

	OMB CIRCULAR		
ENTITY TYPE	**ADMINISTRATIVE REQUIREMENTS**	**COST PRINCIPLES**	**AUDIT REQUIREMENTS**
State. Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501		
Non-Profit Organizations and Non-Profit Hospitals			
Colleges or Universities and Affiliated Hospitals			
For-Profit Organizations			

III. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) Contracts administered by the Washington State Health Care Authority.

1. **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION :** The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Section 2 of this certification; and have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

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Should the Contractor or Subrecipient not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause above certification in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. **CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:** The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

    1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; Establishing an ongoing drug-free awareness program to inform employees about

        i. The dangers of drug abuse in the workplace;

        ii. The contractor's policy of maintaining a drug-free workplace;

        iii. Any available drug counseling, rehabilitation, and employee assistance programs; and

        iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

    2. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (I) above;

    3. Notifying the employee in the statement required by paragraph (I), above, that, as a condition of employment under the contract, the employee will—

        i. Abide by the terms of the statement; and

        ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

    4. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (III)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

    5. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (III) (b), with respect to any employee who is so convicted—

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i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

6. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (I) through (V).

For purposes of paragraph (V) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

Legal Services Manager
WA State Health Care Authority
PO Box 42700
Olympia, WA 98504-2700

3. **CERTIFICATION REGARDING LOBBYING:** Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative Contracts from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative Contract. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative Contract must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative Contracts EXCEEDING $100,000 in total costs (45 CFR Part 93).

   The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

   1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.

   2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

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3. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative Contracts) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. **CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA):** The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. **CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

   Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

   By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

   The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

   The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. **CERTIFICATION REGARDING OTHER RESPONSIBILITY MATTERS**

   1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor

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shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
3. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Authority.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, HCA may terminate this transaction for cause or default.

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
Please also print or type name: Jerome Delvin, Chairman	Benton County Commissioner
ORGANIZATION NAME: (if applicable) Benton County, WA	DATE 12-21-21

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Attachment 3
Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Required Information about your organization and this contract will be made available on USASpending.gov by HCA as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at https://www.uscontractorregistration.com/.

CONTRACTOR

Legal Name County of Benton, Washington	DUNS Number 083738997
Principle Place of Performance 7122 W Okanogan Place, Bldg. B	Congressional District 4
3b. City Kennewick	State WA
3d. Zip+4 99336	Country USA

Are you registered in CCR (https://www.uscontractorregistration.com/)? ☐YES (skip to page 2. Sign, date and return) ☐NO

In the preceding fiscal year did your organization:

Receive 80% or more of annual gross revenue from procurement federal contracts, Subcontracts, grants, loans, sub-grants, and/or cooperative agreements; **and**

$25,000,000 or more in annual gross revenues from federal procurement contracts, Subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**

The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330

☐ NO (skip the remainder of this section - Sign, date and return)

☒ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).

Name Of Official	Total Compensation

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1.	
2.	
3.	
4.	
5.	

Note: "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c) (2))

By signing this document, the Contractor Authorized Representative attests to the information.

HCA will not endorse the Contractor's sub-award until this form is completed and returned.

FOR HEALTH CARE AUTHORITY USE ONLY

HCA Contract Number: **K5680**
Sub-award Project Description (see instructions and examples below)

Instructions for Sub-award Project Description:

In the first line of the description provide a title for the sub-award that captures the main purpose of the Subrecipients work. Then, indicate the name of the Subrecipient and provide a brief

Signature of Contractor Authorized Representative	Date
	12-21-2021

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description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

Example of a Sub-award Project Description:

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environment

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Attachment 4

Substance Abuse and Mental Health Services Administration (SAMHSA) Award Terms

By drawing or otherwise obtaining funds as a subawardee or contractor of a non-federal entity drawing or otherwise obtaining funds from SAMHSA, a branch of the United States Department of Health and Human Services (HHS), you agree to the following pass-through terms and conditions.

Name	Language
Acceptance of the Terms of an Award	This Subaward is subject to the SAMHSA Fiscal Year 2021 – Award Standard Terms, included directly, or incorporated by reference on the Notice of Award (NoA) support the grant.
Non-Supplanting	Federal award funds must supplement, not supplant, nonfederal funds. All recipients who receive awards under programs that prohibit supplanting by law must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt of expected receipt of federal funds. Block grant funds (SABG and MHBG) will not be used to supplant state funding of alcohol and other drug prevention programs. See 45 CFR § 98.123
Unallowable Costs	All costs incurred prior to the award issue date and costs not consistent with the funding opportunity, 45 CFR Part 75, and the HHS Grants Policy Statement, are not allowable under this subaward.
Marijuana Restrictions	Grant funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana treatment using marijuana. Treatment in this context includes the treatment or opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. *See, e.g.,* 45 CFR 75.300(a); 21 USC 812(c)(10) and 841. This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substances under the federal law.
Executive Pay	The Consolidated Appropriations Act, 2021 (Public Law 116-260), signed into law on December 27, 2020 restricts the amount of direct salary to Executive Level II of the Federal Executive Pay scale.

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	Effective January 3, 2021, the salary limitation for Executive Level II is **$199,300.**
Promotional Items	SAMHSA grant funds may not be used for Promotional Items. Promotional Items include but are not limited to: Clothing and commemorative items such as pens, mugs/cups, folders/folios, lanyards, and conference bags.
Acknowledgment of Federal Funding at Conferences and Meetings	When a conference is funded by a grant or cooperative agreement, the recipient must include the following statement in all conference materials (including promotional materials, agenda, and internet sites): *Funding for this conference was made possible 9in part) by (insert grant or cooperative agreement award number) from SAMHSA. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsements by the U.S. Government.*
Rights in Data and Publications	As applicable, recipients agree to the requirements for intellectual property, rights in data, access to research data, publications, and sharing research tools, and intangible property and copyrights as described in 45 CFR 75.322 and the HHS Grants Policy Statement. HCA may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal Award. SAMHSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
Mandatory Disclosures	Consistent with 45 CFR 75.113, Subrecipients must disclose, in a timely manner, in writing to HCA and the HHS Office of Inspector General (OIG), all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to HCA and the HHS OIG at the following addresses: U.S. Department of Health and Human Services Office of Inspector General ATTN: Mandatory Grant Disclosures, Intake Coordinator 330 Independence Avenue, SW, Cohen Building Room 5527

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	Washington DC 20201 Fax: (202) 205-0604 (include "Mandatory Grant Disclosures" in subject line or email) MandatoryGranteeDisclosures@oig.hhs.gov Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 USC 3321)
Lobbying Restrictions	Per 45 CFR §75.215, Subrecipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93. U.S.C. > Title 18 > Part I > Chapter 93 > Section 1913, No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his/her request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute as a violation of section 1352 (a) of Title 31.
Drug Free Workplace	The Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. By signing this Contract, you agree that the grantee will provide a drug-free workplace and will comply with the requirement to notify NIH if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government wide requirements for Drug-Free Workplace for Financial Assistance are

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	found in 2 CFR part 182; HHS implementing regulations are set forth in 2 CFR part 382.400. All recipients of NIH grant funds must comply with the requirements in Subpart B (or Subpart C if the recipient is an individual) of part 382.
Trafficking Victims Protection Act of 2000 (22 USC 7104(G)), as amended, and 2 CFR Part 175	The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. SAMHSA or HCA may unilaterally terminate this award, without penalty, if a private entity recipient, or a private entity subrecipient, or their employees: a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; b) Procure a commercial sex act during the period of time that the award is in effect; or, c) Use forced labor in the performance of the award or subawards under the award. The text of the full award term is available at 2 C.F.R. § 175.15(b). See http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf
Confidentiality of Alcohol and Drug Abuse Patient Records	The regulations (42 CFR 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is federally assisted in any manner (42 CFR 2.12b). Accordingly, all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR Part 2. The Subrecipient is responsible for assuring compliance with these regulations and principles, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.
Healthy People 2020	Healthy People 2020 is a national initiative led by HHS that set priorities for all SAMHSA programs. The initiative has two major goals: (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities. The program consists of 28 focus areas and 467 objectives. SAMHSA has actively participated in the work groups of all the focus areas and is committed to the achievement of the Healthy People 2020 goals. Healthy People 2010 and the conceptual framework for the forthcoming Healthy People 2020 process can be found online at: http://www.healthypeople.gov/
Accessibility Provisions	Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin,

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	disability, age, and in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. The HHS Office for Civil Rights also provides guidance on complying with civil rights laws enforced by HHS. Please see: http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see- http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html. Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at https://www.hhs.gov/civil- rights/index.html or call 1-800-368-1019 or TDD 1-800- 537-7697. Also note that it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6.
Legislative Mandates	Certain statutory provisions under P.L. 115-245, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, Division B, Title V, Title II, General Provisions limit the use of funds on SAMHSA grants, cooperative agreements, and contract awards. Such provisions are subject to change annually based on specific appropriation language that restricts the use of grant funds. The full text of P.L. 115-245 is available at https://www.congress.gov/bill/115th-congress/housebill/6157/text?Format=txt.
Ad Hoc Submissions	Throughout the project period, SAMHSA may determine that a grant requires submission of additional information beyond the standard deliverables. This information may include, but is not limited to, the following: • Payroll • Purchase orders • Contract documentation • Proof of project implementation

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Schedule A: Statement of Work

September 30, 2021 – September 29, 2022

1. The Contractor shall serve as the Initiation Site and be responsible for:

    1.1. Providing MOUD initiation, referral, and retention to an individual prior to his or her transfer to the Local MOUD Treatment Site, ensuring MOUD capacity is maintained at both the Initiation and Local MOUD Treatment Site(s).

    1.2. Serving as the lead organization and recipient of funding for the development and implementation of an Opioid Treatment Network model for adults with an Opioid Use Disorder who are Medicaid eligible or low income. OTN will give priority to:

        a. Individuals at highest risk of overdose and death.

        b. Tribal members to address their OUD needs.

        c. MOUD services for pregnant and parenting individuals with OUD.

        d. MOUD services for intravenous drug users.

    1.3. Ensuring services at the Initiation Site and Local MOUD Treatment Site(s) begin no later than September 30, 2021.

    1.4. Monitoring and ensuring MOUD is initiated to a minimum of twenty-seven (27) individuals per month for the entirety of the contract period, no later than September 30, 2022 at the Initiation Site.

    1.5. Holding responsibility for oversight of the OTN, and ensuring the Local MOUD Treatment Site(s) are working in coordination (including participation in regularly scheduled leadership meetings and educational and technical assistance opportunities) and meet the terms of the project, contract, goals and project deliverables.

    1.6. Ensuring travel per diem, computers, office supplies, and all other supplies and tools necessary to provide defined duties are provided to staff at the Initiation Site and Local MOUD Treatment Site(s) via a legal written agreement between the two sites.

    1.7. Ensuring a low-barrier medication model as evidence by the Contractor's unique site and functions.

    1.8. Providing both agonist and antagonist MOUD medications (on-site or in relationship with a pharmacy) in order to facilitate initial inductions.

    1.9. Using a coordinated team and processes to provide intensive services by developing a central Initiation Site to provide MOUD, and a warm hand-off to a Local MOUD Treatment Site(s) for continuity of care. Local MOUD Treatment Site(s) will provide referrals for other behavioral health and ancillary services necessary to address the individual's holistic

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medical and recovery needs. Build, strengthen, and maintain referral relationships between Initiation Site and Local MOUD Treatment Site(s).

