

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 11, 2022
Benton County Courthouse, Prosser, WA

9:00 AM Call to Order

Pledge of Allegiance

Approval of Minutes

❖ **January 4, 2022**

Review Agenda

Consent Agenda

Human Resources

- a. 2022 Bi-County General Increase of Wages for Juvenile Justice & Superior Court
- b. 2022 General Increase of Wages for Non-Bargaining, Managers and Administrators

Human Services

- c. First Amended Agreement w/Elijah Family Homes for the Five-Year Homeless Housing Plan
- Juvenile**

- d. Contract w/Tri-Cities Chaplaincy for Chaplain Services
- e. Interagency Agreement w/WA State Administrative Office of the Courts for Interpreter Funding

Office of Public Defense

- f. Superior Court Public Defense Agreement w/Angel Betancourt for “Blake” Case Vacations & Resentencing

Public Works

- g. Interlocal Agreement w/City of Kennewick for Road Maintenance in Dove Ridge Subdivision
- h. Interlocal Agreement w/City of Kennewick for Road Maintenance in Highland Vineyards Phase 1 & Phase 2 Subdivision

Purchasing

- i. Purchase of Bulk Diesel Fuel From Christensen, Inc.
- j. Contract w/Superior Tree Service for Tree Trimming @ the Fairgrounds & Prosser Courthouse
- k. Accepting Work Performed by Apollo Mechanical Contractors for Jail Boiler Replacement Project
- l. Contract w/CP Mechanical for the Replacement of Jail Condensing Units
- m. Contract w/Knutzen Consulting Engineering for Engineering & Design Services for New Red Mountain Radio Tower Site Access Road

Risk Management

- n. Appointing PayneWest Insurance as the Broker/Agent of Record for Insurance Policies and/or Bonds

Superior Court

- o. Line Item Transfer, Fund No. 0000-101, Dept. 123

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

Scheduled Business

Request to Waive Service Time Prior to Utilizing Annual Leave for OPD Employee ~ L Wingfield & E Hsu

Prohibition of Local Income Tax on Certain Income Sources ~ Commissioner McKay

Other Business

Executive Session

Pending Litigation ~ R Brown

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, January 4, 2022, 9:00 a.m.

Meeting provided in-person, by Video Live-Broadcast and Telephonically

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

Benton County Employees Present During All or a Portion of the Meeting: Deputy County Administrator Matt Rasmussen; Robert Heard, IT Manager; Lexi Wingfield, HR Manager; Greg Wendt, Community Development Director; Robert Blain, Operations & Capital Programs; County Engineer Doug D'Hondt; Clerk Josie Delvin; Adam Morasch, Risk Manager; Treasurer Ken Spencer; Matt Mahoney, Operations Manager.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of December 21, 2021 were approved.

Agenda Review

The following items were added to the agenda:

- Purchase from Envirotech
- Walla Walla Interlocal Agreement
- Update to Benton County Safe Reopening Plan
- Executive Session - Review Performance of Public Employee
- Executive Session – Review Qualifications of Applicant for Public Employment

Consent Agenda

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

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

Board Organization – Year 2022

The Board discussed the proposed organization for 2022, appointing Commissioner Small as Chairman, Commissioner McKay as Chairman Pro Tem, and adding Matt Mahoney to the Solid Waste Advisory Committee as an alternate.

MOTION: Commissioner McKay moved to approve the resolution for the Board Organization for Year 2022 as presented. Commissioner Small seconded and upon vote, the motion carried.

Commissioner Small proceeded to Chair the remainder of the meeting.

Public Comment

None.

Public Hearing – Amending the 2022-2027 Six-Year Road Program

County Engineer Douglas D'Hondt presented the resolution for approval of the Amendment to the 2022-2027 Six-Year Road Program. Additional federal funding in the amount of \$533,000.00 was secured for the Countywide Safety Improvement Project since the approval of the previous program. The money was going to be used for guardrails on specific roads, markers, etc.

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

MOTION: Commissioner McKay moved to Amend the 2022-2027 Six-Year Road Program to include the Countywide Safety Improvements Project as presented. Commissioner Delvin seconded and upon vote, the motion carried.

Scheduled Business

Acceptance of Bid - Moderate Risk Waste Facility

Doug D'Hondt and Robert Blain presented a resolution accepting a bid for the Moderate Risk Waste Facility. The resolution accepted the seconded lowest bidder and allowed them to release the bond for the first bidder. Siefken & Sons was awarded the bid on December 7, 2021 in the amount of \$1,000,000.00 and since that time, found a bidding error with an amount too great for them to proceed with the project and requested to have their bid withdrawn. Booth & Sons was the second lowest bidder in the amount of \$1,059,700.00.

MOTION: Commissioner Delvin moved 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. Commissioner McKay seconded and upon vote, the motion carried.

Other Business

EnviroTech Services Contract

Doug D'Hondt said there was a supply issue for road salt with the regular vendor and delivery would be 21 days versus 5 days with EnviroTech. Their current supply was gone and with the weather, the Road Department needed to contract with an additional vendor.

MOTION: Commissioner Delvin moved to approve the purchase of road salt from EnviroTech Services, Inc. through the use of the Washington State Master Contract Usage Agreement from

January 1 through May 31, 2022 in an amount not to exceed \$50,000 and the Chairman is approved to sign the Purchase Agreement. Commissioner McKay seconded.

Discussion

Commissioner McKay asked why this was now an emergency, and not dealt with back in November before it became an emergency.

Mr. D'Hondt said it was pre-planned, but they were running out of space to store the material and with the recent weather, the supply was very low.

Upon vote, the motion carried unanimously.

Interlocal Cooperation Agreement with Walla Walla County

Mr. D'Hondt said they had been working on this contract for months but now Walla Walla County was in dire need of using Benton County's snow blower, which is why the item was moved up for approval.

MOTION: Commissioner McKay moved to approve the Interlocal Cooperation Agreement with Walla Walla County for purchasing, sales and providing equipment and services. Commissioner Delvin seconded and upon vote, the motion carried.

Mr. D'Hondt introduced Matt Mahoney, the new Operations Manager for Public Works. He said he worked 32 years at Franklin County.

Update to Benton County Safe Reopening Plan

Adam Morasch requested the Board approve the update to the Benton County Safe Reopening to mirror the State's language and change the isolation/quarantine period from 10 days to 5 days,

MOTION: Commissioner McKay moved to approve the 4th Amendment to the Benton County Roadmap to Recovery Reopening Guide as presented. Commissioner Delvin seconded and upon vote, the motion carried.

Local Income Tax Proposal

Commissioner McKay discussed the proposed local income tax and requested the Board issue a proclamation stating Benton County was opposed to income tax. The Board agreed and Commissioner McKay said he would work with Admin to have it on the agenda.

Masking/Vaccination Mandates in Schools

Commissioner McKay said he was meeting with local residents and school board members regarding the State School Superintendent's proposal for masking and vaccination requirements for children. He said he would keep the Board informed.

Executive Session – Review Performance of Public Employee

The Board went into executive session at 9:24 a.m. for up to 10 minutes with HR Manager Lexi Wingfield to review the performance of a public employee. Also present were Jerrod MacPherson, Matt Rasmussen, and Cami McKenzie.

The Board came out at 9:34 a.m. No decisions were made in executive session.

MOTION: Commissioner Delvin moved to authorize the Chair to sign the separation and release agreement with Scott Souza as presented. Commissioner McKay seconded and upon vote, the motion carried.

Executive Session – Review Qualifications of Applicant for Public Employment

The Board went into executive session at 9:35 a.m. for up to 15 minutes with Lexi Wingfield to review the qualifications of an applicant for public employment. Also present were Jerrod MacPherson, Matt Rasmussen, and Cami McKenzie. Lt. Robert Guerrero was present via/teleconference.

The Board came out at 9:49 a.m. No decisions were made in executive session.

MOTION: Commissioner Delvin moved to approve the Employment Agreement with Robert Guerrero to be Interim Chief of Corrections and transfer funds to create an Interim Chief of Corrections. Commissioner McKay seconded and upon vote, the motion carried.

Tort Claim

CC 2021-34: Received December 27, 2021 from Michael Alan Jackson Ham

Accounts Payable

Check Date: 12/17/2021

Warrants #: 224929-225257
Total all funds: \$3,138,353.38

EFT's #: 2065-2068
Transfers #: 12172101-12172107
Total all funds: \$317,062.87

Check Date: 12/22/2021

Warrants #: 225315-225919
Total all funds: \$865,514.50

EFT's #: 2069-2074
Transfers #: 12222101-12222103
Total all funds: \$47,542.87

Check Date: 12/30/2021

Warrants #: 225987-226136
Total all funds: \$2,139,101.04

EFT's #: 2075-2099
Transfers #: 12302101-12302104
Total all funds: \$510,321.10

Resolutions

2022-001: Appointment of Randall Bricker to the Kiona Irrigation District
2022-002: Re-appointment of Cynthia Gray to the Benton County Mosquito Control Board
2022-003: Fourth Amended Contract w/WA State Health Care Authority for Community Prevention Wellness Initiative Services
2022-004: Contract w/Regional Toxicology Services for Urinalysis Testing
2022-005: Contract w/Roto-Rooter Plumbing for Plumbing Services
2022-006: Juvenile Court Public Defense Agreement w/Susan Henwood
2022-007: Juvenile Court Public Defense Agreement w/Branden Landon
2022-008: Juvenile Court Public Defense Agreement w/Diana Anderson
2022-009: Juvenile Court Public Defense Agreement w/Kathleen Moreno
2022-010: Juvenile Court Public Defense Agreement w/Michelle Trombley
2022-011: Amended Superior Court Public Defense Agreement w/Michelle Alexander
2022-012: Early Termination Notice of District Court Public Defense Agreement w/Rebecca Lemons
2022-013: Early Termination Notice of Superior Court Public Defense Agreement w/Jennifer Azure
2022-014: Early Termination Notice of Superior Court Public Defense Agreement w/Jennifer Azure for Uniform Guardianship Act Cases
2022-015: Early Termination Notice of Juvenile Court Public Defense Agreement w/Jennifer Azure
2022-016: Appointment of Lorna Zaback to Benton County Planning Commission, District 3
2022-017: Line Item Transfer, Fund No. 0148-101, Dept. 115 to 136
2022-018: Line Item Transfer, Fund No. 0148-101, Dept. 121
2022-019: Agreement w/Ideal Option for Medicated Assisted Opioid Treatment Networks Within the Jail
2022-020: Contract Award to Apollo Mechanical Contractors for Courtroom IT HVAC Project
2022-021: Contract Award to Banlin Construction of Justice Center Front Entrance Security Upgrade Project
2022-022: Purchase of Crack Seal Machine From Arrow Construction Supply for Public Works Dept.

- 2022-023: Line Item Transfer, Fund No. 0000-101, Dept. 125
2022-024: Organization of Benton County Commissioners for the Year 2022
2022-025: Approving the Amendment to the 2022-2027 Six-Year Road Program
2022-026: Awarding CB 21-07 – Moderate Risk Waste Facility Project to Booth and Sons Construction, Inc.
2022-027: Purchase of Road Sale from Envirotech Services, Inc.
2022-028: Interlocal Cooperation Agreement Between Benton County and Walla Walla County
2022-029: Amending the Benton County Roadmap to Recovery Reopening Guide for Benton County Facilities
2022-030: Authorizing the Chairman of the Board to sign the Separation and Release Agreement Between Benton County and Scott Souza
2022-031: Authorizing the Chairman of the Board to sign the Employment Agreement for Robert Guerrero to be Interim Chief of Corrections and Transfer of Funds – Current Expense Fund 0000-101, Dept. 120

There being no further business before the Board, the meeting adjourned at approximately 9:50 a.m.

Clerk of the Board

Chairman

COMMISSIONERS' AGENDA ACTIONSHEET

Meeting Date:	January 11, 2022		
Subject:	Providing a Bi-County Non-Bargaining Juvenile Justice and Superior Court general increase of wages for the year 2022.		
Presenter:	L. Wingfield		
Prepared By:	D. Campos		
Reviewed By:	L. Wingfield		
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A <i>(If no, include reasoning for no approval)</i>		
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>		
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document		☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract

Summary / Background Information

Providing a 3% general wage increase on the Bi-County Non-Bargaining Salary Schedule for the year 2022.

Fiscal Impact

No supplement required

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to approve a 3% general wage increase on the Bi-County Non-Bargaining Salary Schedule effective January 1, 2022.

Suggested Motion

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES WASHINGTON

IN THE MATTER OF PROVIDING A GENERAL WAGE INCREASE ON THE BI-COUNTY NON-BARGAINING SALARY SCHEDULE FOR THE YEAR 2022

WHEREAS, the Board of Benton County Commissioners and Board of Franklin County Commissioners has determined it is in the best interest of the Counties to increase the Bi-County Non-Bargaining Salary Schedule by 3% effective January 1, 2022; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners and the Board of Franklin County Commissioners have determined it appropriate to grant a general wage increase of 3% on the Bi-County Non-Bargaining Salary Schedule effective January 1, 2022, as reflected on the 2022 Salary Schedule for Bi-County Non-Bargaining employees attached hereto, and

BE IT FURTHER RESOLVED, that provisions in any prior resolution on this subject are superseded by similar provisions in this Resolution and this Resolution may be rescinded or modified at the sole discretion of the Board of Benton County Commissioners and Board of Franklin County Commissioners without notification; and

BE IT FURTHER RESOLVED, that this resolution is not intended nor shall it be interpreted as limiting, compromising, or otherwise affecting the employees' "at will" status; and

BE IT FURTHER RESOLVED, that in the event of a conflict with prevailing law, law shall prevail.

Dated this _____ day of January, 2022

Dated this _____ day of January, 2022

Board of Benton County Commissioners

Board of Franklin County Commissioners

Chairman

Chairman

Chair Pro Tem

Chair Pro Tem

Member

Member

Attested to by:

Attested to by:

Clerk to the Board

Clerk to the Board

2022 SALARY SCHEDULE

ALL BI-COUNTY NON-BARGAINING

GRADE	STEPS in \$.....								
	A	B	C	D	E	F	G	H	I
27	8978	9158	9479	9811	10154	10509	10877	11258	11652
26	8551	8722	9027	9343	9670	10008	10358	10721	11096
25	8144	8307	8598	8899	9210	9532	9866	10211	10568
24	7755	7910	8187	8474	8771	9078	9396	9725	10065
23	7386	7534	7798	8071	8353	8645	8948	9261	9585
22	7034	7175	7426	7686	7955	8233	8521	8819	9128
21	6699	6833	7072	7320	7576	7841	8115	8399	8693
20	6379	6507	6735	6971	7215	7468	7729	8000	8280
19	6075	6197	6414	6639	6871	7111	7360	7618	7885
18	5786	5902	6109	6323	6544	6773	7010	7255	7509
17	5510	5620	5817	6021	6232	6450	6676	6910	7152
16	5248	5353	5540	5734	5935	6143	6358	6581	6811
15	4998	5098	5276	5461	5652	5850	6055	6267	6486
14	4760	4855	5025	5201	5383	5571	5766	5968	6177
13	4533	4624	4786	4954	5127	5306	5492	5684	5883
12	4318	4404	4558	4718	4883	5054	5231	5414	5603
11	4112	4194	4341	4493	4650	4813	4981	5155	5335
10	3916	3994	4134	4279	4429	4584	4744	4910	5082
9	3729	3804	3937	4075	4218	4366	4519	4677	4841
8	3552	3623	3750	3881	4017	4158	4304	4455	4611
7	3383	3451	3572	3697	3826	3960	4099	4242	4390
6	3223	3287	3402	3521	3644	3772	3904	4041	4182
5	3069	3130	3240	3353	3470	3591	3717	3847	3982
4	2923	2981	3085	3193	3305	3421	3541	3665	3793
3	2784	2840	2939	3042	3148	3258	3372	3490	3612
2	2651	2704	2799	2897	2998	3103	3212	3324	3440
1	2525	2575	2665	2758	2855	2955	3058	3165	3276

cc: Superior Court, Juvenile, Justice
Payroll, HR, and Stephen Hallstrom

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/11/2022	
Subject:	Providing a Benton County Non-Bargaining and Benton County Managers and Administrators General Wage Increase for 2022	
Presenter:	L. Wingfield	
Prepared By:	L. Wingfield	
Reviewed By:		
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A <i>(If no, include reasoning for no approval)</i>	
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>	
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract	

Summary / Background Information

Providing a 3% general wage increase for Benton County Non-Bargaining and Benton County Managers and Administrators effective January 1, 2022.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution establishing the Non-Bargaining and Benton County Managers and Administrators 3% general wage increase effective January 1, 2022.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF PROVIDING A GENERAL WAGE INCREASE FOR BENTON COUNTY NON-BARGAINING AND BENTON COUNTY MANAGERS AND ADMINISTRATORS FOR THE YEAR 2022

WHEREAS, the Board of Benton County Commissioners have determined it is in the best interest of the County to increase the Benton County Non-Bargaining and Benton County Managers and Administrators salary schedules by 3% effective January 1, 2022; **NOW THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners have determined it is in the best interest of the County to increase the Benton County Non-Bargaining and Benton County Managers and Administrators salary schedules by 3% effective January 1, 2022, as reflected on the 2022 Salary Schedule for Benton County Non-Bargaining and Benton County Managers and Administrators attached hereto; and

BE IT FURTHER RESOLVED, that provisions in any prior resolution on this subject are superseded by similar provisions in this Resolution and this Resolution may be rescinded or modified at the sole discretion of the Board of Benton County Commissioners without notice; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting, compromising, or otherwise affecting the employee's "at will" status; and

BE IT FURTHER RESOLVED, that in the event of a conflict with prevailing law, law shall prevail.

Dated this _____ day of _____, 2022.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....

