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 25, 2022
Benton County Courthouse, Prosser, WA

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- **January 11, 2022**

Review Agenda

Consent Agenda

Auditor
a. Surplus & Disposition of Personal Property
b. 2020 Accountability Audit Management Representation Letter

Building
c. Contract w/Northwest Code Professionals for Inspections and Plan Review Services

Commissioners
d. Benton County Tax Levy for 2022
e. Historical Preservation Disbursement Correction for the Historic Preservation Grant
f. Appointment of Angie Pacheco to the Mid-Columbia Libraries

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

Human Resources

h. Reappointing Paul Hart to the Benton County Civil Service Commission
i. Reappointing Mary Hutchins to the Benton County Civil Service Commission
j. GovernmentJobs.Com, dba NeoGov, Ordering Form for Job Postings, Interview Scheduling & Training
k. Compliance Settlement Agreement w/Teamsters Union Regarding Overpayments ULP
l. Collective Bargaining Agreement w/Benton-Franklin Juvenile Court Guild Representing Juvenile Court Unit
m. Amendment 1 for the Collective Bargaining Agreement w/AFSCME Representing Courthouse Union
n. Collective Bargaining Agreement w/Teamsters Local 839, Representing Sheriff's Office & Corrections Department Clerical
o. Collective Bargaining Agreement w/Teamsters Local 839, Representing Bailiffs
p. Collective Bargaining Agreement w/AFSCME Representing Appraisers

Human Services

q. First Amended Agreement w/WA State Department of Commerce Community Service & Housing Assistance Unit Treasury Rent Assistance Program
r. Agreement w/Tri-Cities Hispanic Chamber of Commerce for Treasury Rental Assistance Program

Juvenile

s. Contract w/Johnson Controls Fire Protection for Fire Alarm & Sprinkler Inspections
t. Notice of Termination of Personal Services Contract w/Jennifer Azure
u. Line Item Transfer, Fund No. 0115-101, Dept. 171

Office of Public Defense

v. Amended Superior Court Public Defense Agreement w/Shelley Ajax

Parks

w. Appointment of Sarah Funk to the Benton County Park Board
x. Appointment of Kit McBurney to the Benton County Park Board

Prosecuting Attorney

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

Public Works

z. Digital Submittal Certification of the 2022 Road Levy Certification and Estimated Revenue
aa. Coding Correction Between ER&R and Protective Inspection Services
bb. Solid Waste Financial Assistance Grant from WA State Dept. of Ecology

Purchasing

cc. Contract w/Banlin Construction for the Justice Center Front Entrance Security Upgrade Project
dd. Payment Authorization to Paramount Communications for Pulling Additional Fiber Runs @ the Justice Center
ee. Contract w/Booth & Sons Construction for the Moderate Risk Waste Facility Project
ff. Contract w/CKJT Architects for Architectural & Engineering Design of Justice Center Tenant Improvement Project
gg. Interlocal Agreement w/City of Prosser for General Equipment and/or Services
hh. Purchase from Avery Dennison for Sign Materials for the TrafficJet Print System
ii. Payment to Wilbur-Willis Company for Purchase of Herbicides
jj. Contract w/Apollo Mechanical Contractors for the Courtroom IT HVAC Project

Risk Management

kk. Engagement Letter w/Pricewaterhousecoopers for Self-Insured Workers Compensation & Liability Programs
ll. Contract w/Embark Safety to Monitor Driver Records Monthly

Sheriff
mm Memorandum of Understanding w/US Marshal for the Joint Law Enforcement Operations Task Force
nn 2021 Federal Equitable Sharing Agreement Certification
Treasurer
oo Cancelling Taxes Assessed Upon Personal Property Determined to be Uncollectible

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

Scheduled Business

Agreement w/WA State Parks & Recreations Commission for Boating Safety & Education Services ~ Cdr. Clarke

Grant Award from WA State Parks & Recreation Commission for the 2022 Federal Financial Assistant Grant Program & Boating Safety ~ Cdr. Clarke