1.10. Hiring and/or contracting up to 4.08 FTEs or an agreed-upon amount with the DBHR Contract Manager to cover the functions listed below at the Initiation Site. Through subcontracting, provide for staffing at Local MOUD Treatment Site(s). Specific staffing arrangements are determined by Initiation Site. The following functions are required (individual staff may perform multiple functions):

a. OTN Nurse Care Manager (NCM): The NCM's primary responsibilities are to provide medical support to the prescribing physicians or other waivered practitioners. Duties of the NCM will include, but are not limited to: individual screening, MOUD education, assisting with MOUD inductions, taking vital signs, drug testing, lab work, medical assessments, charting, care planning, stabilization, observation and maintenance, ongoing coordination of follow-up care, relapse prevention, and support for an individual's self-management.

b. OTN Care Navigator: The Care Navigator expedites enrollment into Medicaid as necessary, conducts screenings, assessments and evaluations, provides education, and coordinates referrals for MOUD. Care Navigators assist with data collection requirements and facilitate referrals for infectious disease screenings, housing, employment services, withdrawal management services, transportation, referral to OUD or behavioral health counseling, and provide a warm hand-off to a MOUD provider upon an individual's transfer from any current treatments.

c. OTN Data Collection Coordinator (Coordinator): The Coordinator is responsible for managing all data collection activities and serves as the liaison between the OTN, DBHR and RDA. The Coordinator must become competent in all aspects of GPRA data collection required for this project (including completion of SAMHSA GRPA training) and be available and responsive to project evaluators.

d. OTN MOUD Prescriber: Continue to employ and or contract at least one prescriber and at least one back-up prescriber with a current DATA-2000 Waiver (in case of primary prescriber absence) at the Initiation Site.

e. Contract Management/Accounting: Submitting invoices for payment, ensuring Releases of Information (ROIs) are in place, certifying that agreements with other community partners are signed and guaranteeing the contract deliverables are met including subcontractor's deliverables.

2. Reporting

2.1. Ensuring specific tools, such as job descriptions and statements of work, are developed to ensure consistent practice throughout the OTN.

2.2. Identifying, collaborating, and subcontracting with Local MOUD Treatment Site(s) that are willing to support and embrace MOUD and are responsible for providing integrated care

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that includes therapy, SUD counseling, outreach, MOUD education, case management, and/or referral services.

2.3. Ensuring policies and procedures are in place throughout the OTN to mitigate medication diversion.

2.4. Securing and maintaining Release of Information forms that meet federal confidentiality regulations and allow the release of patient identifying information between Initiation Site and Local MOUD Treatment Site(s) and to DSHS RDA for the purpose of program monitoring and performance evaluation.

2.5. Working collaboratively with ADAI technical assistance staff to identify training needs and participate in peer-to-peer and educational learning opportunities including the utilization of EBPs.

2.6. Attend quarterly meetings with DBHR Contract Manager or SOR Project or Treatment Manager to discuss project contract requirements, compliance, and problem-solving or attending trainings. Additional meetings as required or deemed necessary by the DBHR Contract Manager.

2.7. Site visits will occur one time per year or more often if determined necessary by the DBHR Contract Manager.

2.8. Ensure the use of a certified EHR.

Review of the Prescription Monitoring Drug Program data, when available and appropriate.

2.9. Ensure patient assessments and treatment are consistent with DSM-5 criteria.

2.10. Data Collection Requirements:

2.10.1. OTN staff will collect specified data on every individual inducted (beginning a new episode of grant-funded MOUD treatment) at the Initiation Site. The data collection includes completion of a participant log and three structured interviews. These data collection activities will take place under the supervision of the grant's project evaluator, who will provide the OTN all relevant data collection instruments, training, access to data entry tools, and technical assistance.

2.10.2. OTNs will designate staff (Data Coordinator) responsible for ensuring all data are collected accurately, comprehensively, and in a timely fashion. Any OTN staff with sufficient training may contribute to data collection activities, but the Data Coordinator is responsible for oversite of all aspects of SOR-II data collection at the OTN, including coordination between the Initiation Site and the Local MOUD Treatment Site(s) as individuals move between those locations. The Data Coordinator will be available to the project evaluator, complete necessary training, and attend monthly, 90-minute teleconferences.

2.10.3. OTNs must collect the following data:

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a. Participant Information: All individuals inducted at the OTN must be entered onto the relevant section of the RDA data portal. Upon induction onto MOUD, OTN staff will collect and enter client identifiers, demographics, and basic treatment information into the data portal provided by the project evaluator. The data should be updated at least weekly. Alternatively, OTNs may provide electronic extracts if they meet specifications provided by the project evaluator. Contracted targets for the number of individuals served will be measured using data entered into the data portal.

b. GPRA Intake Survey: this interview is required for all individuals who (a) transfer to your local MOUD provider, OR (b) who have a second consecutive appointment for continued MOUD treatment at your initiation site. The interview must be completed within four days of these appointments. Only one GPRA intake survey (the first enrollment) is required per individual. A minimum of 80 percent of eligible intake surveys must be completed.

c. The Intake Survey and the surveys listed below must be completed by OTN staff in person (telephone/virtual interviews are permitted if approved by the project evaluator). The survey is based on the GPRA Client Outcome Measures Tool. However, the project evaluator will provide a modified version of the GPRA tool for use on this project. No later than weekly, OTN staff will enter all surveys into the data portal provided by the project evaluator.

d. GPRA Six-month Follow-up Survey: the follow-up interview must be completed within one month before to two months after the six-month anniversary date of the GPRA Intake Survey, regardless of whether the individual has been discharged. If a GPRA Intake Survey was never competed for an individual, a follow-up is not required. Follow-up surveys are not required after grant funding ends. See "GPRA Intake Survey" regarding data collection and data entry. You are expected to complete 80 percent of your follow-up surveys. Note that only completed surveys, meaning the client answered at least some of the survey questions, count towards your 80% completion rate. The SOR II grant includes funding for incentives that may be used to encourage hard-to-reach individuals to complete a follow up survey.

e. GPRA Discharge Survey: the discharge survey is to be completed for all individuals who discontinue treatment at your OTN. An administrative discharge survey, which may be completed without the individual's participation, is permitted for discharged individuals you are unable to locate. Individuals still enrolled at the close of the grant will not require a discharge survey. Discharge surveys should be completed within 15 days of discharge. See "GPRA Intake Survey" regarding data collection and data entry.

2.10.4. The Project Evaluator will monitor data collection and provide the OTN Data Coordinator technical assistance when necessary. In the event of prolonged or serious non-compliance, at the request of the Project Evaluator, you must submit a corrective action plan to the DBHR Contract Manager.

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2.10.5. Research and Data Analysis (RDA): Maintain and submit monthly through a secure DSHS portal to RDA, a participant data log template (to be provided) from the Initiation Site only that includes, but is not limited to the following for every new MOUD treatment episode:

2.10.5.1 First name, last name and middle initial; date of birth; Social Security Number; gender; race; ethnicity; treatment start date (induction date); MOUD drug prescribed (methadone, Bup-mono, Bup-combo, Naltrexone-Injectable; Naltrexone-Oral), transfers to Local MOUD Provider, discharge date and discharge status (completed, transferred or lost to follow up).

2.10.6. Engagement Measure:

OTN Performance Measures and Definitions:

"MOUD Treatment Engagement" will be estimated using Medicaid claims and encounter data on MOUD prescriptions received by OTN patients. This information will be used to estimate the percentage of individuals receiving any MOUD within 3 months following their month of induction by the OTN. This measure will account for any MOUD received after induction, regardless of where the MOUD was provided. Only individuals enrolled in Medicaid will be used to generate this measure. Your target performance metric will be based on your site's baseline MOUD treatment engagement rate. Your baseline engagement rate will be based on all SOR-funded inductions at your OTN from January 1, 2019, through September 29, 2020.

2.11. Submit a Monthly Report as detailed in the Deliverables Table with the invoice to the DBHR Contract Manager, including, but not limited to: barriers and successes; training and technical assistance needs; staff changes; actions to address diversity; equity and inclusion (DEI); and additional information as needed.

2.12. Contingency Management: Among patients receiving medication for OUD, provide evidence of a screening for stimulant use disorder, and if screened in, a warm hand-off for referral to services to address stimulant use disorder. All efforts must be documented in the patient's record. Use of Contingency Management may be utilized at a rate of no more than $75 per person per year of SOR II grant funds and $225 per person per year from proviso funds for individuals with stimulant use disorder.

2.12.1. SOR II grant funds can be used in the following: noncash gift cards (e.g., transportation vouchers, phone minute cards, and grocery stores/restaurants), entertainment gift cards, prizes for CM activities, and other items as approved by DBHR Contract Manger.

2.12.2. Proviso CM Funds can be used in the following: cash incentives, noncash gift cards (e.g., transportation vouchers, phone minute cards, and grocery stores/restaurants), entertainment gift cards, prizes for CM activities, and other items as approved by DBHR Contract Manager. Up to $10,000 of Proviso Funds

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may be spent towards CM resources not listed above. Must be submitted for prior approval by DBHR Contract Manager.

2.13. Transportation Voucher: Among individuals, receiving MOUD, a transportation voucher can be provided to them for reimbursement.

2.14. Referrals to EBPs such as CBT or MI for people who experience Stimulant Use Disorder are encouraged. If a referral is made, documentation is needed.

2.15. Attend a DBHR Contract Manager approved Contingency Management Training. Provide evidence of sending a minimum of two staff persons to the training. Additional staff are allowed to attend beyond the required minimum person.

2.16. Tobacco Training: Participate in a minimum of six (6) Tobacco Treatment phone calls during the contract period provided by the Department of Health.

a. A 40-hour Tobacco Training is available through the Department of Health as needed for sites to access. Submit a request to the DBHR Contract Manager.

b. Funding for NRT is available through the Department of Health as needed to sites. Submit a request to the DBHR Contract Manager.

2.17. Assisting in the preparation of reports (e.g., SAMHSA Annual Report, SAMHSA Bi-annual Report) and other data requested by SAMHSA, their designee, or the DBHR Contract Manager.

2.18. Ensuring the utilization of third party and other revenue realized from provision of services to the extent possible and use SAMHSA grant funds only for services to individuals who are not covered by public or commercial health insurance programs, or for services that are not sufficiently covered by an individual's health insurance plan. Facilitate the health insurance application and enrollment process for eligible uninsured clients.

2.19. Screen and refer HIV and Viral Hepatitis cases through a warm hand-off or treatment. Treatment or referrals are to be included in the monthly report and RDA data sheets. Documentation is required and must be included in the monthly report.

2.20. Sustainability Plan: Provide a written document on site letterhead or by PowerPoint to DBHR Contract Manager. This plan should address the following:

a. What is your site's sustainability plan?

b. What actions steps do you need to take in order to implement your sustainability plan?

c. Address staffing and financial aspects of the project.

d. Consider and address alternative funding sources such as other grants in the plan.

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e. Who are your partners in the community and what role do they play in your sustainability plan?

f. Include improvement opportunities or barriers your site has experienced.

g. Include successes of the past year. For example, what is going well and what do you need to keep doing more of?

h. What are your future goals for the SOR II project and how will your site sustain it?

i. Consider the three elements of sustainability. They include impact on people, economics and the environment. List how these will be met.

j. How does your site address diversity, equity and inclusion?