Clerk of the Board

2022 SALARY SCHEDULE

BENTON COUNTY NON-BARGAINING EXHIBIT A

GRADE	STEPS in \$.....								
	A	B	C	D	E	F	G	H	I
27	9209	9393	9722	10062	10414	10778	11155	11545	11949
26	8771	8946	9259	9583	9918	10265	10624	10996	11381
25	8353	8520	8818	9127	9446	9777	10119	10473	10840
24	7955	8114	8398	8692	8996	9311	9637	9974	10323
23	7576	7728	7998	8278	8568	8868	9178	9499	9831
22	7215	7359	7617	7884	8160	8446	8742	9048	9365
21	6872	7009	7254	7508	7771	8043	8325	8616	8918
20	6544	6675	6909	7151	7401	7660	7928	8205	8492
19	6233	6358	6581	6811	7049	7296	7551	7815	8089
18	5936	6055	6267	6486	6713	6948	7191	7443	7704
17	5653	5766	5968	6177	6393	6617	6849	7089	7337
16	5384	5492	5684	5883	6089	6302	6523	6751	6987
15	5128	5231	5414	5603	5799	6002	6212	6429	6654
14	4884	4982	5156	5336	5523	5716	5916	6123	6337
13	4651	4744	4910	5082	5260	5444	5635	5832	6036
12	4430	4519	4677	4841	5010	5185	5366	5554	5748
11	4219	4303	4454	4610	4771	4938	5111	5290	5475
10	4019	4099	4242	4390	4544	4703	4868	5038	5214
9	3827	3904	4041	4182	4328	4479	4636	4798	4966
8	3645	3718	3848	3983	4122	4266	4415	4570	4730
7	3472	3541	3665	3793	3926	4063	4205	4352	4504
6	3307	3373	3491	3613	3739	3870	4005	4145	4290
5	3150	3213	3325	3441	3561	3686	3815	3949	4087
4	2998	3058	3165	3276	3391	3510	3633	3760	3892
3	2856	2913	3015	3121	3230	3343	3460	3581	3706
2	2720	2774	2871	2972	3076	3184	3295	3410	3529
1	2591	2643	2735	2831	2930	3033	3139	3249	3363

cc: All Benton County Elected Officials, Payroll, Personnel, and Stephen Hallstrom

2022 SALARY SCHEDULE

EXHIBIT A

GRADE	A	B	C	D	E
13	10337	10854	11397	11967	12565
12	9845	10337	10854	11397	11967
11	9376	9845	10337	10854	11397
10	8930	9376	9845	10337	10854
9	8505	8930	9376	9845	10337
8	8100	8505	8930	9377	9846
7	7714	8100	8505	8930	9377
6	7347	7714	8100	8505	8930
5	6997	7347	7714	8100	8505
4	6664	6997	7347	7714	8100
3	6347	6664	6997	7347	7714
2	6045	6347	6664	6997	7347
1	5757	6045	6347	6664	6997

Job Title	Grade
OPD Manager	13
Public Works Administrator	13
Chief of Corrections	13
County Engineer	11
Director of Operations & Capital Assets	11
Director of Community Development	11
IT Manager	10
Chief Staff Defender	10
Jail Commander	10
Finance Manager	9
Human Services Manager	8
HR Manager	8
Planning Manager	8
IT Assistant Manager	7
Facilities Manager	6
Building Manager	6
Assistant Finance Manager	6
Risk Manager	6
Sustainable Development Manager	6
Assistant Planning Manager	5
Assistant HR Manager	5

cc: Payroll, HR, and Stephen Hallstrom

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	Execute First Amendment to Agreement #2021-HHAA-EFH with Elijah Family Homes
Presenter:	
Prepared By:	Mari Clark, DHS Program Specialist
Reviewed By:	Kyle Sullivan, DHS Manager
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☒ 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 Department of Human Services would like to continue to contract with Elijah Family Homes to assist the County with meeting the goals of the Five-Year Homeless Housing Plan for Benton County to reduce homelessness.

The program will provide specialized low-income housing and wrap-around support services to families in recovery who are not eligible for public housing options.

This First Amendment is needed to add to the total consideration of the contract.

Fiscal Impact

There is no impact on the current expense budget. All revenues and expenditures are from the Fund 0154101 Homeless Housing and Assistance Fund, for a Consideration amount of \$20,000.00.

Recommendation

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

Suggested Motion

Consent Agenda

RESOLUTION

Benton County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTING FIRST AMENDMENT TO AGREEMENT #2021-HHAA-EFH BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND ELIJAH FAMILY HOMES, TO ASSIST THE COUNTY WITH MEETING THE GOALS OF THE FIVE-YEAR HOMELESS HOUSING PLAN TO REDUCE HOMELESSNESS

WHEREAS, the purpose of this First Amendment to Agreement #2021-HHAA-EFH is to add to the consideration of the Agreement, so services can continue to the end of the Agreement; and

WHEREAS, Benton County Department of Human Services would like to continue to contract with Elijah Family Homes to assist the County with meeting the goals of the Five-Year Homeless Housing Plan for Benton County to reduce homelessness; and

WHEREAS, the program provides specialized, low-income housing and wrap-around support services to families in recovery who are not eligible for public housing options; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed First Amendment to Grant Agreement #2021-HHAA-EFH; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign, on behalf of Benton County, First Amendment to Grant Agreement #2021-HHAA-EFH between Benton County Department of Human Services and Elijah Family Homes to assist the County with meeting the goals of the Five-Year Homeless Housing Plan for Benton County to reduce homelessness, for a consideration amount of \$20,000.00; and

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

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

Chair

Member

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

Attest: _____
Clerk of the Board

**FIRST CONTRACT AMENDMENT TO
GRANT AGREEMENT #2021-HHAA-EFH**

THIS FIRST CONTRACT AMENDMENT (hereinafter "First Amendment") is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350, by and for the **BENTON COUNTY DEPARTMENT OF HUMAN SERVICES**, with its principal offices located at 7102 W. Okanogan Avenue, Suite #201, Kennewick, WA 99336 (hereinafter collectively referred to as "COUNTY"), and **ELIJAH FAMILY HOMES**, a non-profit corporation, with its principal offices at 680 George Washington Way, Richland, WA 99352, (hereinafter "CONTRACTOR").

WHEREAS, per Benton County Resolution No. 2021 558, the parties entered into a Grant Agreement beginning July 1, 2021 and ending December 31, 2022 (hereinafter the "CONTRACT"), whereby CONTRACTOR agreed to assist the COUNTY in meeting the goals of the Five-Year Homeless Housing Plan for Benton County to reduce homelessness for a total consideration amount of \$10,000.00; and

WHEREAS, this First Amendment is necessary to make agreed-upon, needed amendments to the total consideration of the Agreement so services can continue until the end of the Agreement on December 31, 2022.

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

1. FACE SHEET

The "Consideration" specified on the face sheet of the CONTRACT shall be amended and replaced in its entirety with the following:

Consideration.....\$20,000.00

2. Exhibit A shall be replaced in its entirety with the attached "Exhibit A"

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

FOR BENTON COUNTY:

Chair Date

Member Date

Member Date

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

FOR THE CONTRACTOR:

Matthew West, Executive Director

Signature Date 12.16.21

Matthew West

Name

Executive Director

Title

ATTEST:

Clerk of the Board

APPROVED AS TO CONTENT:

Human Services Manager

APPROVED AS TO FORM:

Benton County Deputy Prosecuting Attorney

Elijah Family Homes
2021-HHAA-EFH
Benton County
March 1, 2021 - December 31, 2022

Exhibit A

Rental Assistance	Computation	Cost
Operations		\$20,000.00
Total		\$20,000.00

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 12/14/21 BC 01/11/22
Subject:	Professional Services Contract with Tri-Cities Chaplaincy DBA Chaplaincy Health Care
Presenter:	N/A
Prepared By:	Rosa García
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

Tri-Cities Chaplaincy DBA Chaplaincy Health Care has been providing counseling and consultation services to the Juvenile Detention facility since 2002. Chaplaincy Health Care provides individual and group care counseling services for youth in detention. Chaplaincy Health Care responds to clergy who have parishioners at the Juvenile Detention facility or who have questions about the facility's services.

The Contract between Benton-Franklin Counties Juvenile Justice Center and Chaplaincy Health Care will begin on January 1, 2022 and expire on December 31, 2023.

Fiscal Impact

Amount not to exceed \$27,000.00 to be paid out of Juvenile Funds Dept. 171 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 Professional Services Contract between Tri-Cities Chaplaincy DBA Chaplaincy Health Care and Benton-Franklin Counties Juvenile Justice Center for services.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING THE PROFESSIONAL SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND TRI-CITIES CHAPLAINCY DBA CHAPLAINCY HEALTH CARE

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

WHEREAS, the Benton-Franklin Counties Juvenile Justice Center has a contract with Tri-Cities Chaplaincy DBA Chaplaincy Health Care for chaplain services from January 1, 2020 through December 31, 2021 via Benton County Resolution 2019 844 and Franklin County Resolution 2019 344; and

WHEREAS, the Juvenile Administrator recommends entering into a contract for 2022 and 2023;
NOW THEREFORE

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington the boards concur with the Juvenile Administrator's recommendation and hereby award the Professional Services Contract to Tri-Cities Chaplaincy DBA Chaplaincy Health Care in an amount not to exceed \$27,000.00; and

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

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

DATED this ____ day of _____ 2022

BENTON COUNTY BOARD OF COMMISSIONERS

DATED this ____ day of _____ 2021

FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chair of the Board

Chair of the Board

Chair Pro Tem

Chair Pro Tem

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Clerk of the Board

Clerk of the Board

**BENTON and FRANKLIN COUNTIES
PROFESSIONAL SERVICES CONTRACT**

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 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 West Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Tri-Cities Chaplaincy DBA Chaplaincy Health Care** a corporation organized under the laws of the State of Washington with its principal offices at 1480 Fowler Street, Richland, WA 99352 (hereinafter "CONTRACTOR").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin 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.

2. SERVICES PROVIDED

- a. The CONTRACTOR will provide individual and group care-counseling services for youth in the COUNTIES' Juvenile Justice Detention facility. The CONTRACTOR will see youth in other areas of the COUNTIES' program on a referral basis.
- b. The CONTRACTOR will respond to clergy who have parishioners at the COUNTIES' Juvenile Justice Detention facility or who have questions about the COUNTIES' services.
- c. The CONTRACTOR may help develop training programs for community clergy and the COUNTIES' staff so that they may know more about each other's services.
- d. The CONTRACTOR may provide in-service training for the COUNTIES' staff.

- e. The CONTRACTOR may place a Clinical Pastoral Education (CPE) student at the COUNTIES' Juvenile Justice Detention facility for clinical training. The CONTRACTOR will supervise the CPE student. The COUNTIES' staff will be available to consult with the CPE student as to his/her educational participation in the COUNTIES' Juvenile Justice Detention facility.
- f. The CONTRACTOR may assist the COUNTIES' staff in the development of programs and treatment plans.
- g. The CONTRACTOR may consult with community clergy to secure their support for treatment plans upon the youth's return to the community and congregation, upon request by the youth.
- h. The CONTRACTOR will provide three-hundred and twelve (312) hours of professional services to the COUNTIES per calendar year. The majority of hours provided by the CONTRACTOR to the COUNTIES will be spent in providing direct and support services to youth in the COUNTIES' Juvenile Justice Detention facility on a regular basis.
- i. The CONTRACTOR will prepare written reports on a monthly basis and provide them to the COUNTIES via email to Detention Manager. These reports will track CONTRACTOR hours and pastoral contact with youth and staff. The CONTRACTOR will comply with any quality assurance requests on behalf of the COUNTIES.
- j. 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.
- k. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- l. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- m. 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 requested by the COUNTIES.

3. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name: Roger Gilchrist, Interim CEO
Address: 1480 Fowler St.
Richland, WA 99352
Phone: (509) 783-7416
Email: RogerG@chaplaincyhealthcare.org

b. For COUNTIES:

Name: Darryl Banks, Administrator
Address: 5606 W. Canal Pl., Ste. 106
Kennewick, WA 99336
Phone: 509.222.2316
Email: Darryl.Banks@co.benton.wa.us

4. COMPENSATION

- a. The COUNTIES shall compensate the CONTRACTOR as professional services and not as a salary for the services provided under this CONTRACT for 312 hours per year of services, with the first year 2022 at the rate of \$41.92 per hour in the sum of \$1,089.92 per month, pro-rated for each partial month. Compensation for the second year 2023 at the rate of \$43.18 per hour in the sum of \$1,122.68 per month, pro-rated for each partial month.
- b. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed twenty-seven thousand dollars (\$27,000.00).
- 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, 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 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.

5. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTIES.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTIES.

6. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTIES and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, caused in whole or in part by any act or omission, negligent or otherwise, of the CONTRACTOR or its subcontractors, which arises in connection with the work performed under this Contract or is caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTIES. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTIES or its officers, officials, employees, or agents.
- b. In any and all claims against the COUNTIES and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 6 shall survive termination and expiration of this Contract.
- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or

breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

7. **INSURANCE**

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

The coverage shall apply to liability for a professional error, act, or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. The CONTRACTOR shall annually provide the 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. 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 employer's 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 activities to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 6. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that

except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

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

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

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

e. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTIES or its elected and appointed officers, officials, employees, or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTIES shall be excess and not contributory to CONTRACTOR'S insurance policies.
2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTIES as an additional insured.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTIES or its officers, officials, employees, or agents.
4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought,

except with respect to the limits of the insurer's liability.

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTIES shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. 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 7 shall be written on an Occurrence Policy form.
8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.
9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to

withholding or set-off will be released to CONTRACTOR.

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

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

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability, and Workers' Compensation, shall specifically include the COUNTIES and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the 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.
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 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' Contract Representative referenced in Section 3.
4. Benton County Risk Manager and Franklin County Risk Manager at the following addresses: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336; Franklin County Risk Manager, 1016 N. 4th Ave., Pasco, WA 99301.

8. **TERMINATION**

- a. The COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determines in its sole discretion that such termination is in the best interests of the COUNTIES.

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

- b. In the event that funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTIES may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTIES to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder and fails to cure the breach within ten (10) days of written notice to do so by the COUNTIES, the COUNTIES may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTIES shall pay the CONTRACTOR only for the costs of services accepted by the COUNTIES, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTIES, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTIES in completing the work and all damage sustained by the COUNTIES by reason of the CONTRACTOR'S breach.
- d. Termination of Agreement for Cause. If, through any cause, other than breach, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligation under this Agreement, the COUNTIES shall thereupon have the right to terminate this Agreement by giving thirty (30) days written notice to the CONTRACTOR of such termination and specifying the effective date thereof at least thirty (30) days prior to the effective date of such termination. The CONTRACTOR shall be entitled to receive just and equitable compensation for work completed under this Agreement.

If, through any cause, the COUNTIES shall fail to fulfill its obligation under this Agreement, or if the COUNTIES shall violate any of the covenants, agreements or stipulations of this Agreement, the CONTRACTOR shall thereupon have the right to terminate this Agreement by giving thirty (30) days written

notice to the COUNTIES of such termination and specifying the effective date thereof at least thirty (30) days prior to the effective date of such termination.

- e. In the event of mutual termination either party may initiate with thirty (30) days written notice period.

9. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

- a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTIES.
- b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

10. NON-WAIVER OF RIGHTS

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

11. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee, or servant of the COUNTIES. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 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 by federal, state, or local law that are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTIES' Contract Representative, or designee.

12. COMPLIANCE WITH LAWS

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

13. OTHER PROVISIONS

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

a. Background Check/Criminal History

- 1. Contractor shall authorize Counties to conduct a background check of the Contractor. The background check may include, but is not limited to, a review of records on file with the Washington State Patrol, the FBI National Criminal Information Computer (NCIC) and Interstate Identification Index (III), local law enforcement agencies, the Department of Licensing, courts of law, and other agencies, and also may, depending upon assignment of Contractor, involve fingerprinting.
- 2. In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the Contractor shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.

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

b. Sexual Misconduct

1. The Contractor shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.
2. The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal Place, Suite 106, Kennewick WA 99336-1388.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, 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, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, the presence of any sensory, mental, or physical disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works

for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTIES. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTIES agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this 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 Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 6, 7 and 17); extended reporting period requirements for professional liability insurance (Section 7); 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 learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

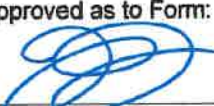
The CONTRACTOR hereby acknowledges that the COUNTIES is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTIES may be required by virtue of that Act to 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 agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on January 1, 2022.

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

Tri-Cities Chaplaincy DBA Chaplaincy Health Care	Benton Franklin Counties Juvenile Justice Center
 Roger Gilchrist Interim CEO	 Darryl Banks Juvenile Court Administrator
BENTON COUNTY APPROVAL Approved as to Form: _____ Stephen Hallstrom, Deputy Prosecuting Attorney Date	FRANKLIN COUNTY APPROVAL Approved as to Form:  11/30/21 _____ Jennifer Johnson, Civil Deputy Prosecuting Attorney Date
By: _____ Name: _____ Title: <u>Chair, Board of Commissioners</u> Date: _____	By: _____ Name: _____ Title: <u>Chair, Board of Commissioners</u> Date: _____
Attest: _____	Attest: _____
Clerk of the Board: _____	Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 12/14/21 BC 01/11/2022		
Subject:	Interagency Agreement IAA22451 with Administrative Office of the Courts for Court Interpreter Funding		
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

The State of Washington, Administrative Office of the Courts (AOC) is providing funds to the Benton-Franklin Counties Juvenile Justice Center (BFJJC) to improve the quality and availability of court interpreter services for Limited English Proficient (LEP), deaf and hard of hearing persons in accordance with RCW 2.242 and 2.43. The interpreter funding is targeted to reimburse Certified, Registered and Qualified Interpreters for interpreter services in accordance with the Interpreter Services Funding Requirements.

The period of performance for this agreement is from July 1, 2021 through June 30, 2022. The Interagency Agreement IAA22451 is backdated to July 1, 2021 so that services are not interrupted, and the Juvenile Justice Center can maximize the use of available funds effective on July 1, 2021. The contract was not received until November 29, 2021.

Fiscal Impact

The reimbursed compensation from the Administrative Office of the Courts (AOC) is a maximum of \$30,123.00.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Interagency Agreement No. IAA22451 between the Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

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 THE INTERAGENCY AGREEMENT IAA22451 BETWEEN THE JUVENILE JUSTICE CENTER AND STATE OF WASHINGTON, ADMINISTRATIVE OFFICE OF THE COURTS

WHEREAS, Darryl Banks, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Interagency Agreement IAA22451 between the State of Washington, Administrative Office of the Courts, and Benton-Franklin Counties Juvenile Justice Center be approved as presented; and

WHEREAS, the new agreement was not received until November 29, 2021 and is backdated to July 1, 2021 so that services are not disrupted and so that the Juvenile Justice Center can maximize the use of available funds effective July 1, 2021; and

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington, that the boards hereby concur with the Administrator and approve the Interagency Agreement IAA22451 between the Juvenile Justice Center and the State of Washington, Administrative Office of the Courts; and

BE IT FURTHER RESOLVED, the Juvenile Justice Center will be reimbursed a maximum of \$30,123.00 for costs incurred during the period of performance; and

BE IT FURTHER RESOLVED, that the chairs are authorized to sign the attached Interagency Agreement; and

BE IT FURTHER RESOLVED, the agreement is effective July 1, 2021 and expires on June 30, 2022.