Grant Agreement w/WA Traffic Safety Commission for Tri-Cities Walker Safety Project ~ Cdr. Clarke

Amending Social Media Policy & Procedures ~ S Palmus

2022 Federal Legislative Agenda ~ S Palmus

Benton County Economic Development Plan ~ A Fyall

Position Request for Transportation Planning Coordinator ~ L Wingfield & D D'Hondt
- Establishing the Classification Description
- Establishing Salary Placement
- Transfer of Funds Within County Roads
- Public Works Department Organizational Chart

Position Request for Principal Planner ~ L Wingfield; G Wendt, M Cooke
- Establishing the Classification Description
- Establishing Salary Placement
- Transfer of Funds Within Planning Department

Other Business

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, January 11, 2022, 9:00 a.m.
Meeting provided in-person, by Video Live-Broadcast and Telephonically

Present: Chairman Shon Small
Commissioner Will McKay
Commissioner Jerome Delvin
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; DPA Ryan Brown; Clerk Josie Delvin; Treasurer Ken Spencer, Kirsten Yniguez, Deputy Treasurer.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of January 4, 2022 were approved.

Agenda Review

The following discussion was added to Other Business:

- Approving Administrative Leave - Inclement Weather

Consent Agenda

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

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

None.

Request to Waive Service Time for OPD Employee

Lexi Wingfield via/WebEx presented a resolution requesting to waive service time to allow use of vacation for an OPD employee that had previously worked for the County for over two years and left for less than nine months.

MOTION: Commissioner McKay moved to approve the Resolution allowing Luis Cisneros to utilize annual leave prior to the completion of six months due to his previous service with the County. Commissioner Delvin seconded and upon vote, the motion carried.

Resolution Opposing Imposition of Local Income Tax

Commissioner McKay presented a resolution prohibiting a local income tax showing Benton County's support to oppose a local income tax.

MOTION: Commissioner Delvin moved to approve the resolution in support of prohibiting a local income tax in Benton County. Commissioner McKay seconded.

Discussion

Commissioner Delvin said the voters have been clear and the constitution was clear on this issue, so the timing was good to restate this.

Commissioner McKay said he was impressed with Benton County's conservativeness and baffled at the State's implementation of tax increases that were forced on local jurisdictions.

Upon vote, the motion carried.

Other Business

Resolution Approving Administrative Leave for Inclement Weather Conditions

Matt Rasmussen presented a resolution ratifying the Board's decision to delay the start of shift by two hours on the morning of January 6, 2022 due to inclement weather conditions and pay Administrative Pay. The Resolution outlined the employees that were eligible to receive the Administrative Pay.

MOTION: Commissioner Delvin moved to approve the Resolution approving Administrative Leave for Employees Impacted by Inclement Weather Conditions on January 6, 2022 as presented. Commissioner McKay seconded and upon vote, the motion carried.

Legislature - SB 5514

Commissioner Delvin said he testified on SB 5514 about allowing counties to hold monthly meetings outside the county seat. He said it was now on the Executive Calendar for Thursday.

Crisis Recovery Center

Commissioner Delvin said they received a list of excluded and included services from Lifepoint and Kyle Sullivan was reviewing the list. He said it was pretty exhaustive and currently prohibited the County from doing what it needed to do. If it was unacceptable, they might have to look at another option for a building or location. He said he would keep the Board updated.

Vaccine/Masking Requirements

Commissioner McKay expressed his frustration about the masking and vaccine requirements for schools and hoped the rules changed and it could be voluntary.

Executive Session – Pending Litigation

The Board went into executive session at 9:19 a.m. for up to 15 minutes with DPA Ryan Brown to discuss pending litigation. 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.

Commissioner Delvin recommended the County meet with the Sheriff's Office to review the lawsuits that were pending from assisting other jurisdictions. The Board requested Admin to meet with DPA Brown and the Sheriff's office to discuss the mutual aid agreements and indemnification clauses.