3. Considerations

3.1. Billing and Payment

a. Invoice System. The Contractor shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by HCA. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to the DBHR Contact, Megan Fowler at megan.fowler@hca.wa.gov by the Contractor not more often than monthly. The invoices shall describe and document to HCA's satisfaction a description of the work performed, activities accomplished, the progress of the project, and fees. Payments shall be in accordance with delivery and approval of deliverables as outlined in Section 3.2, Deliverables Table.

b. Payment. Payment shall be considered timely if made by HCA within thirty (30) days after receipt and acceptance by HCA of the properly completed invoices. Payment shall be sent to the address designated by the Contractor on page one (1) of this Contract. HCA may, at its sole discretion, withhold payment claimed by the Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.

c. Claims for payment submitted by the Contractor to HCA for amounts due and payable under this agreement that were incurred prior to the expiration date shall be paid by HCA if received by HCA within 90 days after the expiration date.

d. HCA shall not reimburse the Contractor for any fees and expenses which exceed the maximum consideration of this contract.

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3.2. Deliverables Table:

	Deliverable	Due Date	Up to
1	Attend a DBHR Contract Manager approved Contingency Management Training. Provide evidence of sending a minimum of two (2) persons to the training. Listed under section **2.15**.	Prior to September 29, 2022	**$20,000**
2	Monthly Reports to DBHR Contract Manager including the items listed in section **2.11** of this SOW. Monthly report form provided by DBHR Contract Manager and Monthly Reports to RDA, including compiled data of Local MOUD Treatment Site referrals and services including agonists and antagonists (**$18,000** per month x 12 months = **$216,000**).	Due by the second Wednesday of the month following the month in which services were provided	**$216,000**
3	Provision of services to a minimum of **27** individuals per month, starting October 2021 (**$1,000** per month x 12 months = **$27,000**) (Payment will be prorated if minimum numbers are not met). Listed under section **1.4**.	Due by the second Wednesday of the month following the month in which services were provided.	**$324,000**
4	Participant Incentives: a.GPRA follow-up for participants refer to section **2.10.3(d)**. Up to **$1,725.00** through September 29th, 2022. b. Contingency Management refer to section **2.12** up to **$225** per person of proviso funds through June 30th, 2022. c. Contingency Management refer to section **2.12** up to **$10,000** of proviso funds through June 30th, 2022. For b. and c. proviso funds up to **$33,333** d. Contingency Management refer to section **2.12** up to **$75** per person of SOR II funds up to **$17,550** through September 29th, 2022. e. Transportation vouchers refer to section **2.13** up to **$3,600** through September 29th, 2022.	Due by the second Wednesday of the month following the month in which services were provided. Contractor will provide updates on monthly reports.	Up to **$56,208**

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5	Participate in a minimum of six (6) Tobacco Treatment phone calls during the contract period. Listed under section **2.16.**	Trainings provided on a monthly basis. Report participation in monthly report.	**$3,000**
6	Sustainability Plan refer to section **2.20.** Provide an updated or revised plan.	September 29, 2022	**$15,000**
7	Engagement Measure refers to section **2.10.6.**	September 29, 2022	**No payment point**
8	Benchmark payment for serving 324 individuals (an average of 27 individuals per month) and meet an overall individual engagement of 50% over the period covered by this Contract. Note: If this benchmark payment is earned, Contractor shall also be entitled to bill, **up to the maximum amount that remains available for payment under Deliverable 3**, a pro rata payment of $1,000 for each individual whom Contractor has served but for whom payment could not be received under the payment terms applicable to Deliverable 3. In no event shall more than a total of **$339,000** be payable under this Deliverable 8 combined with payment under Deliverable 3. Listed under section **3.2.**	September 29, 2022	**$15,000**
	TOTAL		**$649,208**

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Federal Award Identification for Subrecipients (reference 2 CFR 200.331)

Washington State Opioid Response II (SOR II) Grant

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	**County of Benton**
(ii) Subrecipient's unique entity identifier; (DUNS)	**083738997**
(iii) Federal Award Identification Number (FAIN);	H79TI083286
(iv) Federal Award Date (see §200.39 Federal award date);	08/9/2021
(v) Subaward Period of Performance Start and End Date;	9/30/2021 – 9/29/2022
(vi) Amount of Federal Funds Obligated by this action;	$649,208
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	$649,208
(xiii) Total Amount of the Federal Award;	$27,173,792
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Washington State Opioid Response II (SOR II) Grant
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.788
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii)Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimus (10%)

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Exhibit A

Definitions Specific to Special Terms

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

a. "ADAI" means the University of Washington's Addictions Drug & Alcohol Institute, and its employees and authorized agents.

b. "Agonist" means an FDA-approved opioid agonist medication (e.g., methadone, buprenorphine products including buprenorphine/naloxone combination formulations and buprenorphine mono-product formulations) for the maintenance treatment of opioid use disorder.

c. "Antagonist" means the FDA-approved opioid antagonist medication (e.g., naltrexone products including extended-release and oral formulations) to prevent relapse to opioid use.

d. "ASAM" means the American Society of Addiction Medicine.

e. "Care Navigator" means the position responsible to provide support to and work collaboratively with the Care Manager. In addition, the Care Navigator will work closely and collaboratively with staff at each Local MOUD Treatment Site to coordinate patient care, keep the patient engaged with services, address issues related to relapse, and communicate together on patient needs. Duties also include conducting screenings, scheduling appointments, following up on missed appointments, medication diversion control, grant data recordkeeping and reporting, and making referrals to the appropriate Local MOUD Treatment Site. The Care Navigator can be a licensed or credentialed Substance Use Disorder Professional (SUDP) or Substance Use Disorder Professional Trainee (SUDPT), behavioral healthcare worker, social worker, primary healthcare worker, or other staff depending on the personnel needs of the Initiation Site.

f. "Cognitive Behavioral Therapy" or "CBT" means an evidence-based treatment that has been demonstrated to be effective for a range of issues including depression, anxiety disorders, alcohol and substance use disorder, marital problems, eating disorders and severe mental illness.

g. "Contingency Management (CM)" means the behavior modification method of providing reinforcement in exchange for objective evidence of a desired behavior.

h. "Culturally and Linguistically Appropriate Services" or "CLAS" means the national standards in health and health care intended to advance health equity, improve quality, and help eliminate health disparities by establishing a blueprint for health and health care organizations

i. "Data Collector Coordinator" means the person responsible for managing all data collection activities and also serves as the liaison between the OTN and the Project Evaluators (RDA). The Coordinator must become competent in all aspects of GPRA data collection (intake, and six-month follow ups and discharge) required for this project (including completion of SAMHSA GRPA training and project data collection systems) and be available and responsive to Project Evaluators (RDA).

j. "Data Universal Numbering System" or "DUNS" means a unique identifier for businesses. DUNS numbers are assigned and maintained by Dun and Bradstreet (D&B) and are used for a variety of purposes, including applying for government contracting opportunities.

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k. "DBHR" means the HCA Division of Behavioral Health and Recovery, and its employees and authorized agents.

l. "DEI" means diversity, equity, and inclusion.

m. "Department of Health" or "DOH" means a state agency who works with others to protect and improve the health of all people in Washington State. DOH programs and services help prevent illness and injury, promote healthy places to live and work, provide information to help people make good health decisions and ensure that Washington State is prepared for emergencies.

n. *"Diagnostic and Statistical Manual of Mental Disorders"* or "*DSM–5*" means the product of more than 10 years of effort by hundreds of international experts in all aspects of mental health. Their dedication and hard work have yielded an authoritative volume that defines and classifies mental disorders in order to improve diagnoses, treatment, and research.

o. "DSHS" means the Washington State Department of Social and Health Services, and its employees and authorized agents.

p. "Engagement Measure" means the percentage of individuals receiving any MOUD within 3 months following their OTN induction month. It will be limited to individuals receiving publicly-funded (i.e. Medicaid) MOUD.

q. "Evidence-based Practice" or "EBP" means a prevention or treatment service or practice that has been validated by some form of documented research evidence and is appropriate for use with individuals with an opioid use disorder.

r. "Electronic Health Records" or "EHR" means a certified electronic health record system that has been tested and certified by an approved Office of National Coordinator for Health Information Technology's (ONC) certifying body.

s. "FDA" means the U.S. Food and Drug Administration.

t. "GPRA" means Government Performance Results and Modernization Act. Grantees must comply with the GPRA Modernization Act of 2010.

u. "HCA" means the Washington State Health Care Authority and its employees and authorized agents.

v. "Human Immunodeficiency Virus" or "HIV" means the virus that may causes AIDS.

w. "Induct" means the medically monitored initiation of treatment medication when a person with an opioid use disorder has abstained from using opioids for the appropriate amount of time in order to tolerate the utilization of MOUD.

x. "Initiation Site Prescriber" or "Waivered Prescriber" means a physician, physician's assistant (PA), or nurse practitioner (NP) that has obtained and maintained a current DATA 2000 Waiver to prescribe buprenorphine and other medications. A prescriber will also inform individuals regarding the risks and benefits of MOUD, allow for shared-decision making and address other presenting medical needs either directly or by referral.

y. "Integrated Care" means the organized delivery and/or coordination of medical, behavioral or social and recovery support services provided for individuals.

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z. "Local MOUD (formerly MAT) Treatment Site" means a facility that will provide Opioid Use Disorder (OUD) treatment medications, behavioral health treatment and/or primary healthcare services, and/or wrap-around services, and referrals. Local MOUD Treatment Site may be federally qualified health center (FQHC), opioid treatment program, outpatient substance use disorder treatment facility, mental health clinic, or integrated behavioral health clinic.

aa. "Medication Assisted Treatment" or "MAT" (now MOUD) means the use of FDA-approved opioid agonist medications (e.g., methadone, buprenorphine products including buprenorphine/naloxone combination formulations and buprenorphine mono-product formulations) for the treatment of opioid use disorder and the use of opioid antagonist medication (e.g. naltrexone products including extended-release and oral formulations) to prevent relapse to opioid use.

bb. "Medication for Opioid Use Disorder" or "MOUD" means the use of FDA-approved opioid agonist medications (e.g., methadone, buprenorphine products including buprenorphine/naloxone combination formulations and buprenorphine mono-product formulations) for the maintenance treatment of opioid use disorder and the use of opioid antagonist medication (e.g., naltrexone products including extended-release and oral formulations) to prevent relapse to opioid use.

cc. "Motivational Interviewing" or "MI" means an evidence-based practice with a focus on resolving ambivalence and centers on motivational processes within the individual that facilitate positive change.

dd. "Nicotine Replacement Therapy" or "NRT" means a treatment that gives you nicotine in the form of gum, patches, sprays, inhalers, or lozenges but not the other harmful chemicals in tobacco.

ee. "Nurse Care Manager" means the nurse or other employee at the Initiation Site who is responsible for providing medical support to the prescribing physician or other waivered prescribers. Duties of the Care Manager include, but are not limited to patient screening, MOUD education, assisting with MOUD inductions, taking vital signs, drug testing, lab work, medical assessments, charting, care planning, stabilization, maintenance, ongoing coordination of follow-up care, relapse prevention, support for patient self-management, and observation of the patient.

ff. "OTN" means an Opioid Treatment Network that includes an Initiation Site and Local MOUD Treatment Site(s).

gg. "Opioid Use Disorder" or OUD is defined by a pattern of problematic use of opioids, whether prescription painkillers, or heroin, or other illicit synthetic opioids. Practitioners use criteria from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM 5) to diagnose opioid use disorder.

hh. "Prescriber/Administrator" means the position responsible for developing, administering, and overseeing the program and ongoing performance of the OTN. Initiation Sites may use funding to provide oversight and management to an administrator if more appropriate, depending on the business needs of the OTN.

ii. "Prescription Monitoring Drug Program" or "PMDP" means a law that the Washington State Legislature passed in 2007 requiring the Department of Health to create a prescription monitoring program. The law directs the Department to design the program to improve healthcare quality and effectiveness by: Reducing abuse of controlled substances, reducing duplicative prescribing and overprescribing; and improving prescribing practices.