DATED this ____ day of _____, 2021

BENTON COUNTY BOARD OF COMMISSIONERS

Chair of the Board

Chair Pro Tem

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

ATTEST:

Clerk of the Board

DATED this ____ day of _____, 2021

FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chair of the Board

Chair Pro Tem

Member
Constituting the Board of
County Commissioners,
Franklin County, Washington

ATTEST:

Clerk of the Board

INTERAGENCY AGREEMENT IAA22451
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
BENTON/FRANKLIN COUNTIES JUVENILE COURT

THIS AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and Benton/Franklin Counties Juvenile Court, for the purpose of distributing funds for court interpreter and language access service expenses to the Benton/Franklin Counties Juvenile Court (Court).

1. DEFINITIONS

For purposes of this contract, the following definitions shall apply:

- a) "Credentialed Interpreter" means an interpreter who is certified or registered by the Administrative Office of the Courts, as defined in RCW 2.43.020 (4) and RCW 2.43.020 (6), or an interpreter certified by the Office of the Deaf and Hard of Hearing (ODHH) pursuant to WAC 388-818-500, *et seq.*

The names and contact information of AOC-certified interpreters are found, and incorporated herein by reference, at

<http://www.courts.wa.gov/programs/orgs/pos/interpret/>

The names and contact information of ODHH-certified interpreters are found, and incorporated herein by reference, at:

<https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx>

- b) "Qualified Interpreter" means a spoken language interpreter as defined in RCW 2.43.020 (2), or sign language interpreter as defined in RCW 2.42.110 (2).
- c) "Qualifying Event" means a proceeding or event for which an interpreter is appointed by an appointing officer pursuant to RCW 2.42 and/or RCW 2.43.

2. PURPOSE

The purpose of this Agreement is to partner with individual local courts in improving access to the Court for Limited English Proficient (LEP), deaf, and hard of hearing persons in accordance with RCW Chapters 2.42 and 2.43.

These funds are intended to address each court's following needs:

- Financial Need

For example, the gap between the court's available financial resources and the costs to meet its need for credentialed interpreters and the implementation of the Court's language access plan.

- Need for Court Interpreters

For example, the public's right to access the court, and the court's responsibility to provide credentialed interpreters as required by RCW Chapters 2.42 and 2.43.

- **Need for Language Access in General**

For example, translations for websites, translated forms, interpreting equipment, technology enabling remote interpreting, and other things that are necessary for courts to provide fair and equitable access for people who are LEP, deaf, and hard of hearing.

3. GENERAL REQUIREMENTS

- a) The Court shall provide the AOC with a mailing address, vendor identification number, and contact information for the person identified as the main contact, and their email address.
- b) The Court will ensure that the funding is used only for language access purposes and for reimbursement of costs paid to credentialed and qualified interpreters for Qualifying Events pursuant to Exhibit A, which is incorporated herein by reference.
- c) The Court agrees to track and provide interpreter cost and usage data using a web-based application provided by the AOC Language Access Reimbursement Program, reflecting information about the Court's interpreter and language access costs and services.
- d) The Court agrees to work with the AOC Language Access Reimbursement Program, the Interpreter Commission, and neighboring courts to identify and implement best and promising practices for providing language access and interpreter services.
- e) The Court agrees to encourage its staff overseeing interpreter services at the court to attend trainings, in person and/or online, provided by the AOC Interpreter Commission and Interpreter Program.
- f) The Court may elect to pay for interpreter services that are not in accordance with the provisions of Exhibit A as set forth; however, such payments will not be reimbursed.

4. LANGUAGE ACCESS PLAN REQUIREMENT

- a) The Court is required to have a Language Access Plan (LAP) to be a part of the Language Access Reimbursement Program.
- b) All Courts participating in the Language Access Reimbursement Program must submit either an updated or new Language Access Plan (LAP).
- c) Language Access Plan must be received for review and approval by the AOC, pursuant to the schedule below. The AOC can refuse payment if the LAP is submitted after the deadlines listed below.

Language Access Plan Documents	Language Access Plan Documents Due Dates
Draft 1	January 31, 2022
Draft 2	March 31, 2022
Final	May 1, 2022

- d) Staff from the Washington State Supreme Court Interpreter Commission will work with courts to develop and implement their LAPs, and will provide technical assistance and training when needed.

5. TECHNICAL REQUIREMENTS

- a) The Court shall use the Language Access Reimbursement Web Application created by the AOC to electronically submit quarterly data and A-19 voucher invoices for reimbursements.
- b) Courts submitting quarterly data and A-19 vouchers shall use one of the following supported web browsers:
 - MS Edge
 - Chrome
 - Firefox
- c) Network access to the Inter-Governmental Network (IGN) or VPN access to the IGN will be required to use the Language Access Reimbursement Web Application.
- d) JIS Court Credentials (RACF) will be required to authenticate and gain access to the Language Access Reimbursement Program Web Application.

6. PERIOD OF PERFORMANCE

The beginning date of performance under this Agreement is **July 1, 2021**, regardless of the date of execution and which shall end on **June 30, 2022**, Fiscal Year 2022 (FY22).

7. COMPENSATION AND COMPENSATION PROCEDURES

- a) The Court shall be reimbursed a maximum of **\$30,123** for interpreter and language access services costs incurred during the period of July 1, 2021 to June 30, 2022, FY22.
- b) No reimbursement shall be made under this Agreement for language access services provided after June 30, 2022.
- c) The Court shall receive payment for its costs for language access services as set forth in Exhibit A, and incorporated herein.
- d) The Court shall only receive payment after properly submitting A-19 voucher invoices and corresponding data (*See subsection 3b*).
- e) The Court shall submit requests for reimbursements to the AOC quarterly according to the schedule below (see chart below). The AOC will not accept monthly requests for reimbursements.
- f) Requests for reimbursement must be received for review and approval by the AOC, pursuant to the schedule below. The AOC can refuse payment if requests for reimbursement are submitted after the deadlines listed below.

Fiscal Quarter:	For qualifying and non-qualifying events, goods and services, and staff interpreter costs incurred between:	Deadlines – reimbursements must be received by the AOC no later than:
Quarter 1:	July 1, 2021 – September 30, 2021	January 31, 2022
Quarter 2:	October 1, 2021 – December 31, 2021	March 31, 2022
Quarter 3:	January 1, 2022 – March 31, 2022	May 31, 2022
Quarter 4:	April 1, 2022 – June 30, 2022	July 10, 2022

- g) If this this agreement is terminated, the Court shall only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
- h) The Court shall submit its quarterly data and A-19 invoice vouchers using the Language Access Reimbursement Web Application.
- i) Payment to the Court for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed invoice and the completed data report.
- j) The Court shall maintain sufficient backup documentation of expenses under this Agreement.
- k) The AOC, in its sole discretion and upon notice, may initiate revenue sharing and reallocate funding among courts. If it appears the Court may not expend the maximum Agreement amount, the AOC may reduce the maximum Agreement amount. The AOC may increase the maximum Agreement amount if additional funds become available through these revenue sharing provisions.

8. TREATMENT OF ASSETS AND PROPERTY

The AOC shall be the owner of any and all fixed assets or personal property jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

9. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the AOC. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and video and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. In the event that any of the deliverables under this Agreement include material not included within the definition of “works for hire,” the Court hereby assigns such rights to the AOC as consideration for this Agreement.

Data which is delivered under this Agreement, but which does not originate therefrom, shall be transferred to the AOC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the Court has a right to

grant such a license. The Court shall advise the AOC, at the time of delivery of data furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The AOC shall receive prompt written notice of each notice or claim of copyright infringement received by the Court with respect to any data delivered under this Agreement. The AOC shall have the right to modify or remove any restrictive markings placed upon the data by the Court.

10. INDEPENDENT CAPACITY

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

11. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

12. RECORDS, DOCUMENTS, AND REPORTS

The Court shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or Agreement. The Court will retain all books, records, documents, and other material relevant to this Agreement for six years after settlement, and make them available for inspection by persons authorized under this provision.

13. RIGHT OF INSPECTION

The Court shall provide right of access to its facilities to the AOC, 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 Agreement.

14. DISPUTES

Disputes arising under this Agreement shall be resolved by a panel consisting of one representative from the AOC, one representative from the Court, and a mutually agreed upon third party. The dispute panel shall thereafter decide the dispute with the majority prevailing. Neither party shall have recourse to the courts unless there is a showing of noncompliance or waiver of this section.

15. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

16. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

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

- Applicable state and federal statutes and rules;
- This Agreement; and
- Any other provisions of the agreement, including materials incorporated by reference.

17. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

18. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

19. SEVERABILITY

If any provision of this Agreement, or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end the provisions of this Agreement are declared to be severable.

20. AGREEMENT MANAGEMENT

The program managers noted below shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement:

AOC Program Manager	Court Program Manager
Michelle Bellmer PO Box 41170 Olympia, WA 98504-1170 michelle.bellmer@courts.wa.gov (360) 350-5373	Darryl Banks Administrator 5606 W Canal Pl, Ste 106, Kennewick, WA 99336-1300 darryl.banks@co.benton.wa.us (509) 783-2151

ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Agreement.

AGREED:

Administrative Office of the Courts

Court

Signature

Date

See attached signature page

Signature

Date

Dawn Marie Rubio

Name

Darryl Banks

Name

State Court Administrator

Title

Juvenile Court Administrator

Title

NAMES AND TITLES OF AUTHORIZED OFFICER (PERSON WITH LEGAL AUTHORITY: COUNTY COMMISSIONERS' CHAIR OF THE BOARD, MAYOR, CITY/TOWN MANAGER, AGENCY DIRECTOR)

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

 11-29-21
Darryl Banks, Juvenile Court Administrator Date

BENTON COUNTY APPROVAL

Approved as to Form:

Deputy Prosecuting Attorney Date

By: _____

Name: _____

Title: Chair, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

FRANKLIN COUNTY APPROVAL

Approved as to Form:

 11/29/21
Jennifer Johnson, Date
Civil Deputy Prosecuting Attorney

By: _____

Name: _____

Title: Chair, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

EXHIBIT A

WASHINGTON STATE LANGUAGE ACCESS INTERPRETER REIMBURSEMENT PROGRAM FUNDING

FUNDING CONDITIONS AND PAYMENT STRUCTURE

The Language Access Reimbursement Program funding conditions and payment structure shall be as follows:

1. GENERAL FUNDING CONDITIONS

The Administrative Office of the Courts (AOC), will reimburse courts under this Agreement for the cost of spoken language interpretation and sign language interpretation and other goods and services that improve language access in the courts for Limited English Proficient (LEP), deaf, and hard of hearing persons. This includes interpreters credentialed by AOC (certified or registered), or otherwise court-qualified interpreters appointed pursuant to RCW 2.42 and RCW 2.43 under the following conditions listed under Section 2 "Qualifying Interpreter Events."

It also includes goods and services that improve language access, listed under Section 3 "Language Access Items," and services listed under Section 4 "Language Access Services".

Courts shall work with AOC staff in determining whether an expense that is not explicitly mentioned below, qualifies as a reimbursable expense under the Agreement.

2. QUALIFYING INTERPRETING EVENTS

A. Spoken Language Interpreters Qualifying Events

AOC will reimburse courts under this Agreement for the cost of appointing AOC-credentialed or otherwise court-qualified interpreters pursuant to RCW 2.43 that meet one of the following conditions:

- a) If there is at least one there is at least one AOC credentialed interpreter in the language being used then reimbursement will only be provided for using an AOC credentialed interpreter who is credentialed in that language.
- b) Compensation for interpreters for languages for which neither a certified interpreter nor registered interpreter is offered will be reimbursed where the interpreter has been qualified on the record pursuant to RCW 2.43.
- c) Courts will not be reimbursed for events using non-AOC credentialed interpreters if there is one or more AOC credentialed interpreter listed for the language being used.

B. Sign Language Interpreters Qualifying Events

AOC will reimburse courts for 50% of the actual expenses for services of American Sign Language (ASL) interpreters and Certified Deaf Interpreters (CDI) pursuant to RCW 2.42 when the interpreter is listed with the Department of Social and Health Services, Office of Deaf and Hard of Hearing (DSHS, ODHH) as a court-certified interpreter.

The Office of Deaf and Hard of Hearing (ODHH) at the Department of Social and Health Services (DSHS) maintains a list of Certified Court Sign Language Interpreters. This list includes American Sign Language (ASL) interpreters and Certified Deaf Interpreters (CDI). To qualify for reimbursement, and event using an ASL and/or CDI interpreter from this list must be used.

Certified interpreters are listed under three categories:

- Specialist Certificate: Legal – SC: L
- RID Certification with SC: L written test
- Intermediary Interpreters (Deaf Interpreter)

The most up to date list can be found here:

<https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx>

C. Staff Interpreters (Salaried Staff)

Reimbursement will be provided for salaried staff meeting the Qualifying Event conditions for the payment of credentialed spoken and sign language interpreters, as referenced in subsections 2.A and 2.B above.

D. Telephonic and Video Remote Interpreting and Services Outside of the Courtroom

AOC will reimburse local jurisdictions for using certified, registered, or otherwise qualified interpreters operating by telephone or video for court proceedings and other services provided to the public by the Court. The services must meet the Qualifying Event conditions for the payment of credentialed spoken and sign language interpreters, as referenced in subsections 2.A and 2.B above.

3. LANGUAGE ACCESS GOODS AND SERVICES

Courts can request reimbursement for the cost of goods and services that will help increase language access in the Court.

The items listed below are common goods and services that courts have used to increase language access and will be improved for reimbursement.

- Interpreter scheduling software or services
- Document translation
- Portable video device(s) for video remote interpreting
- Equipment used for simultaneous interpretation
- Printed signage for language assistance purposes
- Staff training on language access, interpreting, or bilingual skills improvement, for example:
 - Interpreters skills training for bilingual staff who want to become certified
 - Training for staff who are partly bilingual to improve their skills
 - General training on addressing language access issues.

Other examples can be found here:

<https://www.nmcenterforlanguageaccess.org/cms/en/courts-agencies/about-language-access-basic-training>

Items or services not listed above must be pre-approved (via email) by Language Access Interpreter Reimbursement Program staff prior to purchase or they may not qualify for reimbursement under the Program.

4. SCOPE OF REIMBURSEMENT FUNDING

Reimbursement payment under this Agreement will only be made to the Court when the cost is paid out of the budget or budgets, in the case of multi-court collaborative applicants of the Court responsible for full payment.

5. PAYMENT STRUCTURE

A. Reimbursement Rate

a) Spoken Language Interpreters

AOC will reimburse the Court for 50% of the cost of AOC certified, registered, or otherwise court-qualified interpreters providing services under this Agreement.

b) Sign Language Interpreters

AOC will reimburse the Court for 50% of the cost of certified and court-qualified interpreters providing services under this Agreement.

c) Staff Interpreters (Salaried Staff)

AOC will reimburse the Court for 50% of the cost of staff interpreters.

d) Contracted Interpreters

The cost of contract interpreters who are paid other than on an hourly basis, for example, on a half-day or flat rate basis, will be reimbursed at 50%.

e) Remote Interpreting

AOC will reimburse the Court for 50% of the cost of using certified, registered, or otherwise qualified interpreters providing interpretation by telephone or video.

f) Cancellation Fees

AOC will reimburse the Court for 50% of cancellation fees paid to interpreter.

B. Travel Time and Mileage

AOC will reimburse the Court at 50% of the cost of interpreter travel time and mileage.

Interpreter travel time is reimbursable if a required party fails to appear. "Failure to appear" means a non-appearance by the LEP or deaf or hard of hearing client, attorneys, witnesses, or any necessary party to a hearing, thereby necessitating a cancellation or continuance of the hearing. The Court can be reimbursed for 50% of the cancellation fees paid to the interpreter.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01/11/22
Subject:	Award professional services agreement to Angel Betancourt
Presenter:	N/A
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☒ Execute Contract

Summary / Background Information

Benton County is legally obligated to provide public defense services in Benton County Superior Court on "Blake" case conviction vacations and resentencing cases ("Services").

Because of the immense volume of cases needing Services, OPD is needing to award one or more contracts to provide Services.

Angel Betancourt ("Attorney") is qualified to provide Services and interested in contracting with Benton County to do so (including all of the laborious logistical and administrative aspects of managing these cases). The proposed agreement and resolution effectuate a contract with Attorney for the provision of such Services on the terms contained therein, for the period from 12/08/21 to 12/31/22 at the rate of \$65 per hour of attorney time, \$45 for case related legal assistant time, and a separate \$500 a month as a flat fee for program development and management services (including handling all public inquiries about Blake cases).

Fiscal Impact

None beyond budgeted. This contract will be 100% funded by a grant from State OPD.

Recommendation

Execute agreement with attorney Angel Betancourt for public defense services in Benton County Superior Court for "Blake" case conviction vacations and resentencing cases. Approve associated resolution as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY ANGEL BETANCOURT TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT FOR "BLAKE" CASE CONVICTION VACATIONS AND RESENTENCING CASES

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Superior Court for "Blake" case conviction vacations and resentencing cases ("Services"); and

WHEREAS, because of immense caseload needs (including the very burdensome logistical and administrative aspects of managing it), it is necessary for County to award a public defense contract at this time to provide Services; and

WHEREAS, attorney Angel Betancourt is qualified to provide Services and interested in entering into an agreement with County for such Services (including handling all of the logistical and administrative aspects of Blake cases and interfacing with the public about such cases); and

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

BE IT RESOLVED that the proposed professional services agreement with attorney Angel Betancourt, to provide public defense services in Benton County Superior Court for "Blake" case conviction vacations and resentencing cases, contract number BCSC2122ADB001S, for the time period from 12/08/21 to 12/31/22 for compensation not to exceed \$65 per hour for attorney time, \$45 per hour for case related legal assistant time, a \$500 per month fee to manage program development, administrative, and public interface/inquiry aspects of Blake cases, 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

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE
LEGAL REPRESENTATION TO INDIGENT PERSONS IN
BENTON COUNTY SUPERIOR COURT FOR “BLAKE”
VACATES AND RESENTENCINGS
BCSC2122ADB001S**

CONTRACT SUMMARY			
Contract Type	Special assignment		
Contract Number	BCSC2122ADB001S	Contract Holder	Angel Betancourt
WSBA #	49091	Effective Dates	December 8, 2021 – December 31, 2022
Caseload Cap	N/a	Compensation	\$65/hr – Attorney \$35/hr – Legal Assistant
Assigned Court	Superior Court	Compensation Structure	☐ By the case ☐ Monthly ☒ Hourly ☐ By the case but paid monthly
Contract Slot Identifier n/a			

THIS AGREEMENT is entered into by and between **Angel Betancourt**, attorney at law, Washington State Bar Association #49091 (“Attorney”), dba Betancourt Law, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision (“County”), for and on behalf of the Benton County Superior Court.