Tort Claim

CC 2022-01: Received January 11, 2022 from Adrian Ponce-Velasco

Payroll

Check Date: 01/05/2022

Payroll Checks
Total all funds: $2,444,352.29
Warrant #: 243453-243484
Direct Deposit #: 167762-168350

Payroll Draw Deductions/Transfers
Total all funds: $2,194,459.15
Taxes #: 101220101-101220113
ACH #: 2100-2106

Payroll Deduction Warrants
Total all funds: $117,352.68
Warrant #: 226171-226180

Accounts Payable

Check Date: 01/07/2022

Warrants #: 226181
Total all funds: $26,593.31

Warrants #: 226182
Total all funds: $931.04

Check Date: 01/10/2022

P-Cards #: 0122
Total all funds: $333,921.44

Resolutions

2022-032: 2022 Bi-County General Increase of Wages for Juvenile Justice & Superior Court
2022-033: 2022 General Increase of Wages for Non-Bargaining, Managers and Administrators
2022-034: First Amended Agreement w/Elijah Family Homes for the Five-Year Homeless Housing Plan
2022-035: Contract w/Tri-Cities Chaplaincy for Chaplain Services
2022-036: Interagency Agreement w/WA State Administrative Office of the Courts for Interpreter Funding
2022-037: Superior Court Public Defense Agreement w/Angel Betancourt for "Blake" Case Vacations & Resentencing
2022-038: Interlocal Agreement w/City of Kennewick for Road Maintenance in Dove Ridge Subdivision
2022-039: Interlocal Agreement w/City of Kennewick for Road Maintenance in Highland Vineyards Phase 1 & Phase 2 Subdivision
2022-040: Purchase of Bulk Diesel Fuel From Christensen, Inc.
2022-041: Contract w/Superior Tree Service for Tree Trimming @ the Fairgrounds & Prosser Courthouse
2022-042: Accepting Work Performed by Apollo Mechanical Contractors for Jail Boiler Replacement Project
2022-043: Contract w/CP Mechanical for the Replacement of Jail Condensing Units
2022-044: Contract w/Knutzen Consulting Engineering for Engineering & Design Services for New Red Mountain Radio Tower Site Access Road
2022-045: Appointing PayneWest Insurance as the Broker/Agent of Record for Insurance Policies and/or Bonds
2022-046: Line Item Transfer, Fund No. 0000-101, Dept. 123
2022-047: Allowing Luis Cisneros to Utilize Annual Leave Prior to Completion of Six Months Due to his Previous Service with the County
2022-048: Opposing a Local Income Tax on Wages, Salaries, Investments, the Sale of Goods or Services, or Any Other Income Source
2022-049: Approving Administrative Leave for Employees Impacted by Inclement Weather Conditions on January 6, 2022

There being no further business before the Board, the meeting adjourned at approximately 9:36 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Surplus Resolution
Presenter:	
Prepared By:	Lorene Roe
Reviewed By:	Horacio Gonzales

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

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

Summary / Background Information

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

Fiscal Impact

0

Recommendation

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

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

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

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

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

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

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

WHEREAS, the items listed by the Sheriff's Department have been assigned an exchange value of $5,600 to be credited towards new items listed in attached quote. **NOW, THEREFORE,**

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

Dated this _____day of _____, 2022.

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

L. Roe

Talos Tactical, LLC

Quote

4034 W Van Giesen, Suite C
West Richland, WA 99353 (509) 967-7200

SOLD TO:
Benton Country Sheriff's Department

SHIPPED TO:
Same

QUOTE NUMBER	BCSD Quote
QUOTE DATE	January 12, 2022
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	
SALES REP	Matt Cieslar
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

Sales Tax Rate: 0.00%

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
2	RMR	450.00	$900.00
2	Glock 17	600.00	1,200.00
2	Plates	15.00	30.00
2	Sights	100.00	200.00
4	Surefire	817.50	3,270.00
		SUBTOTAL	5,600.00
		TAX	
		FREIGHT	
			$5,600.00 PAY THIS AMOUNT

DIRECT ALL INQUIRIES TO:
Matt Cieslar
(509) 967-7200
email: Matt@TalosTactical.com

MAKE ALL CHECKS PAYABLE TO:
Talos Tactical

THANK YOU FOR YOUR BUSINESS!