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jj. "Report" or "Monthly Report" means and refers to a report that the Contractor will complete and submit to DBHR on a monthly basis prior to monthly reimbursement.

kk. "RDA" means the Department of Social and Health Services, Research and Data Analysis Division, to whom the Contractor will send required patient and program data through a secure data file transfer.

ll. "SAMHSA" means the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, and its employees and authorized agents.

mm. "Stimulate Use Disorder" means a pattern of amphetamine-type substance, cocaine, or other stimulant use leading to clinically significant impairment or distress (DSM-5).

nn. "Substance Use Disorder Professional" or "SUDP" means an individual certified in substance use disorder counseling by the Washington Department of Health Licensing.

oo. "Substance Use Disorder Professional Trainee" or "SUDPT" means an individual who is in training to become a certified SUDP and is under supervision by a certified SUDP.

pp. "SUD" means substance use disorder. Practitioners use criteria from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5).

qq. "Sustainability Plan" means a roadmap for achieving long-term stability and maintenance through documentation of strategies allowing for the program, activities and partnerships to continue.

rr. "Viral Hepatitis" means is an infection that causes liver inflammation and damage.

ss. "Warm hand-off" means a transfer of care between two members of the health care team, where the handoff occurs in front of the patient explaining why the other team member can better address a specific issue with the patient and emphasizing the other team member's competence.

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Exhibit B

15 Principal CLAS Standard

1. Provide effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy and other communication needs.

Governance, Leadership and Workforce

2. Advance and sustain organizational governance and leadership that promotes CLAS and health equity through policy, practices and allocated resources.

3. Recruit, promote and support a culturally and linguistically diverse governance, leadership and workforce that are responsive to the population in the service area.

4. Educate and train governance, leadership and workforce in culturally and linguistically appropriate policies and practices on an ongoing basis.

Communication and Language Assistance

5. Offer language assistance to individuals who have limited English proficiency and/or other communication needs, at no cost to them, to facilitate timely access to all health care and services.

6. Inform all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing.

7. Ensure the competence of individuals providing language assistance, recognizing that the use of untrained individuals and/or minors as interpreters should be avoided.

8. Provide easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area.

Engagement, Continuous Improvement and Accountability

9. Establish culturally and linguistically appropriate goals, policies and management accountability, and infuse them throughout the organizations' planning and operations.

10. Conduct ongoing assessments of the organization's CLAS-related activities and integrate CLAS-related measures into assessment measurement and continuous quality improvement activities.

11. Collect and maintain accurate and reliable demographic data to monitor and evaluate the impact of CLAS on health equity and outcomes and to inform service delivery.

12. Conduct regular assessments of community health assets and needs and use the results to plan and implement services that respond to the cultural and linguistic diversity of populations in the service area.

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13. Partner with the community to design, implement and evaluate policies, practices and services to ensure cultural and linguistic appropriateness.

14. Create conflict- and grievance-resolution processes that are culturally and linguistically appropriate to identify, prevent and resolve conflicts or complaints.

15. Communicate the organization's progress in implementing and sustaining CLAS to all stakeholders, constituents and the general public.

Ideal Option

Exhibit E

QUALIFIED SERVICE ORGANIZATION/ BUSINESS ASSOCIATE AGREEMENT

WHEREAS, Covered Entity is subject to the "HIPAA Rules," which for purposes of this Agreement shall include the Privacy Rule, Security Rule, Breach Notification Rule and Enforcement Rule (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended and federal regulations for the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2 ("Part 2");

WHEREAS, Business Associate in the course of providing services to Covered Entity may create, receive, maintain or transmit Protected Health Information ("PHI"), as that term is defined in the HIPAA rules, or any information that would identify or otherwise relate to a patient at Covered Entity.

THE PARTIES THEREFORE AGREE TO THE FOLLOWING:

1. Definitions

(a) Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms as defined in the HIPAA Rules and Part 2. The parties recognize that electronic PHI is a subset of PHI and all references to PHI in this Agreement shall include electronic PHI.

2. Obligations and Activities of Business Associate

(a) Business Associate acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from Covered Entity, it is fully bound by the regulations of Part 2.

(b) Business Associate agrees it will, if necessary, resist in judicial proceedings any efforts to obtain access to patient records except as permitted by Part 2.

(c) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate may use and disclose PHI only if its use or disclosure is in compliance

with each applicable requirement of 45 CFR 164.504(e).

(d) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI and to comply with the HIPAA Security Rule [Subpart C of 45 CFR Part 164].

(e) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(f) Within five (5) calendar days of Business Associate first becoming aware of an unauthorized use or disclosure of PHI, including a Security Incident, Business Associate agrees to notify the Covered Entity. Within fifteen (15) calendar days following the notification required above, Business Associate must provide a written report to the Covered Entity that shall include the following: (i) documentation of the specifics surrounding the incident and brief description of what happened, including the description of the unauthorized person(s) who accessed or acquired unsecured PHI and whether such persons actually acquired or viewed the PHI; (ii) description of the investigation that the Business Associate undertook and the findings to date; (iii) date of incident; (iv) name of individuals affected; (v) description of the types of unsecured PHI that were involved in the incident; (vi) any recommended steps that the individuals should take to protect themselves from harm; (vii) what mitigation efforts were implemented to lessen the harm to individuals; and (viii) what processes have been implemented to prevent the incident from happening in the future, including reasonable and appropriate safeguards.

(g) Business Associate agrees that any re-disclosure of patient identifying information, even to an agent or subcontractor of Business Associate, remains strictly prohibited by Part 2, unless Business Associate obtains written patient consent.

(h) Within fifteen (15) calendar days of receiving a written request from Covered Entity, Business Associate agrees to provide access to PHI in a Designated Record Set as necessary to allow Covered Entity to meet the requirements under 45 CFR 164.524. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall forward such a request to the Covered Entity within five (5) calendar days.

(i) Within fifteen (15) calendar days of receiving a written request from Covered Entity, Business Associate agrees to make requested PHI available to the Covered Entity for amendment and incorporate any amendment(s) to PHI that the Covered Entity directs as necessary for compliance with 45 CFR 164.526 to the extent that the Business Associate possesses the Designated Record Set.

(j) Business Associate and/or its contractors and subcontractors agree to make their policies, procedures, documentation required by the HIPAA Rules,

internal practices, books, and records relating to the use and disclosure of PHI created, received or maintained by Business Associate and/or its contractors and subcontractors on behalf of Covered Entity available to the Covered Entity or, at the request of the Covered Entity, to the Secretary of Health and Human Services within a reasonable time of such request for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules.

(k) If Business Associate is required to make a disclosure of PHI in its possession for a legal reason in accordance with Part 2 or the HIPAA Rules, it will track such a disclosure and within fifteen (15) calendar days shall provide all required information to Covered Entity that would be necessary for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. At a minimum, Business Associate shall provide the Covered Entity with the following information: (i) date of disclosure, (ii) name of the individual or entity who received the PHI, and if known, the address of such individual or entity; (iii) brief description of PHI disclosed; and (iv) brief statement of the purpose of such disclosure that includes an explanation of the basis for such disclosure, including any documentation that may support the reason for disclosure. Business Associate shall implement an appropriate record keeping process to enable it to comply with the requirements of this subparagraph. In the event the request for an accounting is delivered directly to the Business Associate, Business Associate shall forward the request to the Covered Entity within five (5) calendar days.

(l) Business Associate agrees that it will use or disclose only the minimal amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request consistent with the requirements applicable to Business Associate under 45 CFR 164.5020).

(m) To the extent that Business Associate is to carry out an obligation of the Covered Entity under the Part 2 or HIPAA Rules, Business Associate shall comply with the requirements of Part 2 or the HIPAA Rules that apply to the Covered Entity in the performance of such obligation.

3. Permitted Uses and Disclosures by Business Associate

(a) Except as otherwise limited in this Agreement and Part 2, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as requested by Covered Entity provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

4. Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose his/her PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Permissible Requests by Covered Entity

Except as otherwise permitted by this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Part 2 and the HIPAA Rules if done by Covered Entity.

6. Term and Termination

(a) Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this Agreement for any reason, Business Associate shall return all PHI to the Covered Entity or destroy all PHI in a manner consistent with the Covered Entity's requirements. This obligation applies to any and all PHI created, received, or maintained in any form by the Business Associate and/or its subcontractors on behalf of the Covered Entity. This provision shall survive the expiration or termination of this Agreement and any Underlying Agreement between the Parties.

(b) Continued Safeguard of Information. Depending on the nature of Business Associate's services provided to the Covered Entity, the Covered Entity may determine that immediate return or destruction of the information is infeasible, or Business Associate requires the retention of certain PHI for its continued proper management and administration or to carry out its legal responsibilities. In such an event, Business Associate will extend the safeguards and protections required by this Agreement for as long as the information is maintained and will limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. When the information is no longer needed by Business Associate, the information will be returned or destroyed in accordance with this Agreement. This provision shall survive termination of the Underlying Agreement and this Agreement.

7. Miscellaneous

(a) No Third-Party Beneficiary Rights. Nothing express or implied in this Agreement is intended to give, nor shall anything herein give any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

(b) Regulatory References. A reference in this Agreement to a section in Part 2 or the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.

(c) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with Part 2 and the HIPAA Rules.

(d) Injunctive Relief. Business Associate acknowledges that its unauthorized use or disclosure of PHI or information protected under Part 2 while performing services on behalf of the Covered Entity pursuant to this Agreement would cause irreparable harm to Covered Entity and, in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages, including injunctive relief.

(e) Independent Contractors. Business Associate and Covered Entity agree that the relationship between them based on the services provided pursuant to the Underlying Agreement is solely that of independent contractors and nothing in this Agreement is intended to create a partnership, agency or joint venture relationship between the Parties.

(f) No Ownership. Under no circumstances shall Business Associate be deemed to be the owner of any PHI created, received, maintained or transmitted by Business Associate on behalf of Covered Entity.

(g) Amendment. In the event that Part 2 or the HIPAA Rules are materially amended or change the obligations of the Parties to this Agreement, the Parties agree to make good faith efforts to appropriately amend this Agreement in a timely fashion in order to give effect to the revised legal obligation. Business Associate's failure to agree to any amendment deemed necessary by Covered Entity to comply with future modifications or amendments to Part 2 or the HIPAA Rules shall constitute a material breach of this Agreement.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Award contract to Apollo Mechanical Contractors for the Courtroom IT HVAC Project
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

Bids were solicited for the installation of a mini-split HVAC system for the IT Closets for both Superior & District Courtrooms at the Justice Center utilizing the MRSC Small Works Roster, and two bids were received in the amounts below:

Apollo Mechanical Contractors, Kennewick, WA (APOLLMC864JQ)	$ 145,769.00
Industrial Constructors, Inc., Kennewick, WA (INDUSI*003QH)	$ 154,300.00

A contract will be brought back to the Board at a later date.

Fiscal Impact

Amount: $145,769.00 excluding W.S.S.T.

Fund: Trial Court Improvement Fund (Fund # 0156-101)

Recommendation

Award the contract for Courtroom IT HVAC Project to Apollo Mechanical Contractors.