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

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County’s jurisdictional boundaries.
- B. More specifically, in light of the Washington Supreme Court’s decision in *State v. Blake*, 197 Wash.2d 170, 481 P.3d 521 (2021) (“Blake”), and its declaration that the crime of Possession of a Controlled Substance was, as of the time of the decision, unconstitutional, it is necessary for County to provide public defense services to assist certain defendants and former defendants in the vacating of their convictions, or resentencing of their cases in light of vacation of Possession of Controlled Substance (“Possession”) convictions that previously constituted part of their criminal history score (“Mandated Services”).
- C. In addition to statutory duties pursuant to Blake, County also is undertaking to provide additional services to the public (without a final determination or opinion as to whether they are mandated by law) in vacating Possession convictions and operating a program of community outreach to contact persons who may be eligible for such vacation of convictions (“Additional Services”), and County is doing

so because of its acceptance of a grant from the State Office of Public Defense requiring that County undertake Additional Services.

- D. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide both Mandatory Services and Additional Services.

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 **December 8, 2021**, and shall continue thereafter through and including **December 31, 2022**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 1355 Columbia Park Trail, Richland, WA 99352; 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 Angel@betancourtllawpllc.com.

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

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

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal

prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class B and C felonies, sex-case felonies, and violent Class B felonies) as adopted by the Washington State 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 disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

d. During each calendar year of the term of this Agreement, Attorney shall obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the PDM with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule,

Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

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 Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing

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

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

i. This Agreement specifically and expressly contemplates that Attorney will be utilizing other attorneys employed by Attorney's law firm ("Associate Attorneys") to provide the Services required by this Agreement. Provided, however, that Attorney shall ensure that all Associate Attorneys are qualified, under the Washington State Public Defense Standards, to represent public defense clients on Class C felonies (or their work is fully and directly supervised by Attorney), and Attorney shall remain fully responsible for the work provided by Associate Attorneys and for the compliance of such Associate Attorneys with the terms of this Agreement. Hereinafter, all references to the term "Attorney" shall also include Associate Attorneys.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

Reserved.

5. **CASE APPOINTMENTS AND OTHER DELIVERABLES.** During the term of this Agreement, Attorney shall handle all aspects of the vacating of convictions under Blake ("Vacating"), and resentencing of felony cases as a result of vacating of convictions under Blake ("Resentencing") for all eligible persons with convictions that originated from Benton County ("Eligible Persons"). This will specifically include:

- a) Starting no later than January 1, 2022, using data provided by BCOPD or State OPD, identifying people who may be eligible for Vacating or Resentencing who aren't serving a sentence or under supervision ("Non-Supervised Blake Clients").
- b) Starting no later than January 1, 2022, identifying persons who are serving sentences or under DOC supervision and are affected by the *Blake* decision ("Supervised Blake Clients") by a regular review of data provided by BCOPD and making reasonable efforts to contact such Supervised Blake Clients to advise them of their options and right to request public defense counsel to assist them with Vacating or Resentencing of their cases.

- c) Starting no later than April 1, 2022, in coordination and consultation with BCOPD, establishing a system and procedure, to be fully managed by Attorney's law firm, by which members of the public who qualify as Non-Supervised Blake Clients may choose to i) petition for vacation orders pro se; or ii) petition for vacation orders with the assistance of public defense counsel.
- d) Answering inquiries from the public about their eligibility for Vacating and Resentencing as applicable. At a minimum, this shall include a dedicated phone number that will be answered during regular business hours by someone knowledgeable about the process for requesting assistance (or will provide a means for callers to be called back within 3 business days or less), and a monitored email address that will provide requesters with the same information, with responses to inquiries provided no later than 3 business days after inquiries. Automated responses to email requests for information shall be sufficient.
- e) Coordinating with the Prosecutor's Office to assist persons who have contacted that office requesting to Vacate or Resentence their prior conviction in either adult Superior Court or Juvenile Court.
- f) For any persons identified, using the process in 5b) – 5c)ii as being eligible for Vacating or Resentencing, taking the needed steps to be formally appointed to represent such persons in their needed Vacating or Resentencing, and providing legal representation for the full and final Vacating or Resentencing needed (as to their Benton County originated convictions only) including the filing of a petition for same, advising such persons as to their legal rights and the process needed for the vacation, coordinating with the Prosecutor's Office as needed, and seeking final orders of vacation.

6. **CONTRACT REPORTS AND RECORD-KEEPING**

The parties acknowledge and understand that this is a grant-funded Agreement that will use funds provided pursuant to a grant agreement between Benton County and the State Office of Public Defense, GRT22032, as its exclusive funding source. The parties further acknowledge that the grant, GRT22032, has certain reporting requirements that must be met in order for County to receive such grant funding. To enable Benton County to fulfill its reporting obligations, Attorney shall provide the following reports to Benton County by the deadlines indicated. The reports are an indispensable pre-condition to compensation under this Agreement and, if reports are not provided as required, shall constitute grounds to withhold all compensation until they are provided.

Required Report:

Report Type	Due Date	Contents
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Quarterly Report	30 days before the end of each calendar quarter	- Total number of Supervised Blake Clients contacted - Total number of Vacations handled - Total number of Resentencings handled - Number of Clients who were on DOC supervision - Number of Clients who were incarcerated at DOC facility - Number of Clients not currently serving sentences or under DOC supervision - Any significant challenges faced - What parts of process went particularly well - Number of inquiries received from members of the public about their <i>Blake</i> rights and options - Number of cases referred directly to Attorney's Firm from the Benton County Prosecutor's Office
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The template provided in Appendix A of this Agreement shall be used for reports.

7. **NUMBER OF APPOINTMENTS.** There is no contractual limit as to the number of cases that Attorney may handle. Provided, however, that Attorney (and Associate Attorneys) shall track the time that they personally expend on *Blake* cases (attorney time only, not including assistant time) and shall reduce their personal availability for other cases (including private practice cases) accordingly, based on a calculation of 2,000 work hours per year and a maximum allowable caseload of 150 felony matters per year, meaning that Attorney's availability for felony matters (either public defense or private) must be reduced by 1 case for every 13 hours expended on *Blake* matters.

8. **RESERVED.**

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another

Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

Provided, however, that Attorney (and Attorney's law firm) may provide initial and provisions assistance and limited services in filing a motion for Vacation or Resentencing but shall, at the earliest juncture reasonable, seek court appointment to represent each prospective client in such a capacity, and shall not proceed further with actual legal representation until the court does in fact appoint Attorney to provide such representation. Appointment may be in Attorney's name, the name of one of Attorney's Associate Attorneys, or the name of Attorney's law firm.

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

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

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule. Furthermore, if County is required, as a condition of its grant agreement with State OPD to provide access to records maintained by Attorney, Attorney shall provide County with access to such records promptly upon request.

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

- (i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130 or misdemeanor sex offense under the laws of the State of Washington, any other State, or Federal law.
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute
- (iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **\$65 per hour** for time expended by Attorney or Associate Attorneys directly on casework, and **\$35 per hour** for time expended any of Attorney or Associate Attorneys' legal assistants. **It is anticipated that time expended is not exceed 3 hours per case (of attorney time) and Attorney shall provide reasonable justification for billings in excess of such 3 hour per case limit.**

b. To receive compensation, Attorney shall complete a Claim for Compensation (no more frequently than monthly) and include detailed billing records providing: i) hours expended rounded to the nearest 15 minute increment; ii) explanation of what hours were expended for (in the case of Assistant time, the explanation can be general and does not need to identify case names or numbers; iii) for Attorney and Associate Attorney time entries, shall include case name and numbers if applicable.

c. Separate and apart from the compensation in Section 12a., Attorney shall also be paid a monthly flat fee of \$500 for managing the administrative aspects of this Agreement including: i) program development; ii) reporting; iii) managing all aspects of public access and referrals; iv) supervising, coaching, and overseeing work of Associate Attorneys and Assistants.

d. All compensation shall be made payable to Betancourt Law, PLLC.

13. **RESERVED.**

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the

requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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

c. Attorney (and Associate Attorneys) shall be entitled to reimbursement for expenses they directly incur in communicating with incarcerated defendants who are prospective *Blake* clients, as well as actually appointed *Blake* clients who are currently incarcerated. The following such communication expenses shall be reimbursable without any need for pre-authorization: i) phone toll charges including collect call charges; ii) travel expenses at the applicable, geographically adjusted GSA rate for private vehicle mileage; iii) any court filing fees (though these should typically be waived for indigent defendants)

15. **RESERVED.**

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

its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. INSURANCE.

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

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

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

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

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

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

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

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

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without

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

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election.

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. In the event that the grant funding (from State OPD, GRT22032) is withdrawn, discontinued, or otherwise unavailable to the County, then County shall be entitled to terminate this agreement immediately with notice, which shall specify the reason for the termination.

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 may utilize any attorneys employed by Attorney's law firm to provide the services required by this Agreement.

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. **RESERVED**

24. **RESERVED**

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.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of

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

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney

at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date _____

Chairman

Commissioner

Commissioner

Constituting the Board of County
Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

DocuSigned by:

Eric Hsu

F80F38017789473...

Eric Hsu

Public Defense Manager

ATTORNEY

Date 12/27/2021

DocuSigned by:

Angel Betancourt

41CE03492C0E450...

Angel Betancourt, WSBA #49091

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11 th 2022
Subject:	Interlocal Agreement with the City of Kennewick for road maintenance in Dove Ridge subdivision
Presenter:	N/A
Prepared By:	Cristina Woods
Reviewed By:	Douglas D'Hondt
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract

Summary / Background Information

The City of Kennewick, anticipating annexation of particular areas into its incorporated limits, may request certain urban roadway improvements be constructed as a condition of development of urban growth areas with properties adjoining the City. The County lacks the resources to maintain certain improvements that are above and beyond its own design standards. This agreement sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Dove Ridge subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards as requested by the City.

The County and the City desire to enter into an interlocal agreement defining the division of responsibilities for the inspection, operation and maintenance of the road and its roadway appurtenances in the Dove Ridge subdivision

Fiscal Impact

None

Recommendation

Staff recommends the Board Approve the interlocal agreement with the City of Kennewick and execute one copy.

Suggested Motion

Move to approve as part of the consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN DOVE RIDGE SUBDIVISION IN THE KENNEWICK URBAN GROWTH AREA

WHEREAS, pursuant to RCW 39.34, local government units are permitted to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, The City of Kennewick, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be constructed as a condition of development of urban growth areas with properties adjoining the City. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards; and

WHEREAS, Benton County and the City of Kennewick desire to enter into an agreement that sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Dove Ridge subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards as requested by the City; **NOW, THEREFORE**;

BE IT RESOLVED, The Benton County Board of Commissioners hereby approves the attached Interlocal Cooperative Agreement between Benton County and the City of Kennewick and the Chairman of the Board of County Commissioners is hereby authorized and directed to execute said agreement, a copy of which is attached.

Dated this 11th day of January 2022.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

Cristina Woods

From: Reid Hay
Sent: Monday, January 3, 2022 3:55 PM
To: Cristina Woods
Cc: Douglas D'Hondt
Subject: RE: Interlocal Agreement for Dove Ridge and Highland Vineyards - corrected

Cristina,

I have again reviewed the proposed interlocal agreement with the City of Kennewick, and it is approved as to form.

-- Reid

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

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

From: Cristina Woods <Cristina.Woods@co.benton.wa.us>
Sent: Wednesday, December 29, 2021 2:01 PM
To: Reid Hay <Reid.Hay@co.benton.wa.us>
Cc: Douglas D'Hondt <Douglas.DHondt@co.benton.wa.us>
Subject: Interlocal Agreement for Dove Ridge and Highland Vineyards - corrected

Hello Reid

Please ignore the files in the previous email with the interlocal agreements with the City of Kennewick.

Bruce Mills asked me to change the signature page.

From: Bruce Mills <Bruce.Mills@ci.kennewick.wa.us>
Sent: Tuesday, December 28, 2021 1:53 PM
To: Cristina Woods <Cristina.Woods@co.benton.wa.us>
Subject: RE: Interlocal Agreement - Dove Ridge / Highland Vineyards

Cristina,

If possible, can you please change the Kennewick signature on both ILAs from the Mayor to the City Manager (Marie E. Mosley)?

Thanks!

//

I have attached the agreements with the modified signature page.

I will need either a signature by January 4th or an email approving to form to give to the commissioner's office.
It is going to be put on the consent agenda on January 11th.

Thank you and Happy New Year



Cristina Woods, MS • *Engineering Associate II*
Benton County Public Works
102206 Wiser Parkway , Kennewick WA, 99338
cristina.woods@co.benton.wa.us
(509) 786-5611

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK
FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN
DOVE RIDGE SUBDIVISION IN THE KENNEWICK URBAN GROWTH AREA**

THIS AGREEMENT is made and entered into by and between Benton County (Hereinafter "the County") with its principal offices located at 620 Market Street, Prosser, Washington, 99350, by and for the Benton County Public Works Department, and the City of Kennewick (hereinafter "the City"), with its principal offices located at 210 W. 6th Avenue, Kennewick, Washington, 99336, by and for the City of Kennewick Public Works Department, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

- 1.01 **PURPOSE.** The City, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be done as a condition of development of adjoining properties. In instances where the developing land owner has been required to make these improvements by request of the City, the County may promote the City's request in accordance with Section 2 of the Memorandum of Understanding dated October 6, 1998. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards. This agreement sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Dove Ridge subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards requested by the City.

**ARTICLE II
ADMINISTRATION AND ORGANIZATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 The County's representative shall be the Public Works Director/County Engineer or their authorized designee.
- 2.03 The City's representative shall be the Public Works Director or their authorized designee.
- 2.04 This Agreement is entered into pursuant to Chapter 39.34 RCW as an interlocal agreement between the parties. Each party shall be solely responsible for all costs,

materials, supplies, and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incidental to the fulfillment of this Interlocal Agreement shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incidental to, this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement.

A copy of this Interlocal Agreement shall be filed with the Benton County Auditor, or posted on the County's or City's website, as provided by Chapter 39.34 RCW.

ARTICLE III DURATION AND RENEWAL OF AGREEMENT

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective when executed by both parties' authorized representatives and shall continue until annexation occurs, unless terminated in writing by either party, consistent with the termination provisions of this Agreement.
- 3.02 **SCOPE OF WORK.** The following shall be a division of responsibilities for the inspection, operation and maintenance of the road and its roadway appurtenances in the Dove Ridge subdivision. Costs for necessary labor, equipment and materials for each task shall be borne by the responsible party

TASK	RESPONSIBLE PARTY	
	COUNTY	CITY
Plans review	X	X
Inspection	X	X
Setting speed limits	X	
Pavement maintenance	X	
Road signage maintenance	X	
Road striping & pavement marking maintenance	X	
Snow and ice control	X	
Vegetation maintenance	X	
Street sweeping		X
Curb & gutter maintenance		X
Storm drain system maintenance		X
Street light system maintenance		X

Electrical service charges for street lights		X
Note: Maintenance of sidewalks, landscaping, irrigation and stormwater ponds are the responsibility of the individual property owners or the homeowners association.		

Construction plans shall be jointly approved by the City Public Works Director and the County Engineer.

ARTICLE IV COMPENSATION

- 4.01 **COMPENSATION.** Each party is responsible for all cost, materials and services necessary to perform their portion of the above scope of work. In the event one party performs all or a portion of the other parties responsibility, with prior written approval or notification, the responsible party shall reimburse the other party based on the actual cost of labor, equipment rental, engineering, and/or materials used in the prosecution of the work involved; plus all costs for fringe benefits to labor, including, but not limited to: social security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. In addition, thereto, a reasonable percent of the total costs may be added for overhead costs for accounting and billing and administrative services. A detailed calculation used to determine any overhead percentage claimed shall be provided on request by either party. Either party shall submit a certificate statement of the costs to the other or within thirty (30) days thereafter the other party shall pay the amount of said statement.

When the City requests that its urban standards be applied to a private development project pursuant to Section 3.02 the City will collect from the project developer any and all fees it would normally collect in accordance with fee schedules published at the time of development. When the project is a County Road Project no such fees will be applied.

ARTICLE V PERFORMANCE OF AGREEMENT

- 5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including, without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 5.02 **COMPLIANCE WITH STANDARDS AND SPECIFICATIONS.** All work shall be completed in accordance with the latest version of the City of Kennewick Standards and Specifications. If there is no local standard or specification for the work to be

performed, the acting party shall comply with WSDOT standards and specifications. If there is no WSDOT standard or specification, the acting party may complete the work as it would its own property.

- 5.03 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.
- 5.04 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance complies with the standards set forth in this Agreement, and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.05 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.06 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.07 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
- 5.08 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties' authorized representatives.
- 5.09 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to the City shall be to:
City of Kennewick, Public Works Director PO Box 6108 Kennewick, WA 99336-0108.

Notice to the County, for all purposes under this Agreement, shall be to: Benton County Public Works Director and the Benton County Commissioners, 620 Market Street, Prosser, Washington, 99350.

ARTICLE VI INDEMNIFICATION

- 6.01 **INDEMNIFICATION.** The County agrees to and shall defend, indemnify, and hold harmless the City, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the City, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the County, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the City, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.

The City agrees to and shall defend, indemnify, and hold harmless the County, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the County, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the City, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the County, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

ARTICLE VII DISPUTES

- 7.01 **TIME.** Time is of the essence for this Agreement.
- 7.02 **GOVERNING LAW AND VENUE.** This Agreement shall be governed exclusively by the laws of the State of Washington.