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 COURTROOM IT HVAC PROJECT TO APOLLO MECHANICAL CONTRACTORS OF KENNEWICK, WA.

WHEREAS, bids were solicited for the Courtroom IT HVAC Project for the Benton County Justice Center; and

WHEREAS, two bids were received in the amounts below:

Apollo Mechanical Contractors, Kennewick, WA (APOLLMC864JQ)	$ 145,769.00
Industrial Constructors, Inc., Kennewick, WA (INDUSI*003QH)	$ 154,300.00

WHEREAS, the Director of Operations and Capital Programs recommends award of the bid to Apollo Mechanical Contractors, Kennewick, WA; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Director of Operations and Capital Program's recommendations and awards the contract for the Courtroom IT HVAC Project to Apollo Mechanical Contractors, Kennewick, Washington in the amount of $145,769.00 excluding Washington State Sales Tax.

Dated this 4th day of January, 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

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

Orig.: Purchasing P. Schut

Due Date: December 8, 2021, 10:00 a.m.: Courtroom IT HVAC				
Documents Received	**Apollo Mechanical Contractors**	**Industrial Constructors, Inc.**		
	Bidder 1	**Bidder 2**	**Bidder 3**	**Bidder 4**
Bid Proposal	**x**	**x**		
Addendums Acknowledged	**x**	**x**		
Bid Bond	**x**	**x**		
Bid Amount	**Bidder 1**	**Bidder 2**	**Bidder 3**	**Bidder 4**
Bid Amount	$145,769.00	$154,300.00		

Note: This bid comparison form represents to the best of our knowledge the items specified and approved. These tabulations do not constitute an award to the low bidder, an award letter will be emailed along with a contract, before January 25, 2022.

BID FORM

Courtroom IT Server Closets - HVAC

Company Name Apollo

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 11/29/21

Addendum No. 2, dated None.

BID AMOUNT:

LUMP SUM (excluding sales tax) $ $145,769

LUMP SUM (excluding sales tax), in words One-hundred, Forty-five thousand, Seven-hundred, & Sixty-nine dollars.

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 _____
Certified Check	_____	($_____) Payable to the County Treasurer of Benton County, Washington.
Bid Bond	X	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 08 day of December, 2021.

COMPANY NAME: Apollo

AUTHORIZED SIGNATURE: Chase Ratchford

TYPE OR PRINT NAME: Chase Ratchford

TITLE: Estimator

STREET ADDRESS: 1119 W. Columbia Dr.

CITY, STATE, ZIP: Kennewick, WA, 99336

TELEPHONE NO.: 509 619-0966

EMAIL: Chase.ratchford@apollosm.com

CONTRACTOR'S LICENSE NO.: #APOLLHC867J1

UBI NO.: 600-443-607

WASHINGTON STATE EMPLOYMENT SECURITY NO.: 511476-00-8

BID BOND FORM

Herein find deposit in the form of a certified check, cashier's check, cash, or Bid Bond, in the Amount of $5% of the total amount bid, which is not less than five percent (5%) of the total amount bid.

****

KNOW ALL MEN BY THESE PRESENTS:

That we, Apollo Sheet Metal, Inc. dba Apollo Mechanical Contractors, as Principal, and Western Surety Company, as Surety, are held and firmly bound unto Benton County as Obligee, in the penal sum of Five percent of the total amount bid, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of this obligation is such that if the Obligee shall make any awards to the Principal for Courtroom IT Server Closets – HVAC, Benton County Justice Center, Kennewick, Washington according to the terms of the proposal or bid made by the Principal thereof, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or sureties approved by the Obligee; or if the Principal shall, in case of failure to do so, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

Signed, sealed, and dated this 7th day of December 2021.

Apollo Sheet Metal, Inc. dba
Apollo Mechanical Contractors

Principal CorpSec/CFO

Received return of deposit
in the sum of $_____

Western Surety Company

Lori McKimmy

Surety
Lori McKimmy, Attorney-in-Fact

_____
Date

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Donna S Martinez, Rod Lewis, Kenneth J Frick, Lori McKimmy, Individually

of Yakima, WA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 27th day of March, 2020.

WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

State of South Dakota
County of Minnehaha } ss

On this 27th day of March, 2020, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021

J. MOHR
NOTARY PUBLIC SOUTH DAKOTA

J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 7th day of December, 2021.

WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

BID FORM

Courtroom IT Server Closets - HVAC

Company Name Industrial Constructors, Inc.

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 12/02/2021

Addendum No. 2, dated _____

BID AMOUNT:

LUMP SUM (excluding sales tax) $ 154,300.00

LUMP SUM (excluding sales tax), in words One hundred fifty four thousand three hundred and 00/100

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 _____
Certified Check	_____	($_____) Payable to the County Treasurer of Benton County, Washington.
Bid Bond	XX	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 8th day of December 2021.

COMPANY NAME: Industrial Constructors, Inc.

AUTHORIZED SIGNATURE: Don McMillin

TYPE OR PRINT NAME: Don McMillin

TITLE: President

STREET ADDRESS: 8524 Gage, Suite A285

CITY, STATE, ZIP: Kennewick, WA 99336

TELEPHONE NO.: 509-628-3335

EMAIL: dmcmillin@ici-tc.com

CONTRACTOR'S LICENSE NO.: indusi*003qh

UBI NO.: 602 038 328

WASHINGTON STATE EMPLOYMENT SECURITY NO.: 134 757 000

Liberty Mutual

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:
(Name, legal status and address)
Industrial Constructors, Inc.
8524 W. Gage Blvd A-285
Kennewick, WA 99336

SURETY:
(Name, legal status and principal place of business)
The Ohio Casualty Insurance Company
9450 Seward Road
Fairfield, OH 45014

Mailing Address for Notices
The Ohio Casualty Insurance Company
Attention: Surety Claims Department
1001 4th Avenue, Suite 1700
Seattle, WA 98154

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)
Benton County Justice Center
7122 W Okanogan Place, Bldg. A
Kennewick, WA 99336

BOND AMOUNT: $5% of Bid Amount (Five percent of amount bid.)

PROJECT:
(Name, location or address, and Project number, if any)
Courtroom IT Server Closets - HVAC
Benton County Justice Center, Kennewick, Washington

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 8th day of December 2021.

LDM
(Witness)

Industrial Constructors, Inc.
(Principal) *(Seal)*

Don McMillin President
(Title)

(Witness)

The Ohio Casualty Insurance Company
(Surety) *(Seal)*

(Title) Kirsten K. Jordan, Attorney-In-Fact

THE OHIO CASUALTY INSURANCE COMPANY CORPORATE SEAL OHIO

Liberty Mutual SURETY

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8206154-974308**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Charles E. Hudon; Jacqueline F. Hernandez; Jodi Clayton; Kimberley A. Fall; Kirsten K. Jordan; Kristina Schrader

all of the city of Pasco state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 17th day of August, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 17th day of August, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 8th day of December, 2021.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Award contract to Banlin Construction for the Justice Center Front Entrance Security Upgrade Project
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

Per Resolution 2021-825 a call for bids was advertised for CB21-12 – Justice Center Entrance Security Upgrade Project. On December 16, 2021 two bids were received and opened in the amounts on the attached tabulation. Banlin Construction was the lowest bidder at $205,000.00. The Director of Operations and Capital Programs recommends award of the bid to Banlin Construction.

A contract will be brought back to the Board at a later date.

Fiscal Impact

Amount:	$165,000.00	&	$40,000.00
Fund:	Public Safety Tax Fund		Capital Projects Fund

Recommendation

It is recommended by the Director of Operations and Capital Programs that the Board concur and award the contract for CB21-12 – Justice Center Entrance Security Upgrade Project to Banlin Construction.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING CB21-12 – JUSTICE CENTER FRONT ENTRANCE SECURITY UPGRADE PROJECT TO BANLIN CONSTRUCTION, KENNEWICK, WASHINGTON

WHEREAS, per Resolution 2021-825 a bid call was scheduled for CB21-12 – Justice Center Front Entrance Security Upgrade Project; and

WHEREAS, two bids were received and opened on December 16, 2021, and are as set forth on the attached tabulation

Banlin Construction (BANLICL8818CB) Kennewick, Washington	$205,000.00
Vincent Brothers, LLP (VINCEBL930D6) Pasco, Washington	$298,161.00

WHEREAS, the Director of Operations and Capital Programs recommends award of the bid to Banlin Construction as the lowest bidder; **NOW, THEREFORE,**

BE IT RESOLVED the Board of County Commissioners concurs with the Director of Operations and Capital Programs' recommendation and awards the bid for CB21-12 – Justice Center Front Entrance Security Upgrade Project to Banlin Construction, Kennewick, Washington in the amount of $205,000.00; and

BE IT FURTHER RESOLVED the Board of Benton County Commissioners direct staff to prepare a contract with Banlin Construction to be brought back to the Board for approval at a later date.

Dated this 4th day of January, 2022.

_____
Chairman.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Procurement P. Schut

Opened December 16, 2021, 10:00 a.m.: Front Entrance Renovation				
Documents Received	**Vincent Brothers LLP**	**Banlin Construction**		
	Bidder 1	**Bidder 2**	**Bidder 3**	**Bidder 4**
Bid Proposal	**x**	**x**		
Addendums Acknowledged	**x**	**x**		
Bid Bond	**x**	**x**		
Bid Amount	**Bidder 1**	**Bidder 2**	**Bidder 3**	**Bidder 4**
Bid Amount	$298,161.00	$205,000.00		

Note: This bid comparison form represents to the best of our knowledge the items specified and approved. These tabulations do not constitute an award to the low bidder, an award letter will be emailed along with a contract, before January 25, 2022.

DOCUMENT 004113 - BID FORM - STIPULATED SUM (SINGLE-PRIME CONTRACT)

1.1 BID INFORMATION

A. Bidder: BANLIN Construction.

B. Project Name: BENTON COUNTY JUSTICE CENTER MAIN ENTRY RENOVATION

C. Project Location: 7122 W. Okanogan Place, Kennewick, Washington.

D. Owner: Benton County

E. Owner Project Number: CB21-12

F. Architect: Wave Design Group, Michael A. Corbin, AIA

G. Architect Project Number: 21-017.

1.2 CERTIFICATIONS AND BIDS

A. Base Bid, Single-Prime (All Trades) Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, Drawings, Specifications, and all subsequent Addenda, as prepared by Wave Design Group and Architect's consultants, having visited the site, and being familiar with all conditions and requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the construction of the above-named project, according to the requirements of the Procurement and Contracting Documents, for the stipulated sum of:

FRONT ENTRANCE RENOVATIONS

1. Two hundred and five thousand Dollars ($205,000). The above amount, which EXCLUDES WSST, may be modified by amounts indicated by the Bidder on the attached Document 004322 "Unit Prices Form" and Document 004323 "Alternates Form."

1.3 BID GUARANTEE

A. The undersigned Bidder agrees to execute a contract for this Work in the above amount and to furnish surety as specified within 10 days after a written Notice of Award, if offered within 60 days after receipt of bids, and on failure to do so agrees to forfeit to Owner the attached cashier's check, certified check, U.S. money order, or bid bond, as liquidated damages for such failure, in the following amount constituting five percent (5%) of the Bid amount above:

1. 5% of Bid Dollars ($5% of Bid).

B. In the event Owner does not offer Notice of Award within the time limits stated above, Owner will return to the undersigned the cashier's check, certified check, U.S. money order, or bid bond.

1.4 TIME OF COMPLETION

A. The undersigned Bidder proposes and agrees hereby to commence the Work of the Contract Documents on a date specified in a written Notice to Proceed to be issued by Architect, and shall fully complete the Work within scheduled to be determined between Owner and Contractor.

1.5 ACKNOWLEDGEMENT OF ADDENDA

A. The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:

1. Addendum No. 1, dated 11-22-2021.
2. Addendum No. 2, dated 11-22-2021.
3. Addendum No. 3, dated 12-2-2021.
4. Addendum No. 4, dated 12-7-2021.

1.6 BID SUPPLEMENTS

A. The following supplements are a part of this Bid Form and are attached hereto.

1. Bid Form Supplement - Bid Bond Form (AIA Document A310).

1.7 CONTRACTOR'S LICENSE

A. The undersigned further states that it is a duly licensed contractor, for the type of work proposed, in City of Kennewick, and that all fees, permits, etc., pursuant to submitting this proposal have been paid in full.

1.8 ASSURANCE OF NON DISCRIMINATION

A. 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.

1.9 NON COLLUSION DECLARATION

A. The undersigned hereby declares, under penalty of perjury under the laws of the United States that the following statements are 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.

1.10 CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

A. The undersigned 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 judgment entered by a court of limited or general jurisdiction.

1.11 REQUIRED PUBLIC WORKS TRAINING

A. The undersigned hereby certifies, per RCW 39.04.350 and RCW 39.06.020, the bidder has had L & I training or are they exempt from said public works training.

1.12 SUBMISSION OF BID

A. Respectfully submitted this 16th day of December, 2021.

B. Submitted By: BANLIN Construction (Name of bidding firm or corporation).

C. Authorized Signature: _____ (Handwritten signature).

D. Signed By: Jasen Banta (Type or print name).

E. Title: owner (Owner/Partner/President/Vice President).

F. Street Address: 320 W Columbia Dr.

G. City, State, Zip: Kennewick WA 99336.

H. Phone: 509-586-2000.

I. Email: Jasen@banlinconstruction.com.

J. License No.: BANLICL88186B.

K. UBI No.: 602 556 199.

L. Washington State Employment Security No.: 330072-003.

M. Federal ID No.: 90-0810742 (Affix Corporate Seal Here).

END OF DOCUMENT 004113

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:
(Name, legal status and address)
Banlin Construction, LLC
320 West Columbia Drive
Kennewick, WA 99336

SURETY:
(Name, legal status and principal place of business)
Liberty Mutual Insurance Company
835 N Post St., Suite 203
Spokane, WA 99201
Mailing Address for Notices
835 N Post St., Suite 203
Spokane, WA 99201

OWNER:
(Name, legal status and address)
Benton County

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND AMOUNT: Five Percent of Total Amount Bid (5%)

PROJECT:
(Name, location or address, and Project number, if any)
Benton County Justice Center Main Entry Renovation CB21-12

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 9th day of December, 2021

(Witness)

Banlin Construction, LLC
(Principal) *(Seal)*

By: Owner
(Title)

(Witness) Shelby L Foo, Witness

Liberty Mutual Insurance Company
(Surety) *(Seal)*

By:
(Title) Travis Long, Attorney-in-Fact

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8204945-985770**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alan M. Wolfson, Amy F. Cathey, Chris Larson, Craig Jones, Diana R. Williams, Erin L. Repp, H. Keith McNally, Laurie A. Stewart, Meggan Davenport, Natasha Geiser, Ryan J. Pugh, Scott Jones, Susan B. Green, Travis Long, Wm Dinneen

all of the city of Spokane state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 2nd day of March, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 2nd day of March, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 9th day of December, 2021.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

DOCUMENT 004113 - BID FORM - STIPULATED SUM (SINGLE-PRIME CONTRACT)

1.1 BID INFORMATION

A. Bidder: Vincent Brothers LLP

B. Project Name: BENTON COUNTY JUSTICE CENTER MAIN ENTRY RENOVATION

C. Project Location: 7122 W. Okanogan Place, Kennewick, Washington.

D. Owner: Benton County

E. Owner Project Number: CB21-12

F. Architect: Wave Design Group, Michael A. Corbin, AIA

G. Architect Project Number: 21-017.

1.2 CERTIFICATIONS AND BIDS

A. Base Bid, Single-Prime (All Trades) Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, Drawings, Specifications, and all subsequent Addenda, as prepared by Wave Design Group and Architect's consultants, having visited the site, and being familiar with all conditions and requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the construction of the above-named project, according to the requirements of the Procurement and Contracting Documents, for the stipulated sum of:

FRONT ENTRANCE RENOVATIONS

1. Two hundred ninety-eight thousand one hundred sixty-one Dollars ($ 298,161.00).
   The above amount, which EXCLUDES WSST, may be modified by amounts indicated by the Bidder on the attached Document 004322 "Unit Prices Form" and Document 004323 "Alternates Form."

1.3 BID GUARANTEE

A. The undersigned Bidder agrees to execute a contract for this Work in the above amount and to furnish surety as specified within 10 days after a written Notice of Award, if offered within 60 days after receipt of bids, and on failure to do so agrees to forfeit to Owner the attached cashier's check, certified check, U.S. money order, or bid bond, as liquidated damages for such failure, in the following amount constituting five percent (5%) of the Bid amount above:

1. Fourteen thousand, one hundred eight & 05/100 Dollars ($ 14,908.05).

B. In the event Owner does not offer Notice of Award within the time limits stated above, Owner will return to the undersigned the cashier's check, certified check, U.S. money order, or bid bond.

1.4 TIME OF COMPLETION

A. The undersigned Bidder proposes and agrees hereby to commence the Work of the Contract Documents on a date specified in a written Notice to Proceed to be issued by Architect, and shall fully complete the Work within scheduled to be determined between Owner and Contractor.

1.5 ACKNOWLEDGEMENT OF ADDENDA

A. The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:

1. Addendum No. 1, dated 11/22/2021.
2. Addendum No. 2, dated 11/23/2021.
3. Addendum No. 3, dated 12/2/2021.
4. Addendum No. 4, dated 12/7/2021.

1.6 BID SUPPLEMENTS

A. The following supplements are a part of this Bid Form and are attached hereto.

1. Bid Form Supplement - Bid Bond Form (AIA Document A310).

1.7 CONTRACTOR'S LICENSE

A. The undersigned further states that it is a duly licensed contractor, for the type of work proposed, in City of Kennewick, and that all fees, permits, etc., pursuant to submitting this proposal have been paid in full.

1.8 ASSURANCE OF NON DISCRIMINATION

A. 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.

1.9 NON COLLUSION DECLARATION

A. The undersigned hereby declares, under penalty of perjury under the laws of the United States that the following statements are 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.

1.10 CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

A. The undersigned 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 judgment entered by a court of limited or general jurisdiction.

1.11 REQUIRED PUBLIC WORKS TRAINING

A. The undersigned hereby certifies, per RCW 39.04.350 and RCW 39.06.020, the bidder has had L & I training or are they exempt from said public works training.

1.12 SUBMISSION OF BID

A. Respectfully submitted this 16th day of December 2021.

B. Submitted By: Vincent Brothers LLP (Name of bidding firm or corporation).

C. Authorized Signature: [signature] (Hand written signature).

D. Signed By: Drew Vincent, Nadene Vincent (Type or print name).

E. Title: partner (Owner/Partner/President/Vice President).

F. Street Address: 10401 N Glade Rd.

G. City, State, Zip: Pasco, WA 99301

H. Phone: 509-366-6214, 509-366-7442

I. Email: drew@thevincentbros.com

J. License No.: VINCEBL930D6

K. UBI No.: 602-701-699

L. Washington State Employment Security No.: 368646-00-3

M. Federal ID No.: 33-1117958 (Affix Corporate Seal Here).

END OF DOCUMENT 004113

THE CINCINNATI INSURANCE COMPANY

Bid Bond

CONTRACTOR (Name, legal status and address):

Vincent Brothers LLP
PO Box 4952
Pasco, WA 99302

OWNER (Name, legal status and address):

Benton County
7122 W Okanogan Place
Kennewick, WA 99336

BOND AMOUNT:

5% Five Percent of Amount Bid

SURETY (Name, legal status and principal place of business):

THE CINCINNATI INSURANCE COMPANY
6200 S. GILMORE ROAD
FAIRFIELD, OHIO 45014-5141

This document has important legal consequences, Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

PROJECT (Name, location or address, and Project number, if any): Benton County Justice Center Main Entry Renovation

Project Number, if any:

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond the sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 16th day of December, 2021

(Witness)

Vincent Brothers LLP
By:
(Principal) (Seal)
partner
(Title)

(Witness) Sandra Vergara, CSA

THE CINCINNATI INSURANCE COMPANY
By:
(Surety) (Seal)
Yesica Perez, Attorney-in-Fact
(Title)

The Cincinnati Insurance Company CORPORATE SEAL OHIO

The Company executing this bond vouches that this document conforms to American Institute of Architects Document **A310**, 2010 Edition.
S-2000-AIA (11/10) PUBLIC

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint **Yesica Perez** its true and legal Attorney-in-Fact to sign and deliver on behalf of the Companies as Surety, at any place within the United States, the following surety bond:

Surety Bond Number: Bid Bond
Principal: Vincent Brothers LLP
Obligee: Benton County

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Senior Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or any Senior Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Vice-President and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or any Senior Vice President this 16th day of March, 2021.

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

STATE OF OHIO)SS:
COUNTY OF BUTLER)

On this 16th day of March, 2021 before me came the above-named President or Senior Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.

Keith Collett, Attorney at Law
Notary Public – State of Ohio
My commission has no expiration date.
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Vice-President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 16th day of December , 2021 .

BN-1457-S (3/21)

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Authorization to purchase one (1) Crafco Supershot 250D Crack Seal machine from Arrow Construction Supply, Inc. utilizing Sourcewell Contract No. 080521-CFC
Presenter:	
Prepared By:	S. Christen
Reviewed By:	R. Blain, M. McGhan

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

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

Summary / Background Information

The Public Works Department has decided the yearly crack seal project will be completed by County forces and not by contract. Benton County does not have a crack seal machine in their fleet, so one needs to be purchased. Staff checked the Department of Enterprise Services (State Contract) and the cooperative purchasing groups, that the County is a member of, to see if a crack seal machine was available on an existing contract. The only contract that was found was through Sourcewell.

Sourcewell's Contract No. 080521-CFC offers the Crafco Supershot 250D from Crafco, Inc. Arrow Construction Supply, Inc. is the authorized dealer for Crafco equipment in this area. A quote was solicited from Arrow Construction Supply in the amount of $91,095.44 plus freight and WSST.

A Purchase Agreement has been prepared, approved by our Deputy Prosecting Attorney and signed by Arrow.

The equipment will be purchased from the Road Fund and per the ER&R Fund Policy will be placed in the ER&R replacement program.