In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the City Manager and the County Administrator shall first meet in a good faith attempt to resolve such dispute. In the event they are unable to resolve such dispute, either individually or with the assistance of a mediator, the dispute shall be resolved by arbitration pursuant to RCW 7.04A; with venue being placed in Benton

County, Washington; with all parties waiving the right of a jury trial upon *de novo* appeal, if any; and the substantially prevailing party being awarded its attorney fees and costs as additional award and judgment against the other.

ARTICLE VIII TERMINATION

- 8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX GENERAL PROVISIONS

- 9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended, or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission and shall not constitute a waiver as to any other term or condition, or future act, occurrence, or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract, or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.
- 9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference will be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 9.05 **FILING.** This Agreement shall be filed pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2022.

APPROVED:
BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON

APPROVED:
CITY OF KENNEWICK

Chair

City Manager (Marie E. Mosley)

Chair Pro-Tem

APPROVED AS TO FORM:

Member

By: _____
City Attorney

ATTEST:

By: _____
Clerk of the Board

APPROVED AS TO FORM:

By: _____
Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11 th 2022
Subject:	Interlocal Agreement with the City of Kennewick for road maintenance in Highland Vineyards Phase 1 and Phase 2 subdivision
Presenter:	N/A
Prepared By:	Cristina Woods
Reviewed By:	Douglas D'Hondt
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract

Summary / Background Information

The City of Kennewick, anticipating annexation of particular areas into its incorporated limits, may request certain urban roadway improvements be constructed as a condition of development of urban growth areas with properties adjoining the City. The County lacks the resources to maintain certain improvements that are above and beyond its own design standards. This agreement sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Highland Vineyards Phase 1 and Phase 2 subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards as requested by the City.

The County and the City desire to enter into an interlocal agreement defining the division of responsibilities for the inspection, operation and maintenance of the road and its roadway appurtenances in the Highland Vineyards Phase 1 and Phase 2 subdivision

Fiscal Impact

None

Recommendation

Staff recommends the Board Approve the interlocal agreement with the City of Kennewick and execute one copy.

Suggested Motion

Move to approve as part of the consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN HIGHLAND VINEYARDS PHASE 1 AND PHASE 2 SUBDIVISION IN THE KENNEWICK URBAN GROWTH AREA

WHEREAS, pursuant to RCW 39.34, local government units are permitted to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, The City of Kennewick, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be constructed as a condition of development of urban growth areas with properties adjoining the City. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards; and

WHEREAS, Benton County and the City of Kennewick desire to enter into an agreement that sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Highland Vineyards Phase 1 and Phase 2 subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards as requested by the City; **NOW, THEREFORE**;

BE IT RESOLVED, The Benton County Board of Commissioners hereby approves the attached Interlocal Cooperative Agreement between Benton County and the City of Kennewick and the Chairman of the Board of County Commissioners is hereby authorized and directed to execute said agreement, a copy of which is attached.

Dated this 11th day of January 2022.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

Cristina Woods

From: Reid Hay
Sent: Monday, January 3, 2022 3:55 PM
To: Cristina Woods
Cc: Douglas D'Hondt
Subject: RE: Interlocal Agreement for Dove Ridge and Highland Vineyards - corrected

Cristina,

I have again reviewed the proposed interlocal agreement with the City of Kennewick, and it is approved as to form.

-- Reid

Reid Hay

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

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

From: Cristina Woods <Cristina.Woods@co.benton.wa.us>
Sent: Wednesday, December 29, 2021 2:01 PM
To: Reid Hay <Reid.Hay@co.benton.wa.us>
Cc: Douglas D'Hondt <Douglas.DHondt@co.benton.wa.us>
Subject: Interlocal Agreement for Dove Ridge and Highland Vineyards - corrected

Hello Reid

Please ignore the files in the previous email with the interlocal agreements with the City of Kennewick.

Bruce Mills asked me to change the signature page.

From: Bruce Mills <Bruce.Mills@ci.kennewick.wa.us>
Sent: Tuesday, December 28, 2021 1:53 PM
To: Cristina Woods <Cristina.Woods@co.benton.wa.us>
Subject: RE: Interlocal Agreement - Dove Ridge / Highland Vineyards

Cristina,

If possible, can you please change the Kennewick signature on both ILAs from the Mayor to the City Manager (Marie E. Mosley)?

Thanks!

//

I have attached the agreements with the modified signature page.

I will need either a signature by January 4th or an email approving to form to give to the commissioner's office.
It is going to be put on the consent agenda on January 11th.

Thank you and Happy New Year



Cristina Woods, MS • *Engineering Associate II*
Benton County Public Works
102206 Wiser Parkway , Kennewick WA, 99338
cristina.woods@co.benton.wa.us
(509) 786-5611

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK
FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN
HIGHLAND VINEYARDS PHASE 1 AND PHASE 2 SUBDIVISION IN THE KENNEWICK
URBAN GROWTH AREA**

THIS AGREEMENT is made and entered into by and between Benton County (Hereinafter "the County") with its principal offices located at 620 Market Street, Prosser, Washington, 99350, by and for the Benton County Public Works Department, and the City of Kennewick (hereinafter "the City"), with its principal offices located at 210 W. 6th Avenue, Kennewick, Washington, 99336, by and for the City of Kennewick Public Works Department, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

- 1.01 **PURPOSE.** The City, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be done as a condition of development of adjoining properties. In instances where the developing land owner has been required to make these improvements by request of the City, the County may promote the City's request in accordance with Section 2 of the Memorandum of Understanding dated October 6, 1998. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards. This agreement sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Highland Vineyards phase 1 and phase 2 subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards requested by the City.

**ARTICLE II
ADMINISTRATION AND ORGANIZATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 The County's representative shall be the Public Works Director/County Engineer or their authorized designee.
- 2.03 The City's representative shall be the Public Works Director or their authorized designee.
- 2.04 This Agreement is entered into pursuant to Chapter 39.34 RCW as an interlocal agreement between the parties. Each party shall be solely responsible for all costs,

INTERLOCAL AGREEMENT BETWEEN BENTON COUNTY AND CITY OF KENNEWICK FOR OPERATION AND MAINTENANCE OF ROADWAY'S WITHIN THE UGA IN HIGHLAND VINEYARDS PHASE 1 AND PHASE 2 SUBDIVISION AT THE REQUEST OF THE CITY

materials, supplies, and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incidental to the fulfillment of this Interlocal Agreement shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incidental to, this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement.

A copy of this Interlocal Agreement shall be filed with the Benton County Auditor, or posted on the County's or City's website, as provided by Chapter 39.34 RCW.

ARTICLE III DURATION AND RENEWAL OF AGREEMENT

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective when executed by both parties' authorized representatives and shall continue until annexation occurs, unless terminated in writing by either party, consistent with the termination provisions of this Agreement.
- 3.02 **SCOPE OF WORK.** The following shall be a division of responsibilities for the inspection, operation and maintenance of the road and its roadway appurtenances in the Highland Vineyards phase 1 and phase 2 subdivision. Costs for necessary labor, equipment and materials for each task shall be borne by the responsible party

TASK	RESPONSIBLE PARTY	
	COUNTY	CITY
Plans review	X	X
Inspection	X	X
Setting speed limits	X	
Pavement maintenance	X	
Road signage maintenance	X	
Road striping & pavement marking maintenance	X	
Snow and ice control	X	
Vegetation maintenance	X	
Street sweeping		X
Curb & gutter maintenance		X
Storm drain system maintenance		X
Street light system maintenance		X

Electrical service charges for street lights		X
Note: Maintenance of sidewalks, landscaping, irrigation and stormwater ponds are the responsibility of the individual property owners or the homeowners association.		

Construction plans shall be jointly approved by the City Public Works Director and the County Engineer.

ARTICLE IV COMPENSATION

- 4.01 **COMPENSATION.** Each party is responsible for all cost, materials and services necessary to perform their portion of the above scope of work. In the event one party performs all or a portion of the other parties responsibility, with prior written approval or notification, the responsible party shall reimburse the other party based on the actual cost of labor, equipment rental, engineering, and/or materials used in the prosecution of the work involved; plus all costs for fringe benefits to labor, including, but not limited to: social security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. In addition, thereto, a reasonable percent of the total costs may be added for overhead costs for accounting and billing and administrative services. A detailed calculation used to determine any overhead percentage claimed shall be provided on request by either party. Either party shall submit a certificate statement of the costs to the other or within thirty (30) days thereafter the other party shall pay the amount of said statement.

When the City requests that its urban standards be applied to a private development project pursuant to Section 3.02 the City will collect from the project developer any and all fees it would normally collect in accordance with fee schedules published at the time of development. When the project is a County Road Project no such fees will be applied.

ARTICLE V PERFORMANCE OF AGREEMENT

- 5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including, without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 5.02 **COMPLIANCE WITH STANDARDS AND SPECIFICATIONS.** All work shall be completed in accordance with the latest version of the City of Kennewick Standards and Specifications. If there is no local standard or specification for the work to be

performed, the acting party shall comply with WSDOT standards and specifications. If there is no WSDOT standard or specification, the acting party may complete the work as it would its own property.

- 5.03 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.
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- 5.05 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.06 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.07 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
- 5.08 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties' authorized representatives.
- 5.09 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to the City shall be to:
City of Kennewick, Public Works Director PO Box 6108 Kennewick, WA 99336-0108.
Notice to the County, for all purposes under this Agreement, shall be to: Benton County Public Works Director and the Benton County Commissioners, 620 Market Street, Prosser, Washington, 99350.

ARTICLE VI INDEMNIFICATION

- 6.01 **INDEMNIFICATION.** The County agrees to and shall defend, indemnify, and hold harmless the City, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the City, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the County, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the City, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.

The City agrees to and shall defend, indemnify, and hold harmless the County, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the County, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the City, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the County, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

ARTICLE VII DISPUTES

- 7.01 **TIME.** Time is of the essence for this Agreement.
- 7.02 **GOVERNING LAW AND VENUE.** This Agreement shall be governed exclusively by the laws of the State of Washington.
In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the City Manager and the County Administrator shall first meet in a good faith attempt to resolve such dispute. In the event they are unable to resolve such dispute, either individually or with the assistance of a mediator, the dispute shall be resolved by arbitration pursuant to RCW 7.04A; with venue being placed in Benton

County, Washington; with all parties waiving the right of a jury trial upon *de novo* appeal, if any; and the substantially prevailing party being awarded its attorney fees and costs as additional award and judgment against the other.

ARTICLE VIII TERMINATION

- 8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX GENERAL PROVISIONS

- 9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended, or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission and shall not constitute a waiver as to any other term or condition, or future act, occurrence, or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract, or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.
- 9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference will be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 9.05 **FILING.** This Agreement shall be filed pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2022.

APPROVED:
BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON

APPROVED:
CITY OF KENNEWICK

Chair

City Manager (Marie E. Mosley)

Chair Pro-Tem

APPROVED AS TO FORM:

Member

By: _____
City Attorney

ATTEST:

By: _____
Clerk of the Board

APPROVED AS TO FORM:

By: _____
Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	Purchase of bulk diesel from Christensen, Inc. utilizing State Contract #00311
Presenter:	
Prepared By:	Shannon Christen
Reviewed By:	Michael McGhan
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed:
☒ Consent Agenda	☐ Discussion Only (1 st) ☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2 nd) ☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction ☐ Pass Ordinance
	☐ Sign Letter/Document ☒ Execute Contract

Summary / Background Information

The County has three bulk diesel storage tanks, one each at the Prosser and Kennewick Road Maintenance Facilities and one at the Fairgrounds. There is a need to purchase the on-going replenishment of diesel fuel to be used by the vehicles and equipment managed by the ER&R Department. Washington State DES Contract No. 00311 allows for the purchase of bulk diesel fuel from Christensen, Inc. Our current contract with Christensen, Inc. utilizing the State Contract expired December 31, 2021. The State put the contracts out to bid, had some problems and announced the newly awarded contracts on December 30. Christensen, Inc. was not awarded a new fuel contract, so the State has extended the existing contract until February 28, 2022 to allow customers enough time to get a contract in place with the new vendors. This new Agreement with Christensen will allow the County to continue to purchase diesel fuel under the State Contract until February 28, 2022.

A Purchase Agreement stating the County is utilizing the State Contract has been prepared, reviewed and approved by our departmental Deputy Prosecuting Attorney, and has been signed by Christensen, Inc.

Fiscal Impact

Amount: Not to exceed \$50,000.00

Fund: Primarily the ER&R Fund, the fuel for the tank at the Fairgrounds will be purchased by Fairground funds.

Recommendation

Authorize the purchase of bulk diesel fuel from Christensen, Inc. utilizing the Washington State DES Contract No. 00311 from January 1, 2022 through February 28, 2022 in an amount not to exceed \$50,000.00.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF THE PURCHASE OF BULK DIESEL FUEL FROM CHRISTENSEN, INC.
UTILIZING THE WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES (DES)
MASTER CONTRACT USAGE AGREEMENT**

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

WHEREAS, there is a need to purchase the on-going replenishment of bulk diesel fuel for equipment and vehicles managed by ER&R; and

WHEREAS, Washington State DES Contract No. 00311 allows for the purchase of bulk diesel fuel from Christensen, Inc. until the expiration of that contract which is February 28, 2022; and

WHEREAS, our departmental Deputy Prosecuting Attorney has reviewed and approved the attached Purchase Agreement; and

WHEREAS, the Fleet Superintendent recommends the approval of the purchase of bulk diesel fuel from Christensen, Inc., utilizing DES Contract No. 00311; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners authorizes the purchase of bulk diesel fuel from Christensen, Inc., utilizing the Washington State DES Contract No. 00311 from January 1, 2022 through February 28, 2022, at or below the current state contract rate, in a total amount not to exceed \$50,000.00.

Dated this 11th 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.

Shannon Christen

From: Reid Hay
Sent: Monday, January 3, 2022 9:06 AM
To: Shannon Christen
Subject: RE: IMPORTANT - Please review - Purchase of diesel fuel - State Contract

Follow Up Flag: Follow up
Flag Status: Completed

Shannon,

I have reviewed the proposed agreement with Christensen, Inc. for the purchase of bulk diesel fuel utilizing the State Contract, and it is approved as to form.

-- Reid

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

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

From: Shannon Christen <Shannon.Christen@co.benton.wa.us>
Sent: Thursday, December 30, 2021 1:48 PM
To: Reid Hay <Reid.Hay@co.benton.wa.us>
Subject: IMPORTANT - Please review - Purchase of diesel fuel - State Contract
Importance: High

Reid-

Please review the attached Purchase Agreement authorizing the purchase of diesel fuel from Christensen, Inc. utilizing the State Contract. I need to get originals to Marilu by Tuesday so if you could send me an approval email that would be great. Then I will get your signature on Thursday.

I know you are just getting back from vacation so sorry about the rush. Thanks.



Shannon Christen
Procurement & Contract Coordinator
Benton County Purchasing Department
509-786-5611 Ext. 5665

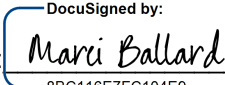


PURCHASE AGREEMENT Benton County, Washington Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350			RESOLUTION No: _____ Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.	
Vendor: Christensen, Inc.			AGREEMENT: In exchange for the consideration identified herein, the Vendor agrees to provide the following to Benton County under the terms described.	
Vendor Code:				
Vendor Contact: Micah Zumwalt				
Vendor Contact Phone: 509-795-0452				
Vendor Principal Place of Business: Richland, WA				
Ship To: Benton County Road Dept. 14303 N. Hinzerling Rd., Prosser, WA or 1500 S. Oak St., Kennewick, WA or 102808 Wiser Parkway, Kennewick, WA Order form will specify delivery location		Bill To: Benton County Public Works P. O. Box 1001 Prosser, WA 99350 fleet@co.benton.wa.us		P.O. Date: _____
		Delivery Date: _____		Various
Line	Description	Qty	Unit Price	Total Price
	WA State Contract 00311 - Fuel: Keep Full & Bulk/			
	Will-Call Service			
	Purchase on-going replenishment of bulk diesel fuel			
	through the use of the Washington State Master			
	Contract Usage Agreement-Contract No. 00311			
	from January 1, 2022 through February 28, 2022			
	at or below the current state contract rate in an amount			
	not to exceed \$50,000.00 including WSST.	variable	as per State	Not to exceed
			Contract 00311	\$50,000.00
This Agreement shall expire on February 28, 2022. Payment is due by the County to Vendor within 30 days of delivery and the paperwork required pursuant to Contract No. 00311.			SUB TOTAL = - SALES TAX = - TOTAL ORDER = \$ -	
This purchase agreement incorporates by reference all terms and conditions issued off the State of Washington Contract No. 00311 Vendor signature on this purchase agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms.			Questions and Clarifications should be Addressed to Buyer Contact: Contact: Michael McGhan Address: P. O. Box 1001 Prosser, WA 99350 Phone: 509-786-5611 Email: michael.mcghan@co.benton.wa.us	
Approved as to Form (Deputy Prosecutor): _____ Reid Hay, Civil DPA				

By signing in the space provided, the parties hereby acknowledge the following:

- 1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
- 2) The person executing this Agreement is authorized to do so by his/her party;
- 3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreements(s) for all purposes.

Vendor Name (Print): Marci Ballard Title: General Manager Date: 1/3/2022

Vendor Signature:  8BC116E7FC104E9...

Benton County
Board of Commissioners: _____ Date: _____
Shon Small, Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	Awarding and executing a contract with Superior Tree Service, LLC for Tree Trimming at the Fairgrounds and Courthouse
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed:
☒ Consent Agenda	☐ Discussion Only (1 st) ☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2 nd) ☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction ☐ Pass Ordinance
	☐ Sign Letter/Document ☒ Execute Contract

Summary / Background Information

Bids were solicited for the Tree Trimming services at Benton County Fairgrounds and Prosser Courthouse utilizing the MRSC Small Works Roster, and two bids were received in the amounts below:

Superior Tree Service, LLC, Pasco, WA (SUPERT5805JW) \$ 33,990.00

Boyd's Tree, Kennewick, WA (BOYDSTS909LB) \$ 34,275.00

A contract has been prepared; reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney from the Civil Division; and has been executed by Superior Tree Service, LLC, Pasco, WA

Fiscal Impact

Amount: \$20,995.00 excluding W.S.S.T. & \$12,995.00 excluding W.S.S.T.