Fiscal Impact

Amount: Not to exceed $105,000.00 including WSST

Fund: Road Fund (0101101)

Recommendation

Approve the purchase of one (1) Crafco Supershot 250D Crack Seal machine from Arrow Construction Supply, Inc. under Sourcewell Contract No. 080521-CFC and authorize the Chairman to sign the Purchase 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 ONE (1) CRAFCO SUPERSHOT 250D CRACK SEAL MACHINE FROM ARROW CONSTRUCTION SUPPLY, INC. UTILIZING SOURCEWELL CONTRACT NO. 080521-CFC BY THE BENTON COUNTY ROAD FUND

WHEREAS, by Resolution 2020-504 dated July 28, 2020, an Agreement for Cooperative Purchasing between Benton County and Sourcewell was approved; and

WHEREAS, Crafco, Inc. allows the purchase of their road maintenance equipment under Sourcewell Contract No. 080521-CFC through Arrow Construction Supply, Inc., our area authorized Crafco dealer; and

WHEREAS, the Public Works Department has need for a crack seal machine to complete the yearly crack seal project and Benton County does not have a crack seal machine in their fleet; and

WHEREAS, the Fleet Manager has received a quote from Arrow Construction Supply, Inc., utilizing the Sourcewell Contract, for one (1) Crafco Supershot 250D Crack Seal machine, in the amount of $91,095.44 plus freight and Washington State Sales Tax; and

WHEREAS, a Purchase Agreement has been prepared, approved by our Deputy Prosecuting Attorney, and signed by Arrow Construction Supply, Inc.; and

WHEREAS, the Fleet Manager recommends purchasing the above equipment to fulfill the needs of the Public Works Department and placing it in the ER&R replacement program; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with the Fleet Manager's recommendation and approves the purchase of one (1) Crafco Supershot 250D Crack Seal machine with the total not to exceed $105,000.00 including freight and Washington State Sales Tax, utilizing Sourcewell Contract No. 080521-CFC from Arrow Construction Supply, Inc., and authorizes the Chairman to sign the attached Purchase Agreement; and

BE IT FURTHER RESOLVED, the equipment will be purchased for the Public Works Department's use with funds from the Road Fund, and per the ER&R Fund Policy (Resolution 2019-927) will be placed in the ER&R replacement program.

Dated this 4th day of January, 2022.

_____
Chairman of the Board

_____
Chairman ProTem

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

Attest _____
Clerk of the Board

Original: Purchasing Dept.
cc: Auditor

S. Christen

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: Arrow Construction Supply, Inc.
Vendor Code: 116766
Vendor Contact: Heath Nave
Vendor Contact Phone: 509-435-1421 heath@asphaltsupply.net
Vendor Principal Place of Business: 9915 E. Trent Ave., Spokane, WA 99206

Ship To:	Bill To:
Attn: Michael McGhan	Attn: Michael McGhan
Benton County Maintenance Facility	Benton County ER&R
102808 Wiser Parkway	102808 Wiser Parkway
Kennewick, WA 99338	Kennewick, WA 99338
509-539-4769	509-539-4769

AGREEMENT:
In exchange for the consideration identified herein, the Vendor agrees to provide the following to Benton County under the terms described.

Date: _____

		Est Qty	Unit Price	Total Price
	Sourcewell Contract No. 080521-CFC - Crafco Roadway			
	Maintenance Equipment			
1	47900N Crafco Supershot 250D w/100CFM Compressor	1		91,095.44
	plus options per the attached quote dated 11/8/2021			
2	Freight			2,000.00

Payment is due by the County to Vendor within 30 days of delivery and the paperwork required pursuant to Sourcewell Contract #080521-CFC. Payment will be made to: Arrow Construction Supply, Inc., P. O. Box 11133, Spokane, WA 99211-1133.

	-
SUB TOTAL =	$ 93,095.44
SALES TAX =	7,447.63
TOTAL ORDER =	$ 100,543.07

This purchase agreement incorporates by reference all terms and conditions issued off the Sourcewell Contract No. 080521-CFC between Sourcewell and Crafco, Inc., with Arrow Construction Supply, Inc. being the authorized dealer.

Vendor signature on this purchase agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms.

In case of conflict, the order of precedence is:
1. Sourcewell Contract No. 080521-CFC
2. This Purchase Agreement

Questions and Clarifications should be Addressed to Buyer Contact:

Contact: Michael McGhan
Address: 102808 Wiser Parkway
Kennewick, WA 99338
Phone: 509-539-4769
Email michael.mcghan@co.benton.wa.us

Approved as to Form

_____

Reid Hay, Civil Deputy Prosecuting Attorney

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 agreements(s) for all purposes.

Vendor Name (Print): Heath Nave Title: Rental Manager Date: 12-21-2021

Vendor Signature: _____

Chairman
Benton County
Board of Commissioners: _____ Date: _____
Jerome Delvin, Chairman

SOURCEWELL PRICING WORKSHEET Contract #080521-CFC

DATE: 12/13/2021

PURCHASING AGENCY	CONTRACTOR	AUTHORIZED DISTRIBUTOR
Benton County	Crafco, Inc.	Arrow Construction Supply Inc.
Mike Meghan	Angie Hoaglin	Heath Nave
509-539-4769	602-276-0406	509-435-1421
FAX:	480-961-0513	FAX:
michael.meghan@co.benton.wa.us	angie.hoaglin@crafco.com	heath@asphaltsupply.net

Benton County 102808 Wiser Parkway Kennewick WA 99338

EQUIPMENT PART #/DESCRIPTION:		Discounted Contract Price
Part Number	Description	Price
47900N	Crafco Supershot 250D w/ 100CFM Compressor	$ 82,170.00

EQUIPMENT OPTIONS: (Listed in Contract)

Price for options requiring mutiple units please list the total price not the each price.

QTY/Part #/Description	Price	QTY/Part #/Description	Price
20014 3" Pintle hitch	$ 114.24	48120N Engine Cover	$2,440.00
24227 7 Pin Round Blade Connector		45650 Heat Lance	$2,382.40
20120 18" Hitch Extension	$ 496.00		$ -
26098 Fender Mounted Tool box	$ 76.80		$ -
26119 3/8" Safety Hook 2 Each	$ 104.00		$ -
43549 Spare Tire Kit	$ 296.00		$ -
24190K Overnight Heaters 2 each	$ 576.00		$ -
24508S Class 1 Strobe & Arrow Bar	$ 2,440.00		$ -
			Subtotal: $ 8,925.44

UNPUBLISHED OPTIONS: (Items not shown it the Contract Price List)

Price for options requiring mutiple units please list the total price not the each price.

QTY/Part #/Description	Price	QTY/Part #/Description	Price
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
	$ -		$ -
			Subtotal: $ -
	QUANTITY	1	Equipment Total: $ 91,095.44

MATERIALS: (Listed in Contract Price list)

Part #/Description	Units	Price/unit	TOTAL
		$ -	$ -
		$ -	$ -
		$ -	$ -
			Material Total: $ -

TRADE-INS/DISC./FREIGHT/TAX

Description	Price	Description	Price
Factory Freight	$ 2,000.0000		$ -
Plus Applicable Sales Tax 8%	$ 7,447.6300		$ -
	$ -		$ -
			Subtotal $ 9,447.6300
			TOTAL: $ 100,543.0700

Crafco Approval By: Date: 12/14/2021

Angie Hoaglin

Not Valid Without Approval

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 125

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Katie Gillies

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Sheriff Traffic Control Dept Nbr: 125

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: **Dept. 125** TRANSFER TO: **Dept.** 125

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.700	1919	Deputy	$25,000	521.700	1925	Overtime	$25,000
TOTAL			$25,000	TOTAL			$25,000

Explanation:

Moving Funds from deputy line to cover current excess in overtime due to staffing shortages in 2021, homicides, SWAT and SIU Investigations.

Prepared by: Katie Gillies Date: 12/14/21

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Amending the 2022-2027 Six Year Road Program
Presenter:	Douglas D'Hondt
Prepared By:	Jeff Liner
Reviewed By:	Shannon Christen

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:

- ☐ Discussion Only (1st)
- ☐ Discussion Only (2nd)
- ☐ Decision/Direction
- ☐ Sign Letter/Document
- ☐ Pass Motion
- ☒ Pass Resolution
- ☐ Pass Ordinance
- ☐ Execute Contract

Summary / Background Information

Resolution 2021-609 approved the 2022-2027 Six-Year Road Program. Additional funding has been secured for a Countywide Safety Improvement Project. This Project must be amended to the 2022-2027 Six Year Road Program with Construction scheduled for 2022. A public hearing will be held on January 4, 2022 to hear testimony. If no opposition is brought forth during the public hearing, the amendment of the 2022-2027 Six-Year Road Program to include the Countywide Safety Improvements Project needs to be approved by the Board.

Fiscal Impact

Amount: $533,000.00
Fund: Road Fund

Recommendation

After closing the public hearing with no opposition brought forth, approve the amendment of the 2022-2027 Six-Year Road Program.

Suggested Motion

Move to amend the 2022-2027 Six Year Road Program to include the Countywide Safety Improvements Project.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: APPROVING THE AMENDMENT OF THE 2022 - 2027 SIX-YEAR ROAD PROGRAM TO INCLUDE THE COUNTYWIDE SAFETY IMPROVEMENTS PROJECT

WHEREAS, RCW 36.81.121 requires development of perpetual advanced six-year plans for coordinated transportation; and

WHEREAS, Resolution 2021-609 approved the 2022-2027 Six-Year Road Program; and

WHEREAS, additional funding for the Countywide Safety Improvements Project was secured; and

WHEREAS, said project was not on the 2022-2027 Six-Year Road Program; and

WHEREAS, construction for the Countywide Safety Improvements Project will occur in year 2022; and

WHEREAS, a public hearing was held on January 4, 2022 and no opposition was brought forth; and

WHEREAS, the County Engineer recommends an amendment to the 2022 – 2027 Six-Year Road Program to include the Countywide Safety Improvements Project; **NOW, THEREFORE,**

BE IT RESOLVED the 2022 – 2027 Six-Year Road Program is hereby amended to include the Countywide Safety Improvements Project.

Dated this 4th day of January, 2022.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest_____
Clerk of the Board

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

Orig.: Public Works

J. Liner

BENTON COUNTY ROAD DEPARTMENT
2022-2027 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM

016

Countywide Safety Improvements

Countywide

Description and Scope

Dallas Road and Kennedy Road have a need for Guardrail because of roadside slopes being steeper than 4 to 1. Kennedy Road additionally has a need for guideposts to improve safety. Signage, pavement markings, and transverse rumble strips will also be added to intersections throughout 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	$ 533,000.00	$ 533,000.00					
			$ -						
			$ -						
		TOTAL	$ 533,000.00	$ 533,000.00	$ -	$ -	$ -	$ -	$ -

FUND DISTRUBUTION		TOTAL ESTIMATED PROJECT COSTS	EXPENDITURES 2022-2023		2024-2025		2026-2027	
Preliminary Engineering		$ 167,000.00	$ 167,000.00					
Right of Way		$ -						
Construction/Service Cost		$ 366,000.00	$ 366,000.00					
	TOTAL	$ 533,000.00	$ 533,000.00	$ -	$ -	$ -	$ -	$ -

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Accept Siefken & Sons Construction, Inc.'s Moderate Risk Waste Facility project bid withdrawal and award contract to Booth and Sons Construction, Inc.
Presenter:	R. Blain and D. D'Hondt
Prepared By:	S. Christen
Reviewed By:	D. D'Hondt, R. Blain

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*
Reviewed and discussed with PA over several telephone calls, but no signature.

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

Summary / Background Information

Per Resolution 2021-743 a call for bids was advertised for CB21-07 – Moderate Risk Waste Facility project. On November 19, 2021 three bids were received and opened. Siefken & Sons Construction, Inc. was the lowest bidder at $1,000,000.00 for the Base Bid and Alternate B – the removal of the equipment storage shed.

Siefken & Sons was awarded the bid on December 7, 2021 per Resolution 2021-863. Since then, Siefken & Sons has found a bidding error that negatively affects them. The amount is too great for them to proceed with the project and have asked to have their bid withdrawn. See attached letter.