Fund: Fairgrounds Operating Budget Current Expense – Dept. 110 Facilities

Recommendation

Award the contract for Tree Trimming in an amount not to exceed \$33,990.00 to Superior Tree Service, LLC and authorize the Chairman to sign the said contract.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING THE CONTRACT FOR THE TREE TRIMMING AT THE FAIRGROUNDS & PROSSER COURTHOUSE TO SUPERIOR TREE SERVICE, LLC OF PASCO, WA AND AUTHORIZING THE CHAIRMAN TO SIGN SAID CONTRACT

WHEREAS, bids were solicited, utilizing the MRSC Small Works Roster, for the tree trimming at the Benton County Fairgrounds and Prosser Courthouse; and

WHEREAS, two bids were received in the amounts below:

Superior Tree Service, LLC, Pasco, WA (SUPERT5805JW)	\$ 33,990.00
Boyd's Tree, Kennewick, WA (BOYDSTS909LB)	\$ 34,275.00

WHEREAS, the Purchasing Department recommends award of the bid to Superior Tree Service, LLC, Pasco, WA; and

WHEREAS, a contract has been prepared; reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney from the Civil Division; and has been executed by Superior Tree Service, LLC; and

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

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Purchasing Department's recommendation and awards the bid for tree trimming at the Benton County Fairgrounds and Prosser Courthouse to Superior Tree Service, LLC, Pasco, Washington, in a not to exceed amount of \$33,990.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract with Superior Tree Service, LLC; and

BE IT FURTHER RESOLVED, said contract expires on March 31, 2022.

Dated this 11th day of January, 2022.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

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

**BENTON COUNTY
PUBLIC WORKS CONTRACT**

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **SUPERIOR TREE SERVICE, LLC**, a corporation organized under the laws of the State of Washington with its principal offices at 2121 N Commercial Ave, Pasco, WA 99301 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

- a. Exhibit A - Bid Form
- b. Exhibit B - Maps; and
- c. Exhibit C - Washington State Prevailing Wage Rates for Public Works Contracts.

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on March 31, 2022. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

- a. The CONTRACTOR shall provide tree trimming services for at the Benton County Fairgrounds and Prosser Courthouse in accordance to maps detailed in Exhibit B - Maps. All work performed are to be in accordance to ANSI A300 tree trimming standards.
- b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in conjunction with the other contractor. In the event that the

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

- c. Upon completion of services, CONTRACTOR shall ensure that a completed work order, detailing the work done, the time expended, and the parts used, is remitted to the COUNTY's Contract Representative, or his or her designee, prior to the CONTRACTOR leaving the work site.
- d. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.
- e. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- f. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- g. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR:

Name:	John Montero
Address:	2121 N Commercial Ave Pasco, WA 99301
Phone:	509-545-6947
Email:	John@superiortreellc.com

b. For COUNTY:

Name: Jeff Jones
Address: 7122 W Okanogan Place, Bldg. A
Kennewick, WA 99337
Phone: 509-222-3799
Email: Thomas.Jones@co.benton.wa.us

5. **COMPENSATION**

- a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Thirty-Three Thousand Nine-Hundred Ninety Dollars and Zero Cents (\$33,990.00), excluding W.S.S.T., in accordance with Exhibit A, "Bid Form", which is attached hereto and incorporated herein by reference.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Thirty-Three Thousand Nine-Hundred Ninety Dollars and Zero Cents (\$33,990.00) excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.
- c. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via <https://secureaccess.wa.gov/> and then forward a copy of the statement to COUNTY'S Contract Representative. At the completion of all work contemplated by this Contract, or at the end of the contract term, whichever comes first, CONTRACTOR shall submit an Affidavit of Wages Paid via <https://secureaccess.wa.gov/> and then forward a copy of the affidavit to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with <https://secureaccess.wa.gov/>.
- d. No payment shall be for any work performed by CONTRACTOR, except for work identified and set forth in this Contract.

6. INVOICING

- a. The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed, but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTY as required in Section 3.c. of this Contract.
- b. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via <https://secureaccess.wa.gov> and then forward a copy of the statement to the COUNTY's Contract Representative.
- c. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties have executed and submitted a Statement of Intent to Pay Prevailing Wages in accordance with this section and the work has been performed to the satisfaction of the COUNTY. The COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) days after receiving the invoice.
- d. For each invoiced and approved payment due to the CONTRACTOR under this section, the COUNTY shall withhold from the earned portion of the payment (*i.e.* that portion excluding sales tax or other tax) five percent (5%) as a contract retainage, pursuant to RCW 60.28.011 and in accordance with chapter 60.28 RCW. Within ten (10) days following the execution of this Contract, the CONTRACTOR shall submit written notice to the COUNTY stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTY. If such written election is not received by the COUNTY, then the COUNTY may choose any method allowed by RCW 60.28.011(4)(a)-(c) for holding the retained moneys.

7. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the

CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

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

8. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents. In the event of the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.
- b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood

by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 8 shall survive termination and expiration of this Contract.**

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

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for

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

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

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

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

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

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

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

- c. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any auto (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims that may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.
- d. **Other Insurance Provisions:**
1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY and its elected and appointed officers, officials, employees, and agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.
 2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY or its officers, officials, employees, or agents.
 4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all

of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.
8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.
9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

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

Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Auto Liability and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY or its elected and appointed officials, employees, or agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, must be provided to the County's Contract Representative referenced in Section 4.
3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.
4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager at the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

10. PERFORMANCE AND PAYMENT BONDS

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

later. Proof of the performance and payment bonds, or written notification of the CONTRACTOR'S desire to elect the alternative to the bonds (described above), must be received by COUNTY within ten (10) days following the execution of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.
- d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required for the performance of work under this Contract by federal, state, or local law that is now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do

so from the COUNTY'S Contract Representative or designee.

13. INSPECTION OF BOOKS AND RECORDS

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

14. CHOICE OF LAW AND JURISDICTION

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

15. SUCCESSORS AND ASSIGNS

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

16. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit C, which is attached hereto and incorporated herein by reference, shall be

paid to all employees, agents, subcontractors, and sub-subcontractors who do any work for the CONTRACTOR on this project. The CONTRACTOR shall ensure that all subcontractors or sub-subcontractors sign an agreement to pay these same wages and that the signed agreement is submitted to the COUNTY prior to subcontractor commencing any work on the project. This schedule of prevailing wages is duplicated from the Washington State Department of Labor and Industries website, it is provided for informational purposes only, and the COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies, then the CONTRACTOR is responsible for contacting the Washington State Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. NONDISCRIMINATION

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

19. DISPUTES

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

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

21. ENTIRE AGREEMENT

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

22. NOTICES

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

23. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

24. LITIGATION HOLD NOTICE

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

instructions to suspend any regularly scheduled purge schedule.

25. PUBLIC RECORDS ACT

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

26. SURVIVABILITY

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

27. CONFIDENTIALITY

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

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

Date: _____

BENTON COUNTY

Chairman
Benton County Board of County
Commissioners

Approved as to Form:



Civil Deputy Prosecuting Attorney

Date: 12/22/21

SUPERIOR TREE SERVICE, LLC

Signature

MGR

Title:

Johanna Montano

PRINTED NAME

BID FORM

FALL 2021 – FACILITIES TREE TRIMMING

Company Name Superior Tree Service, LLC

ACKNOWLEDGEMENT OF ADDENDA:

The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:

Addendum No. 1, dated _____

Addendum No. 2, dated _____

BID AMOUNT:

For budgeting purposes only, please provide the bid amount for each location. The "total lump sum" shall equal the two locations added together, and the lowest responsible bidder will be determined solely on that amount.

FAIRGROUNDS (excluding sales tax) \$ 20,995⁰⁰

COURTHOUSE (excluding sales tax) \$ 12,995⁰⁰

TOTAL LUMP SUM (excluding sales tax) \$ 33,990⁰⁰

TOTAL LUMP SUM (excluding sales tax), in words Thirty three thousand nine hundred and ninety 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 # 55903

In the Amount of _____

Certified Check _____

(\$ 1,699.50) Payable to the
County Treasurer of Benton County, Washington.

Bid Bond _____

In the amount of 5% of the Bid.

CONTRACTOR'S LICENSE:

The undersigned states that it is a duly licensed contractor for the type of work proposed in the State of Washington, and that all fees, permits, etc., pursuant to submitting this bid have been paid in full.

PUBLIC WORKS TRAINING:

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

NON-COLLUSION DECLARATION

I hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of Chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction.

SUBMISSION OF BID

Respectfully submitted this 7th day of December 2021.

COMPANY NAME: Superior Tree Service, LLC

AUTHORIZED SIGNATURE: [Signature]

TYPE OR PRINT NAME: John Montero

TITLE: Manager

STREET ADDRESS: 2121 N. Commercial Ave

CITY, STATE, ZIP: Pasco WA 99301

TELEPHONE NO.: 509-545-6947

EMAIL: john@superiortreeinc.com

CONTRACTOR'S LICENSE NO.: Supert5805JW

UBI NO.: 604 587 372

WASHINGTON STATE EMPLOYMENT SECURITY NO.: 000 862143 00 0



Tree Trimming - Fair Grounds

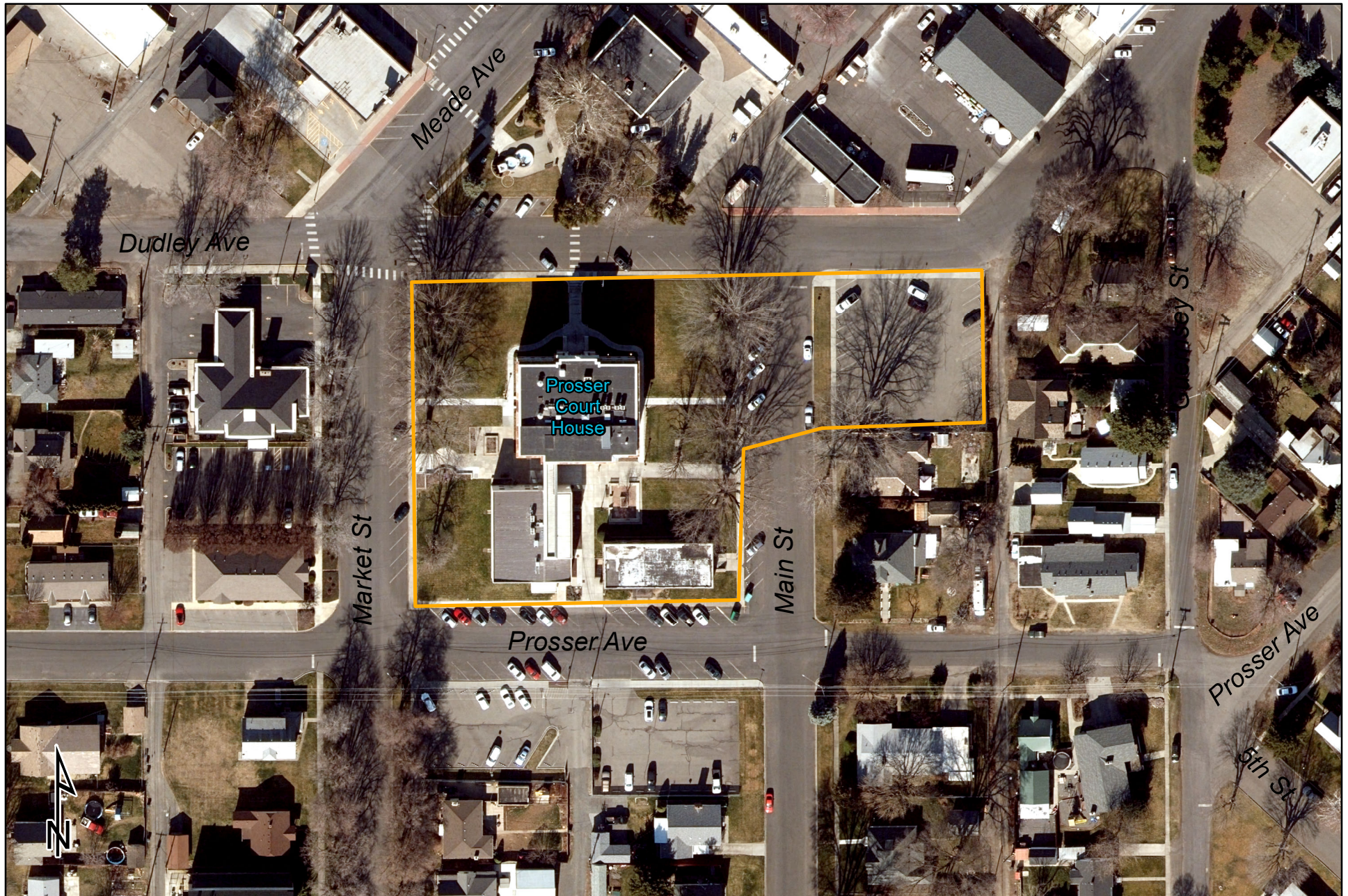
Trimming Area = 





Tree Trimming - Proccer Court House

Trimming Area = 



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

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

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

The Department of Labor & Industries prevailing wage rate website is
<http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm>

The publication date to use is December 8, 2021.

The public works project is located in Benton County.

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

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	Accepting work performed by Apollo Mechanical Contractors for the Jail Boiler Replacement Project
Presenter:	
Prepared By:	P. Schut
Reviewed By:	R. Blain
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed:
☒ Consent Agenda	☐ Discussion Only (1 st) ☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2 nd) ☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction ☐ Pass Ordinance
	☐ Sign Letter/Document ☐ Execute Contract

Summary / Background Information

The County entered a contract with Apollo Mechanical Contractors for the Jail Boiler Replacement Project on March 30, 2021 (Res. 2021-280). Apollo Mechanical Contractors has completed all work required under the contract. The project has been examined by the Director of Operations and Capital Programs and has been found to comply with the project specifications and drawings.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The Director of Operations and Capital Programs recommends that the Board formally accept Apollo Mechanical Contractor's work and the project as complete and authorize the release of their retainage.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ACCEPTING WORK PERFORMED BY APOLLO MECHANICAL CONTRACTORS UNDER THE CONTRACT FOR JAIL BOILER REPLACEMENT PROJECT

WHEREAS, on March 30, 2021, the Board of County Commissioners entered into a contract with Apollo Mechanical Contractors of Kennewick, Washington (Resolution 2021-280) for the Jail Boiler Replacement Project; and

WHEREAS, the contractor has completed all work required under their contract with Benton County for the project; and

WHEREAS, all releases for the project retainage have been received, and all closeout paperwork is in order; and

WHEREAS, this project has been examined by the Director of Operations and Capital Programs and has been found to comply with the applicable project specifications and drawings; and

WHEREAS, it is the Director of Operations and Capital Programs' recommendation that the Board of Benton County Commissioners formally accept the contractor's work and the project as complete;
NOW, THEREFORE,

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Director of Operations and Capital Programs' recommendation and hereby accepts the work performed by Apollo Mechanical Contractors under the contract for the Jail Boiler Replacement Project as being completed in conformance with the contract documents; and

BE IT FURTHER RESOLVED, the Board authorizes the release of the retainage of \$6,753.64.

Dated this 11th day of January 2022.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	Awarding and executing a contract with CP Mechanical, LLC for the Jail Condenser Replacement Project
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed:
☒ Consent Agenda	☐ Discussion Only (1 st) ☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2 nd) ☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction ☐ Pass Ordinance
	☐ Sign Letter/Document ☒ Execute Contract

Summary / Background Information

Bids were solicited for the replacement of three condenser units at Benton County Jail utilizing the MRSC Small Works Roster, and four bids were received in the amounts below:

CP Mechanical, LLC, Yakima, WA (CPMECHL874B2) \$ 41,900.00

Coffey Refrigeration, Kennewick, WA (COFFER*099LG) \$ 52,085.20

Johnson Controls, Inc., Spokane, WA (JOHNSC*27205) Non-Responsive

JRT Mechanical, Kennewick, WA (JRTMEI*066KE) Non-Responsive

A contract has been prepared; reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney from the Civil Division; and has been executed by CP Mechanical, LLC, Yakima, WA

Fiscal Impact

Amount: \$41,900.00 excluding W.S.S.T.

Fund: Jail Depreciation Reserve Fund (Fund # 142-101)

Recommendation

Award the contract for the Jail Condenser Replacement Project in an amount not to exceed \$41,900.00 to CP Mechanical, LLC and authorize the Chairman to sign the said contract.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING THE CONTRACT FOR THE REPLACEMENT OF JAIL CONDENSING UNITS TO CP MECHANICAL, LLC OF YAKIMA, WA AND AUTHORIZING THE CHAIRMAN TO SIGN SAID CONTRACT

WHEREAS, bids were solicited, utilizing the MRSC Small Works Roster, for the replacement of three condenser units at the Benton County Jail; and

WHEREAS, four bids were received in the amounts below:

CP Mechanical, LLC, Yakima, WA (CPMECHL874B2)	\$ 41,900.00
Coffey Refrigeration, Kennewick, WA (COFFER*099LG)	\$ 52,085.20
Johnson Controls, Inc., Spokane, WA (JOHNSC*27205)	Non-Responsive
JRT Mechanical, Kennewick, WA (JRTMEI*066KE)	Non-Responsive

WHEREAS, the Purchasing Department recommends award of the bid to CP Mechanical, LLC, Yakima, WA; and

WHEREAS, a contract has been prepared; reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney from the Civil Division; and has been executed by CP Mechanical, LLC; and

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

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Purchasing Department's recommendation and awards the bid for replacement of jail condensing units to CP Mechanical, LLC, Yakima, Washington, in a not to exceed amount of \$41,900.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract with CP Mechanical, LLC; and

BE IT FURTHER RESOLVED, said contract expires on April 15, 2022.

Dated this 11th day of January, 2022.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

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

**BENTON COUNTY
PUBLIC WORKS CONTRACT**

TERMS AND CONDITIONS

THIS Contract is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **CP MECHANICAL, LLC**, a corporation organized under the laws of the State of Washington with its principal offices at 12 S 6th Ave, Yakima, WA 98902 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

- a. Exhibit A – Bid Form dated December 8, 2021
- b. Exhibit B – Washington State Prevailing Wage Rates for Public Works Contracts.

2. DURATION OF CONTRACT

The term of this Contract shall begin upon signature of both parties and shall expire April 15, 2022. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

- a. The CONTRACTOR agrees to replace three condensing units (two walk-in cooler units & one freezer unit) in the Jail Kitchen. The new units will be Russell Condensing Units (Model # RF0150E4Sealent for walk-in coolers & Model # RF0250L4SEATA for the walk-in freezer) The new units will need to be installed on the outside concrete wall at approximately 10 feet off the ground. A new line set will need to be ran through the concrete wall for each unit and changing the refrigerant to R448. The Contractor will be responsible for removing and disposing of the old units. The Contractor will also be responsible for cutting/capping for the old-line sets and filling in the exterior line with concrete at least 12" in depth. The Contractor will also be responsible for sub-contracting out the necessary electrical work out.
- b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in conjunction with the other contractor. In the event that the requested work requires, under State or local law, the issuance of a building or other permit, CONTRACTOR shall be responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process but may not charge any additional processing or other fees that it does not actually incur.
- e. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

- f. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- g. The CONTRACTOR agrees to submit a COVID-19 Safety Plan in compliance with the Washington State Stay Home, Stay Healthy Proclamation before work can begin.
- h. Each of the CONTRACTOR'S employees or subcontractors who will be working onsite at the Jail facility are required to submit a Benton County Background Check Authorization and Release form and be approved to work on the site by COUNTY, as further outlined in Section 29.
- I. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- J. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name: Claudio Penaloza
 Address: 12 S 6th Ave
 Yakima, WA 98902
 Phone: 509-910-5027
 Email: CPMechanical@charter.net

b. For COUNTY:

Name: Robert Blain, Director of Operations and Capital Programs
 Address: 7122 W. Okanogan Pl., Bldg. A
 Kennewick, WA 99336
 Phone: 509-736-2704
 Email: procurement@co.benton.wa.us

5. COMPENSATION

- a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Forty-One Thousand Nine Hundred Dollars and Zero Cents (\$41,900.00), excluding W.S.S.T., in accordance with Exhibit A, "Bid Form", which is attached hereto and incorporated herein by reference.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed of Forty-One Thousand Nine Hundred Dollars and Zero Cents (\$41,900.00), excluding W.S.S.T. Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.

- c. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via <https://secureaccess.wa.gov/> and then forward a copy of the statement to COUNTY'S Contract Representative. At the completion of all work contemplated by this Contract, or at the end of the contract term, whichever comes first, CONTRACTOR shall submit an Affidavit of Wages Paid via <https://secureaccess.wa.gov/> and then forward a copy of the affidavit to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with <https://secureaccess.wa.gov/>.
- d. No payment shall be for any work performed by CONTRACTOR, except for work identified and set forth in this Contract.

6. INVOICING

- a. The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTY as required in Section 3.c. of this Contract.
- b. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov and then forward a copy of the statement to the COUNTY's Contract Representative.
- c. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties have executed and submitted a Statement of Intent to Pay Prevailing Wages in accordance with this section and the work has been performed to the satisfaction of the COUNTY. The COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) days after receiving the invoice.
- d. For each invoiced and approved payment due to the CONTRACTOR under this section, the COUNTY shall withhold from the earned portion of the payment (*i.e.* that portion excluding sales tax or other tax) five percent (5%) as a contract retainage, pursuant to RCW 60.28.011 and in accordance with chapter 60.28 RCW. Within ten (10) days following the execution of this Contract, the CONTRACTOR shall submit written notice to the COUNTY stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTY. If such written election is not received by the COUNTY, then the COUNTY may choose any method allowed by RCW 60.28.011(4)(a)-(c) for holding the retained moneys.

7. AMENDMENTS AND CHANGES IN WORK

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

for the accuracy of the work, even if the work is accepted by the COUNTY.

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

8. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents. In the event of the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.
- b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 8 shall survive termination and expiration of this Contract.**
- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR or the CONTRACTOR'S employees, agents, or subcontractors. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into this Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

- a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers

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

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

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

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

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

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

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

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

- c. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any auto (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims that may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.
- d. **Other Insurance Provisions:**
1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY and its elected and appointed officers, officials, employees, and agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.
 2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY or its officers, officials, employees, or agents.
 4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
 6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
 7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.
 8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

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

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

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

1. All insurance to be maintained by the CONTRACTOR, other than Auto Liability, and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY or its elected and appointed officials, employees, or agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, must be provided to the County's Contract Representative referenced in Section 4.
3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.
4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager at the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

10. PERFORMANCE AND PAYMENT BONDS

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

the execution of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.
- d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required for the performance of work under this Contract by federal, state, or local law that is now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative or designee.

13. INSPECTION OF BOOKS AND RECORDS

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

14. CHOICE OF LAW AND JURISDICTION

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

15. SUCCESSORS AND ASSIGNS

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

16. TERMINATION

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

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

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

18. NONDISCRIMINATION

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

19. DISPUTES

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

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

21. VERIFICATION OF SUBCONTRACTOR RESPONSIBILITY CRITERIA

A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses a contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

22. ENTIRE AGREEMENT

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

23. NOTICES

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

24. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

25. LITIGATION HOLD NOTICE

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

26. PUBLIC RECORDS ACT

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

27. SURVIVABILITY

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

28. CONFIDENTIALITY

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

29 SECURITY BACKGROUND CHECK

The CONTRACTOR, its employees, subcontractors, and their employees who will be working onsite will be required to complete in full the Security Background Check, which can be found at <https://bentoncountywa.jotform.com/211997385382974>. Successful completion of the background check, as determined by the COUNTY, is required prior to the first day of work or entry into the jail. The COUNTY reserves the right to interview CONTRACTOR employees, or subcontractor employees as part of the security background process. The CONTRACTOR agrees to remove any of its employees, or subcontractor employees, prior to performance hereunder if in the sole discretion of the COUNTY said employees fail the Security Background Check. In addition, CONTRACTOR agrees to provide the COUNTY notice if during the performance of work hereunder any of its' employees, or subcontractors' employees, are charged with or convicted of any crime. Finally, if the CONTRACTOR, its employees, subcontractors, or their employees are working in the jail area and discover that a friend or family member is in the jail's custody they must immediately notify jail staff.

If fingerprints are required, CONTRACTOR, its employees, subcontractors, and their employees who will be working onsite must present themselves, their government issued identification and a check, exact

cash, or money order for \$34.25 for livescan, or \$71.25 if required to ink roll the fingerprint, to the records staff at the Benton County Corrections Department. Fingerprints will be taken and submitted to Washington State Patrol for verification. A complete fingerprint based criminal history check and local criminal history will be completed by the Records Sergeant. Information regarding any felony or misdemeanor conviction history will be presented to the Chief of Corrections for a determination if the individual will be allowed UNESCORTED access to the facility. Any felony convictions for a Contractor's employee will be presented to the Washington State Patrol WSP ACCESS section to determine if they will allow unescorted access to locations which have access to the network housing the ACCESS program; which is anything connecting to the COUNTY network and the majority of computers within the facilities.

It will be solely determined by the COUNTY if the CONTRACTOR, its employees, subcontractors, and their employees will be required to complete the CJIS online training. This is a web-based training accessible from any computer.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and it is effective upon signature of both parties.

Date: _____

BENTON COUNTY

Chairman
Benton County Commissioners

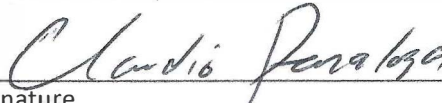
Approved as to Form:



Eric Andrews, Civil DPA

Date: 12-22-2021

CP MECHANICAL, LLC



Signature

President

Title

Claudio Penaloza

PRINTED NAME

BID FORM

KITCHEN WALK-IN COOLER/FREEZER CONDENSER REPLACEMENT

Company Name CP Mechanical LLC

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 12-08-2021

Addendum No. 2, dated 12-08-2021

BID AMOUNT:

LUMP SUM (excluding sales tax) \$ 41,900.00

LUMP SUM (excluding sales tax), in words Forty One thousand Nine hundred 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 X

In the Amount of Two thousand Ninety five dollars

Certified Check _____

(\$ 2095.00) Payable to the
County Treasurer of Benton County, Washington.

Bid Bond _____

In the amount of 5% of the Bid.

CONTRACTOR'S LICENSE:

The undersigned states that it is a duly licensed contractor, for the type of work proposed, in the State of Washington, and that all fees, permits, etc., pursuant to submitting this bid have been paid in full.

PUBLIC WORKS TRAINING:

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

NON-COLLUSION DECLARATION

I hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of Chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction.

SUBMISSION OF BID

Respectfully submitted this 8th day of December 2021.

COMPANY NAME: CP Mechanical LLC

AUTHORIZED SIGNATURE: Claudio Penaloza

TYPE OR PRINT NAME: Claudio Penaloza

TITLE: Owner

STREET ADDRESS: 12 S 6th Ave

CITY, STATE, ZIP: Yakima, WA 98902

TELEPHONE NO.: 509-910-5027

EMAIL: CPmechanical@charter.net

CONTRACTOR'S LICENSE NO.: CPMECML874B2

UBI NO.: 603264074

WASHINGTON STATE EMPLOYMENT SECURITY NO.: 654040-00-0

EXHIBIT B

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

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

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

The Department of Labor & Industries prevailing wage rate website is
<http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm>

The publication date to use is December 9, 2021.

The public works project is located in Benton County.

A copy of the prevailing wage rates, the benefit code key and the supplement are available for viewing at the Purchasing Department, 7122 W Okanogan Place; STE E330, Kennewick, WA Monday through Friday, between 8:00 a.m. & noon and between 1:00 p.m. & 5:00 p.m. except holidays.

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	Contract w/ Knutzen Consulting Engineering, PLLC. for the Design of the New Access Road for the new Red Mountain Radio Tower Site
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed:
☒ Consent Agenda	☐ Discussion Only (1 st) ☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2 nd) ☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction ☐ Pass Ordinance
	☐ Sign Letter/Document ☒ Execute Contract

Summary / Background Information

Qualifications were solicited to provide engineering & design services for the new access road for the new Red Mountain Radio Tower site.

After reviewing the qualifications submitted, it was determined that Knutzen Consulting Engineering, PLLC., Kennewick, Washington, would be the most qualified consultant to provide the services needed.

A Professional Services Contract has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney, and signed by Knutzen Consulting Engineering, PLLC.

Fiscal Impact

Amount: \$150,000.00 excluding W.S.S.T.

Fund: Public Safety Tax Fund (Fund# 0148-101)

Recommendation

Approve the Contract with Knutzen Consulting Engineering, PLLC. to design the new access road for the new Red Mountain Radio Tower site.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICES CONTRACT WITH KNUTZEN CONSULTING ENGINEERING, PLLC. FOR PROVIDING ENGINEERING & DESIGN SERVICES FOR THE NEW ACCESS ROAD FOR THE NEW RED MOUNTAIN RADIO TOWER SITE

WHEREAS, qualifications were solicited to provide engineering & design services for the new access road for the new Red Mountain radio tower site; and

WHEREAS, after review of qualifications submitted, it was determined that Knutzen Consulting Engineering, PLLC., Kennewick, Washington, would be the most qualified consultant to provide the services needed; and

WHEREAS, a Professional Services Contract has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney, and signed by Knutzen Consulting Engineering, PLLC.; **NOW, THEREFORE**,

BE IT RESOLVED, that the Board of County Commissioners hereby approves the Professional Services Contract with Knutzen Consulting Engineering, PLLC. of Kennewick, Washington, to provide professional engineering & design services for the new access road for the new Red Mountain radio tower site with a maximum total amount payable not to exceed \$150,000.00, excluding Washington State Sales Tax, unless agreed to by amendment by both parties; and

BE IT FURTHER RESOLVED the term of this contract commences on this date and terminates on June 30, 2024.

Dated this 11th 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.

**BENTON COUNTY
ARCHITECTURAL/ENGINEERING
PROFESSIONAL SERVICES CONTRACT**

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **KNUTZEN CONSULTING ENGINEERING, PLLC**, a corporation organized under the laws of the State of Washington with its principal offices at 5401 Ridgeline Dr., STE 160, Kennewick, WA 99338 (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 - Scope of Services & Fees; and

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on June 30, 2024. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The COUNTY requires and the CONTRACTOR agrees to perform the following services:

- a. Provide Engineering, Design, Construction Management Services for the new access road for upcoming Red Mountain Emergency Radio Tower project all in accordance with Exhibit A attached hereto; subject to the following requirements and limitations:

- i. The CONTRACTOR agrees to provide its own labor and materials as included costs in the fees payable consistent

with Exhibit A and Section 5 below. Unless otherwise provided for in a work order, no materials, labor, or facilities will be furnished by the COUNTY.

ii. The COUNTY shall furnish the CONTRACTOR with a proposed work order for each project under this Contract, and the CONTRACTOR shall in return provide the COUNTY with a detailed breakdown proposal including the scope of work and fees consistent with the Exhibit A for services to be performed. All proposals from the Architect must be approved by the Board of Benton County Commissioners via resolution prior to commencement of any work.

iii. The CONTRACTOR shall review the COUNTY's scope of work, budget and schedule and reach an understanding with the COUNTY of the project requirements. Based on the approved project requirements, the CONTRACTOR shall develop a design. Upon COUNTY's approval of the design, CONTRACTOR shall prepare construction documents indicating requirements for construction of the project and shall coordinate its services with any consulting services the COUNTY provides. The Contractor shall assist the COUNTY in filing documents required for the approval of government authorities in obtaining proposals and in awarding contracts for construction. During the construction phase, CONTRACTOR shall act as the COUNTY's representative to the extent set forth in this Contract. CONTRACTOR will visit the construction site at intervals appropriate the stage of construction to become generally familiar with the progress and quality of the work. CONTRACTOR will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work. Based on the CONTRACTOR's observations and evaluations of the construction, CONTRACTOR shall certify amount the amounts due to the construction contractor. CONTRACTOR shall promptly review and approve or take appropriate action upon construction contractor's submittals for the limited purpose of checking with the conformance of information given and the design concept expressed in the contract documents. CONTRACTOR shall be responsible for producing all contract documents and correspondence related to construction or improvement projects for which CONTRACTOR is responsible. CONTRACTOR shall oversee, manage and direct all facets of project in a manner consistent with the standards expected of similarly situated architects on construction or improvement

projects within the State of Washington. CONTRACTOR shall generate all necessary documentation and contracts associated with construction or improvement projects for which CONTRACTOR is responsible subject, when appropriate, to review by COUNTY's legal counsel, and shall amend or modify such documents and contracts at the direction of COUNTY's legal counsel or COUNTY's representative. These documents and contracts include, but are not limited to: request for proposals/request for competitive bids to include posting the legal advertisements; Notices to Proceed; AIA standard form contracts; Change Orders; approval of all Progress Payments; Letter of Substantial Completion. The CONTRACTOR shall forward all original documents to the COUNTY at COUNTY's request, and shall retain all records related to any given project for the appropriate Washington State Retention Schedule as promulgated by the Washington State Archivist.

iv. The CONTRACTOR shall perform the work consistent with the industry standards in the A&E Profession. Specifically, in instances where project contracts call for the architect to exercise independent discretion in making a decision or resolving a dispute, CONTRACTOR shall do so in an independent fashion.

v. The CONTRACTOR shall complete each task assigned in a timely manner according to the schedule agreed to by the parties.

b. Information and Reports: The CONTRACTOR'S representative shall meet with the COUNTY'S representative as specified in each work order, and if not stated, no less than one time per week while a work order is in progress. The CONTRACTOR shall prepare and present status reports and other required information as specified in each work order, or as otherwise requested in writing by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Paul Knutzen
Address:	5401 Ridgeline Dr.; STE 160 Kennewick, WA 99338

Phone: 509-222-0959
Email: Paul@Knutzenengineering.com

b. For COUNTY:

Name: Robert Blain
Address: 7122 W Okanogan Place; Bldg. A
Kennewick, WA 99336
Phone: 509-727-2704
Email: Robert.Blain@co.benton.wa.us

5. COMPENSATION

- a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of One Hundred Thirty-Two Thousand Nine Hundred Dollars and Zero Cents (\$132,900.00), excluding W.S.S.T., additional services shall be performed at rates set for in Exhibit A, in accordance with Exhibit A, "Scope of Services & Fees", which is attached hereto and incorporated herein by reference.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), excluding W.S.S.T.
- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- d. The CONTRACTOR may, in accordance with Exhibit A, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.
- e. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- f. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR

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

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

6. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

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

by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents. In the event of the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.

- b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**
- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

- a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the CONTRACTOR shall secure and maintain at its own expense Professional Liability Insurance appropriate to the CONTRACTOR'S profession and shall be

written subject to limits of not less than one million dollars (\$1,000,000) each claim and in the aggregate. Such insurance must be provided by an insurance carrier with a Best's Rating of not less than A-VII.

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

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

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

CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

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

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

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

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

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

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

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

e. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY or its elected and appointed officers, officials, employees, or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.
2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY or its officers, officials, employees, or agents.
4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an

indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 8(a), shall be written on an Occurrence Policy form.
8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.
9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

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

Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability, and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.
3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.
4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in

this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

- a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.
- b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the

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

- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.
- d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state, or local law that are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative, or designee.

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of

any of its obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.
- b. All design work done by the CONTRACTOR shall be done on AutoCAD Civil 3D 2015 or higher, or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the expiration of the Contract. Should a construction project result from the work of the CONTRACTOR, the record drawings from the CONTRACTOR shall be transposed onto the electronic design drawings and submitted to the COUNTY.
- c. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall

be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice

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

27. PUBLIC RECORDS ACT

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

- This section left blank intentionally -

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

Dated: _____

Dated: 1/6/2022

FOR: BENTON COUNTY

**FOR: KNUTZEN CONSULTING
ENGINEERING, PLLC**

Chairman

DocuSigned by:

Paul Knutzen

4846ECB9537E4D9...
Signature

President

Member

Title:

Paul Knutzen

Member

Print Name

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

Attest: _____
Clerk of the Board

Approved as to Form

DocuSigned by:

Eric Andrews

B4F7673B88A1486...
Civil Deputy Prosecuting Attorney



SCOPE OF SERVICES

PROJECT: RED MOUNTAIN RADIO TOWER ACCESS ROAD AND POWER INSTALLATION PROJECT

PROJECT BACKGROUND:

We understand that Benton County has entered into an agreement with Benton County Emergency Services partners to install a radio tower site on the west end of Red Mountain. The exact location has been designated at 46°18'6.01"N 119°26'54.16"W which is located on parcel #13307300000400 and owned by Gary Heaton. Benton County has agreed to provide a new access road and power to the site. A preliminary sketch is shown below.