Our Deputy Prosecuting Attorney has reviewed and approved accepting Siefken & Sons request to have their bid withdrawn, relinquishing their bid bond and awarding to the second lowest bidder – Booth and Sons Construction, Inc. at $1,059,700.00.

The Chairman of the Board needs to sign the letter to Siefken & Sons accepting their bid withdrawal. A contract with Booth and Sons will be brought back to the Board at a later date.

Fiscal Impact

Amount: $1,059,700.00
Fund: Solid Waste Fund

Recommendation

It is recommended by the County Engineer that the Board concur and accept Siefken's request to have their bid withdrawn, relinquish their bid bond and award the contract for CB21-07 – Moderate Risk Waste Facility project to Booth and Sons Construction, Inc. Also approve the Chairman to sign the letter to Siefken & Sons.

Suggested Motion

I move to accept Siefken & Sons Construction, Inc.'s request to have their bid withdrawn, relinquish their bid bond and award the Moderate Risk Waste Facility project to Booth and Sons Construction, Inc. for $1,059,700.00. The Chairman is approved to sign the letter to Siefken & Sons Construction, Inc. accepting their request to withdraw their bid.

Siefken & Sons
CONSTRUCTION, INC.

December 20, 2021

Benton County Public Works Department
ATTN: Robert Blain
P.O. Box 1001
Prosser, WA 99350

RE: Benton County Moderate Risk Waste Facility – Bid Withdrawal

Dear Robert,

First of all we would like to thank you for the opportunity to work with you on the Moderate Risk Waste Facility project. We were excited to hear the news of being awarded the project and beginning the new year with this on the horizon. Unfortunately, as we were going through the process of getting all of our subcontracts in place, we discovered an error on our bid spreadsheet. As we mentioned previously, this error was in transposing numbers from one of our biggest subcontractors, and this error had a negative impact of $47,091 to our overall bid amount. This amount is just too great for us to proceed with this project.

Per our phone conversation, we would like to officially withdraw our bid. We apologize for our mistake, and any inconvenience this may cause. This is the first time in the history of our company that we have had to do this, and it is a decision that we do not take lightly.

Again, we thank you for the opportunity, and we hope to work with you on future projects.

Sincerely,

Jeffrey G. Siefken
President

•1305 Mansfield, Suite 1, Richland, WA 99352 •Phone (509) 946-6500 / Fax (509) 946-6506
•GENERAL CONTRACTOR: SIEFKSC198MZ •e-mail: office@siefkensons.com

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING CB21-07 – MODERATE RISK WASTE FACILITY PROJECT TO BOOTH AND SONS CONSTRUCTION, INC., RICHLAND, WASHINGTON

WHEREAS, per Resolution 2021-743 a bid call was scheduled for CB21-07 – Moderate Risk Waste Facility project and three bids were received and opened on November 19, 2021; and

WHEREAS, Siefken & Sons Construction, Inc., being the lowest bidder, was awarded the bid on December 7, 2021 per Resolution 2021-863; and

WHEREAS, due to a bidding error found by Siefken & Sons, they have asked to withdraw their bid, and the remaining two bids are as follows:

Booth and Sons Construction, Inc., Richland, WA (BOOTHSC994NB)	$1,056,700.00
Alternate B – Removal of equipment storage shed	$ 3,000.00
Banlin Construction, Kennewick, WA (BANLICL8818CB)	$1,094,874.00
Alternate B – Removal of equipment storage shed	$ 1,050.00

WHEREAS, the County Engineer recommends the acceptance of Siefken & Sons Construction, Inc.'s request to withdraw their bid and relinquish interest in Siefken & Sons Construction, Inc.'s bid bond; and

WHEREAS, the County Engineer further recommends award of the Base Bid and Alternate B to Booth and Sons Construction, Inc. as the lowest responsible bidder with a total bid of $1,059,700.00; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of County Commissioners concurs with the County Engineer's recommendation and accepts Siefken & Sons Construction, Inc.'s request to withdraw their bid and shall relinquish interest in their bid bond; and

BE IT FURTHER RESOLVED, the Chairman is approved to sign the letter to Siefken & Sons Construction, Inc. accepting their request to withdraw their bid; and

BE IT FURTHER RESOLVED, the Board of County Commissioners concurs with the County Engineer's recommendation and awards the bid for CB21-07 – Moderate Risk Waste Facility project (Base Bid plus Alternate B) to Booth and Sons Construction, Inc., Richland, Washington in the amount of $1,059,700.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners direct staff to prepare a contract with Booth and Sons Construction, Inc. to be brought back to the Board for approval at a later date.

Dated this 4th day of January 2022.

_____
Chairman.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Dept. S. Christen
Procurement

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

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

January 4, 2022

Jeffrey Siefken, President
Siefken & Sons Construction, Inc.
1305 Mansfield St., Suite 1
Richland, WA 99352

RE: Moderate Risk Waste Facility Project

Dear Mr. Siefken:

Benton County appreciates your organization's interest in and bid for the Moderate Risk Waste Facility project. We have received your letter requesting to withdraw your bid from the project.

It is with great disappointment that we learned about the bidding error you discovered after our award of the project. We understand the situation and agree to allow you to withdraw your bid. After considering the circumstances, Benton County will also release your bid bond.

We encourage you to continue to consider bidding on future Benton County projects.

Respectfully,

Shon Small
Chairman of the Board
Benton County Commissioners

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 4, 2022
Subject:	Commissioner Board Assignments
Presenter:	
Prepared By:	M Flores
Reviewed By:	Administration

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

Commissioners will be discussing their organizational assignments for 2022.

Changes being made are as follows:

- Chairman ~ Commissioner Small
- Chairman Pro Tem ~ Commissioner McKay
- Solid Waste Advisory Committee ~ Matt Mahoney as Alternate (leaving Commissioner McKay as primary)

Fiscal Impact

na

Recommendation

Commissioners review their 2022 organizational assignments with the following recommendations:

- Chairman ~ Commissioner Small
- Chairman Pro Tem ~ Commissioner McKay
- Solid Waste Advisory Committee ~ Matt Mahoney as Alternate (leaving Commissioner McKay as primary)

Suggested Motion

Move to approve the Resolution for the Organization of the Benton County Commissioners for the Year 2022, as amended.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ORGANIZATION OF BENTON COUNTY COMMISSIONERS FOR THE YEAR 2022; RESCINDING RESOLUTION 2021-662

NOW, THEREFORE, BE IT HEREBY RESOLVED that the following constitutes the organization of the Benton County Commissioners and staff for the Year 2022 effective upon execution of this resolution.

CHAIRMAN OF THE BOARD ..... Shon Small

CHAIRMAN PRO TEM ..... Will McKay

COUNTY ADMINISTRATOR ..... Jerrod MacPherson

CLERK OF THE BOARD ..... Cami McKenzie
..... Marilu Flores, Alt.

BENTON COUNTY ENGINEER ..... Douglas D'Hondt, PE

BENTON COUNTY PEST BOARD SUPERINTENDENT ..... Frank Wolf

BENTON COUNTY PURCHASING AGENT ..... Robert Blain

BENTON COUNTY WSU EXTENSION DIRECTOR ..... Gwen-Alyn Hoheisel

ACCESSIBLE COMMUNITIES ADVISORY COMMITTEE ..... Brenda Chilton
..... Shyanne Palmus

BI-PIN ..... Jerrod MacPherson
Matt Rasmussen, Alt.

BENTON-FRANKLIN REGIONAL REVOLVING LOAN FUND BOARD ..... Will McKay
..... Jerome Delvin, Alt.

BEN FRANKLIN TRANSIT BOARD ..... Will McKay
..... Shon Small, Alt.

BENTON CITY LIBRARY CAPITAL FACILITIES AREA BOARD ..... Jerome Delvin
..... Shon Small
..... Will McKay

BENTON CLEAN AIR AUTHORITY ..... Will McKay
..... Jerome Delvin, Alt.

BENTON COUNTY EMERGENCY SERVICES BOARD.....Jerome Delvin
.....Matt Rasmussen, Alt.

BENTON COUNTY FINANCE COMMITTEE (rotate w/chair) .....Shon Small

BENTON COUNTY HISTORICAL PRESERVATION COMMITTEE.....Shyanne Palmus

BENTON COUNTY LEOFF DISABILITY BOARD.....Shon Small

BENTON-FRANKLIN COUNCIL OF GOVERNMENTS ..... Will McKay
.....Shon Small, Alt.

BENTON-FRANKLIN LAW LIBRARY BOARD.....Jerome Delvin

BI-COUNTY HEALTH BOARD .....Shon Small
Jerome Delvin
Will McKay

COLUMBIA REGIONAL ECONOMIC DEVELOPMENT TRUST (CREDIT) ..... Will McKay

ENERGY COMMUNITIES ALLIANCE.....Jerome Delvin
..... Adam Fyall, Alt.

GREATER COLUMBIA BEHAVIORAL HEALTH (ASO).....Shon Small
Kyle Sullivan, Alt.

HANFORD ADVISORY BOARD .....Bob Suyama
..... Pam Larsen, Alt.

HANFORD AREA ECONOMIC INVESTMENT FUND COMMITTEE…. ..... Will McKay

HANFORD COMMUNITIES..... Governing Board – Jerome Delvin
.....Administrative Board – Adam Fyall

HOMELESS HOUSING..... Kyle Sullivan

HUMAN SERVICES ADMINISTRATOR..... Kyle Sullivan

METRO ..... Will McKay
.....Matt Rasmussen, Alt.

NATIONAL ASSOCIATION OF COUNTIES (NACo).....Jerome Delvin

PARK BOARD ..... Adam Fyall

PROSSER ECONOMIC DEVELOPMENT ASSOCIATION (ex-officio).....Shon Small

SOLID WASTE ADVISORY COMMITTEE ..... Will McKay
Matt Mahoney, Alt.

TRI-CITIES RIVERSHORE ENHANCEMENT COMMITTEE (TREC)
..... Strategic Committee – Adam Fyall
..... Technical Committee – Shyanne Palmus

TRI-CITY REGIONAL CHAMBER OF COMMERCE (ex-officio) ..... Will McKay

TRI-CITY VISITOR & CONVENTION BUREAU..... Will McKay

TRI-COUNTY METROPOLITAN TRANSPORTATION.....Jerome Delvin
Will McKay, Alt.

TRIDEC..... Will McKay
Jerome Delvin, Alt.

WASHINGTON COUNTIES INSURANCE FUND.....Jerome Delvin
Lexi Wingfield, Alt.

WASHINGTON STATE ASSOCIATION OF COUNTIES (WSAC)
Legislative Steering Committee (LSC) TRANSPORTATION ASSOCIATION.....Jerome Delvin
Board of Directors ..... Will McKay
.....Jerome Delvin, Alt.
Columbia River Caucus.....Jerome Delvin

WEST RICHLAND AREA CHAMBER OF COMMERCE.....Jerome Delvin

WORKFORCE DEVELOPMENT COUNCIL..... Will McKay
Shon Small, Alt.

YAKIMA FISH & WILDLIFE RECOVERY BOARD ..... Will McKay
Adam Fyall, Alt.

YAKIMA BASIN INTEGRATED PLAN..... Will McKay
Adam Fyall, Alt.

Dated this _____ day of January, 2022.

_____
Chairman

ATTEST:

_____
Chairman Pro-Tem

_____
Clerk of the Board

_____
Member
Constituting the Board of
Benton County Commissioners

cc: BOCC; Admin; website