PROJECT ASSUMPTIONS:

In preparing this proposal, Knutzen has made the following assumptions based on information provided by the Client and based on prior experience with projects:

1. An engineering hydrology report will not be required since no impervious surface is being proposed.
2. It is assumed all plans will be prepared on Knutzen Engineering border, using Knutzen's AutoCAD line types.
3. The project will be designed, submitted and approved in one (1) phase.
4. All plans will be stamped by a licensed engineer in the State of Washington.

PROPOSED SCOPE OF SERVICES:

CONCEPTUAL PLANNING:

Knutzen will provide the following services as a part of this Contract.

1. Attend project kickoff meeting with County representatives to discuss scope of work.
2. Initially utilizing County GIS parcel data and USGS topographic contour data, analyze perspective access road alignments to the new tower site, we assume 15% maximum slope on the road and that the road will be a gravel road.
3. Review alignments with County staff to determine whether to continue discussions with property owners.
4. With County consent, contact and meet with perspective property owners to discuss routing on those affected parcels to determine their interest in potential routes and easement requirements.
5. Coordinate with utility providers (Benton REA) to determine power routing.
6. Obtain initial commitments from respective parties prior to moving to next step.

TOPOGRAPHIC & BOUNDARY SURVEY SCOPE:

Knutzen will hire a survey firm (PBS) to provide the following services as a part of this Contract.

1. Obtain Title Reports on affected parcels (Assume 5)
2. Call in for a public utility locate service (Dig-Alert).
3. Perform a UAS topographic survey for design on the affected portions of the parcel to delineate 1' contour intervals. Provide spot elevations of hard surfaces, provide locations of existing utility structures and underground utilities from public and private locate services. Locate existing fencing, roads, property boundaries, and other pertinent features.
4. Prepare topographic survey in AutoCAD Civil 3D and PDF.

SEPA

Knutzen will provide the following services as a part of this Contract.

1. Due to the project size, a SEPA checklist is expected and is going to be provided as a service.
2. The SEPA will trigger any associated critical area reports, slope hazards are expected, biological hazards are expected, along with the high likelihood of a cultural study which is included as well below.

CULTURAL STUDY:

Knutzen will hire an archaeologist (GRAM NW) to provide these following services as a part of this Contract.

1. Perform a pedestrian survey and excavation of 1 STP every ¼ mile along the road alignment.
2. Prepare a cultural resources report and provide to the County for review.
3. Submit final report to DAHP and the tribes for project comments.

BIOLOGICAL STUDY:

Knutzen will hire a biologist (PBS) to provide these following services as a part of this Contract.

1. Perform a field survey to observe any possible biological areas of importance along the road alignment.
2. Prepare a critical area report showing the results of the survey.

GEOTECHNICAL INVESTIGATION:

Knutzen will hire a geotechnical engineer (Shannon & Wilson) to provide these following services as a part of this Contract.

1. Review published County critical areas maps and complete a site reconnaissance. Based on our observations and the published literature, we will provide a review of the proposed development relative to identified geologic hazards.
2. Obtain geology and geologic hazard maps and publications of the immediate area. These documents may include geologic maps, historical aerial photos, documentation of previous slope failures, and nearby geotechnical explorations. Shannon & Wilson will request of the County any topographic information and documentation that discusses potential or known geologic hazards in an approximately ½-mile radius of the building pad site and access road alignment, including previous geologic hazard studies, landslide assessments, or other information which details known geologic conditions in the area.
3. Prepare a geological hazard assessment report that summarizes the literature review, reconnaissance, and assessments.
4. Call in for a public utility locate service (Dig-Alert).
5. Dig test pits at up to six locations along the alignment of the access road improvements.
6. Provide recommendations for earthwork, gravel road section, and infiltration in a complete geotechnical engineering report.
7. OPTIONAL – Seismic refraction study to determine rippability of shallow rock.

ACCESS ROAD DESIGN:

Knutzen will provide the following services as a part of this Contract.

1. Prepare road plan and profile with all horizontal and vertical information. Show proposed and existing contours in one (1) foot intervals for the Project. Prepare standard and site-specific details.
2. Drainage will be handled with roadside ditches, and we will not perform storm drain calculations, but we can do this if directed to construct facilities to capture the storm water before it discharges off site.

3. Prepare an erosion control plan to satisfy Ecology requirements for storm water permitting. It is assumed that a General Construction Storm Water Permit (CGSWP) is not required for this Project since the disturbed area is less than 5 acres. However, an Erosivity Waiver should be completed with the State to satisfy their requirements, otherwise a CGSWP and SWPPP will be required. We will assist the Client in preparation of this form which will require signature of the Site Contractor once this work is awarded.
4. Prepare technical specifications and utilize County contract documents.
5. Prepare preliminary construction schedule.
6. Submit plans & specifications for County review at 60%, 90%, and 100% milestones.
7. Contract and bidding documents will be provided at the 90% and 100% design levels.
8. Provide all copies necessary for submittal to the County for review and obtain engineering plan approval. It is assumed the approval will take no more than one (1) review, with one (1) re-issue to the County for approval.
9. The following sheets will be included in Knutzen's work:
 - a. C001 General notes, legend, and vicinity map.
 - b. C200+ Access road plan and profile
 - c. C300+ Power routing showing alignment and configuration as designed by utility company.
 - d. C501 Project specific details and specifications.

GRADING PERMIT:

Knutzen will provide the following services as a part of this Contract.

1. Once SEPA approval is obtained and the County has accepted the reports and issued their Determination of Non-Significance (DNS), or Mitigated Determination of Non-Significance (MDNS), we will then complete the plans and submit for a proper Grading permit with the Building Department.

EASEMENT PREPARATION & RECORDING:

Knutzen will hire a survey firm (PBS) and attorney (MMC Law) to prepare the final easements.

1. Write legal descriptions consistent with the approved design.
2. Prepare required access easement forms for each affected parcel and tax affidavits with the easements
3. Review all documents with the County & affected property owners and incorporate any changes into the documents, obtain final signatures and record with the County Auditor.
4. Payment of access easement acquisition costs is included but costs are unknown at this time.
5. If power easements are not shared within the access road, separate power easements or the preferred use of a single combined access/utility easement should be a project goal.

CONSTRUCTION ADMINISTRATION SCOPE:

Knutzen will provide the following services as a part of this Contract.

1. Assist the County during the bidding process, issue addendum(s) as necessary.

2. Upon construction commencing we will provide construction support, answering RFI's, reviewing submittals, assisting in resolving unknown issues which could not have been addressed in the plans.
3. Attend regular construction meetings and assist in preparation of change orders.
4. Attend final walkthrough and assist in preparation of punch list.
5. Assist in the preparation of as-constructed drawings.

EXCLUSIONS:

The following list of items has been excluded from this proposal. Knutzen can perform and/or coordinate some of these items for an additional fee.

- a. Construction staking, setting new property corners, filing new record of surveys, or as-built surveying
- b. Bidding services or advertising of this project. It is assumed the County will obtain bids for this work through public bidding.
- c. Architectural, landscaping, structural, mechanical, electrical, traffic engineering of any kind.

All services not specifically outlined in the scope of work above shall be considered additional services and shall be subject to a commensurate adjustment to the agreed compensation, which shall be determined by way of a written addendum, signed by the parties, prior to proceeding with the additional work.

COMPENSATION:

Knutzen will perform these services on a time & materials basis with estimated totals of:

Conceptual Planning	\$8,200
Topographic & Boundary Survey	\$17,500
SEPA	\$1,500
Cultural Study	\$7,800
Biological Study	\$9,200
Geotechnical Investigation	\$14,200
OPTIONAL-Seismic Refraction	\$5,700
Access Road Design	\$13,400
Grading Permit	\$1,800
Easement Preparation	
Surveying	\$2,700
Legal	\$4,500
Actual Acquisition Costs (TBD estimated at \$.50/sf)	\$37,500
Construction Administration	\$8,900

TOTAL **\$132,900**

Subconsultant markup is charged at 15%. Direct fee markup is 5%. Due to the many variables in this project, we propose to perform all scope on a time & materials basis based on our current rate schedule (attached).

SCHEDULE:

Once a signed contract is received by Knutzen we will prepare a conceptual alignment to the County to gauge interest in negotiating with property owners. This first part of the process will take approximately 4 weeks' time. Upon acceptance of alignment by County and property owners, a topographic & boundary survey will be ordered, and we estimate this will take up to 8 weeks' time to complete. Once the survey is complete, we will begin our civil design and submit to the Client for review at the project milestones (60-90-100) within subsequent 2 weeks' time from receipt of each review comments. We suggest at the 60% review we submit for grading permit and SEPA review. All critical area reports will occur during this phase, and this process may take upwards of 12 weeks' time depending on agency requirements. Upon conclusion of SEPA, associated critical area reports, obtaining easements, and grading permit approval, we should be at 100% and the project can be bid to Contractors. We estimate the overall time to get to construction from start of this project to be approximately 4-6 months' time.

OTHER TERMS AND CONDITIONS:

Thank you for the opportunity to submit this agreement. We look forward to working with you on this Project. If the scope of work above does not adequately reflect your expectations, please let us know. It is our goal to meet your needs and budget on this Project. If you have any questions, please feel free to contact the undersigned directly at 509.222.0959. The return of a signed copy of this agreement will authorize Knutzen to proceed with this work.

APPROVED BY:

Benton County

Signature_____
Print_____
Date

Knutzen Engineering



Signature

Paul Knutzen

Print

12/30/2021

Date



This is **Appendix 1, Knutzen's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Client and Knutzen for Professional Services dated January 1, 2022.

Knutzen's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

Principal Engineer	\$ 160/hour
Senior Structural Engineer	\$ 155/hour
Senior Engineer	\$ 138/hour
Associate Structural Engineer	\$ 133/hour
Associate Engineer	\$ 123/hour
Assistant Engineer	\$ 107/hour
Junior Engineer	\$ 90/hour
Senior Designer	\$ 112/hour
Associate Designer	\$ 105/hour
Assistant Designer	\$ 95/hour
Project Assistant	\$ 79/hour
Support Staff	\$ 68/hour
College Intern	\$ 60/hour

Minimum Charges

In-office Consultation *	\$ 150
On-Site Consultation *	\$ 500
* Does not include written product	

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	PayneWest Insurance Broker/Agent
Presenter:	N/A
Prepared By:	Adam Morasch, Risk Manager
Reviewed By:	Mary Christen, Administrative Assistant
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract

Summary / Background Information

PayneWest Insurance has acted as Benton County's agent/broker for insurance policies/bonds. The amount for insurance/bond payments not to exceed is authorized each year by Commissioners' resolution. This resolution if approved authorizes payment to PayneWest Insurance up to \$200,000. It also authorizes the Risk Manager to negotiate up to \$10,000 the purchase of insurance policies/bonds where the insurance/bond company does not pay commission.

Fiscal Impact

N/A

Recommendation

Approve the attached Resolution to use PayneWest as our agent/broker for insurance policies and bonds.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPOINTING PAYNEWEST INSURANCE AS THE BROKER/AGENT OF RECORD FOR INSURANCE POLICIES AND/OR BONDS REQUESTED BY BENTON COUNTY

WHEREAS, if requested by Benton County, PayneWest Insurance shall act as Benton County's agent and/or broker for insurance policies and/or bonds for 2022; and

WHEREAS, PayneWest Insurance's compensation will be from commissions received by PayneWest Insurance from the respective insurance or bond companies providing the applicable insurance policies and/or bonds for Benton County; and

WHEREAS, if the insurance policy or bonds are obtained for Benton County from insurance and/or bond companies that do not pay commission, the Board of Benton County Commissioners authorizes the Risk Manager or designee to negotiate a fee prior to the purchase of insurance policies and/or bonds; and

WHEREAS, the Board of the Benton County Commissioners authorizes insurance and bond payments for 2022 in a total amount not to exceed \$200,000 to PayneWest Insurance for acting as Benton County's agent and/or broker for requested insurance policies and/or bonds; **NOW, THEREFORE**,

BE IT RESOLVED the Board of Benton County Commissioners, Benton County, Washington hereby authorizes insurance policies and/or bond payments in a total amount not to exceed \$200,000 to PayneWest Insurance for acting as Benton County's agent and/or broker for requested insurance policies and/or bonds; and

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners, Benton County Washington hereby authorizes the Risk Manager or designee to negotiate a fee not to exceed \$10,000 prior to the purchase of insurance policies and/or bonds where the insurance and/or bond company does not pay commission; and

BE IT FURTHER RESOLVED, that any negotiated fee which exceeds \$10,000 shall be approved by the Board of Benton County Commissioners prior to the purchase of insurance policies and/or bonds where the insurance or bond company does not pay a commission.

Dated this _____ day of _____, 2022.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County

Commissioners of Benton County, Washington

Attest:
Clerk of the Board

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 123.

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: Commissioners; Auditor; File, Superior Court

Prepared by: T. Runge

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM: Superior Court

TRANSFER TO: Superior Court

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.210	1379	Court Reporter	\$1,500	512.210	1925	Overtime	1,500
TOTAL			\$1,500	TOTAL			\$1,500

Explanation: 2021-2022 Budget - Transfer of funds to accurately cover the costs of overtime within the BARS coding.

Prepared by: Tiffany Runge, Superior Court Administrator

Date:

Approved ☐

Denied ☐

Date: _____

Chairman

Member

Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/11/2022	
Subject:	Waiving service time required prior to utilizing annual leave	
Presenter:	L. Wingfield and E. Hsu	
Prepared By:	L. Wingfield	
Reviewed By:		
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A <i>(If no, include reasoning for no approval)</i>	
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>	
☐ Consent Agenda ☐ Public Hearing ☒ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract	

Summary / Background Information

Luis Cisneros had previously worked for the County for over two (2) years and left for less than nine (9) months. The non-barg policy does not allow Luis to use annual leave until he completes another 6 months of service. It is requested that the Benton County Commissioners waive requiring Luis Cisneros to complete six (6) continuous months of employment before utilizing any accrued leave due to his previous service with the County and short break in service.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution waiving the requirement to complete 6 months of continuous service prior to using accrued annual leave for Luis Cisneros.

Suggested Motion

I move to approve the Resolution allowing Luis Cisneros to utilize annual leave prior to the completion of 6 months due to his previous service with the county.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ALLOWING LUIS CISNEROS TO UTILIZE ANNUAL LEAVE PRIOR TO COMPLETION OF SIX MONTHS DUE TO HIS PREVIOUS SERVICE WITH THE COUNTY.

WHEREAS, the Benton County Non-Bargaining Personnel Policies and Procedures state that annual leave cannot be utilized until an employee completes six (6) months of full time employment with the County; and

WHEREAS, Luis Cisneros had previously worked for the County for over two (2) years and left for less than nine (9) months; and

WHEREAS, it is requested that Mr. Cisneros be allowed to utilize any annual leave accrued prior to completing six (6) months of employment since his return; **NOW THEREFORE**,

BE IT RESOLVED, the Benton County Commissioners waive requiring Luis Cisneros completing six (6) continuous months of employment before utilizing any accrued leave due to his previous service with the County and short break in service.

Dated this _____ day of _____, 2022.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....

Clerk of the Board

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 11, 2022
Subject:	Resolution Prohibiting a Local Income Tax
Presenter:	Commissioner Will McKay
Prepared By:	Shyanne Palmus, Communications Coordinator
Reviewed By:	Matt Rasmussen, Deputy County Administrator
PA Review, Approval to Form:	☐ Yes ☐ No ☒ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☐ Consent Agenda ☐ Public Hearing ☒ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract

Summary / Background Information

At the January 4, 2022 Regular Meeting under Other Business, the Commissioner McKay proposed that the Board consider adopting a resolution prohibiting a local income tax on wages, salaries, investments, the sale of goods or services, or any other income source. A similar resolution has been adopted by Spokane County, Franklin County, City of Kennewick, City of Richland, and other local and regional municipalities.

The attached resolution is presented for discussion amongst the Board and possible approval.

Fiscal Impact

N/A

Recommendation

Approve the attached Resolution.

Suggested Motion

"I move to approve the Resolution prohibiting a local income tax in Benton County, as presented."

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF PROHIBITING A LOCAL INCOME TAX ON WAGES, SALARIES,
INVESTMENTS, THE SALE OF GOODS OR SERVICES, OR ANY OTHER INCOME
SOURCE**

WHEREAS, Article VII, § 1 of the Washington State Constitution establishes the basic framework for taxation in the state of Washington, including what shall be permitted as a tax; and

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners has the care of County property and the management of County funds and business; and

WHEREAS, after the City of Seattle attempted to enact an income tax on certain individuals applicable within its municipal boundaries, the Washington State Court of Appeals, Division I ruled in *Kunath v. City of Seattle*, 10 Wash. App. 2d 205 (2019) that such a tax, when selectively applied, was unconstitutional and invalid, and also invalidated the statutory prohibitions on local governments from imposing a flat income tax; and

WHEREAS, the Washington State Supreme Court refused to review Division I's holding in *Kunath* and as such that the holding stands at this time; and

WHEREAS, the Board of Benton County Commissioners desires to declare its position regarding the potential for local governments to impose a local income tax on its residents and businesses; and

WHEREAS, businesses large and small provide the economic lifeblood in our County, the region, state, and country; and

WHEREAS, the Board of Benton County Commissioners knows that a strong and encouraging business climate is one of the best ways to attract and retain good businesses to employ people in family wage jobs; and

WHEREAS, while imposing a local income tax may generate additional revenue in the short term, it may very well result in less long-term revenue due to the dampening effect it would have on our businesses; and

WHEREAS, the Board of Benton County Commissioners encourages all municipalities throughout Benton County to provide the same protection from the adoption of another onerous tax for their citizens; **NOW THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners, pursuant to the provisions of RCW 36.32.120(6), hereby opposes the imposition of a local income tax on the businesses and residents of unincorporated Benton County. Such a tax would be in direct conflict with the high value Benton County places on promoting economic development through the attraction and expansion of financially healthy, family wage paying employers. Small businesses are the backbone of our local, regional, state, and national economy and it is imperative that Benton County not put unnecessary hurdles in the way of their success. As such, the Board of Benton County Commissioners opposes the imposition of a local income tax in the event a local income tax is determined legal and permissible by the Washington State Legislature or the Washington State Supreme Court.

BE IT FURTHER RESOLVED, this Resolution shall be effective upon the date of adoption.

Dated this _____ 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**