Talos Tactical, LLC

Trade In

4034 W Van Giesen, Suite C
West Richland, WA 99353 (509) 967-7200

SOLD TO:
Benton Country Sheriff's Department

SHIPPED TO:
Same

QUOTE NUMBER	BCSD Trade
QUOTE DATE	January 12, 2022
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	
SALES REP	Matt Cieslar
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

Sales Tax Rate: 0.00%

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	Colt AR LE004096	450.00	$450.00
1	SW AR TE23326	350.00	350.00
1	LB0025594 Colt AR	450.00	450.00
1	SW AR ST81186	350.00	350.00
1	Colt AR LB0025784	450.00	450.00
1	DTI AR S048939	350.00	350.00
1	Colt AR LB025537	450.00	450.00
1	Colt AR LB026422	450.00	450.00
1	LWRC AR 14-04805 "Tim's Gun"	700.00	700.00
1	SW22 D224482	200.00	200.00
1	SW22 D220760	200.00	200.00
1	SW22 D225638	200.00	200.00
1	SW22 D225142	200.00	200.00
1	SW22 D223377	200.00	200.00
1	SW .38 Revolver CA 27052	300.00	300.00
1	Glock 42 ABCP162	300.00	300.00
		SUBTOTAL	5,600.00
		TAX	
		FREIGHT	
			$5,600.00 PAY THIS AMOUNT

DIRECT ALL INQUIRIES TO:
Matt Cieslar
(509) 967-7200
email: Matt@TalosTactical.com

MAKE ALL CHECKS PAYABLE TO:
Talos Tactical

THANK YOU FOR YOUR BUSINESS!

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25,2022
Subject:	2020 Accountability Audit Management Representation Letter
Presenter:	
Prepared By:	A. Coverdell
Reviewed By:	B. Chilton, K. Spencer, R. Brown

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

Presented is the Management Letter to close out the 2020 Accountability Audit of Benton County. This Management letter from Benton County to the State Auditor's Office contains representations which affirm the County's cooperation during the Accountability Audit of Benton County's 2020 operations.

Fiscal Impact

No fiscal impact.

Recommendation

It is recommended that the letter be signed by the Chairman of the Board. The Auditor and Treasurer have signed the letter.

Suggested Motion

Approve as part of consent agenda.

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

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

January 25, 2022

Ms. Michelle Kwon, Assistant State Auditor
Washington State Auditor's Office
100 North Morain, Ste. 216
Kennewick, WA 99336

To the Office of the Washington State Auditor:

We are providing this letter in connection with your audit of Benton County for the period from January 1, 2020 through December 31, 2020. Representations are in relation to matters existing during or subsequent to the audit period up to the date of this letter.

Certain representations in this letter are described as being limited to matters that are significant or material. Information is considered significant or material if it is probable that it would change or influence the judgment of a reasonable person.

We confirm, to the best of our knowledge and belief, having made appropriate inquires to be able to provide our representations, the following representations made to you during your audit. If we subsequently discover information that would change our representations related to this period, we will notify you in a timely manner.

General Representations:

1. We have provided you with unrestricted access to people you wished to speak with and made available requested and relevant information of which we are aware, including:
   a. Financial records and related data.
   b. Minutes of the meetings of the governing body or summaries of actions of recent meetings for which minutes have not yet been prepared.
   c. Other internal or external audits, examinations, investigations or studies that might concern the objectives of the audit and the corrective action taken to address significant findings and recommendations.

d. Communications from regulatory agencies, government representatives or others concerning possible material noncompliance, deficiencies in internal control or other matters that might concern the objectives of the audit.

e. Related party relationships and transactions.

f. Results of our internal assessment of business risks and risks related to financial reporting, compliance and fraud.

2. We acknowledge our responsibility for compliance with requirements related to confidentiality of certain information and have notified you whenever records or data containing information subject to any confidentiality requirements were made available.

3. We acknowledge our responsibility for compliance with applicable laws, regulations, contracts, and grant agreements.

4. We have identified and disclosed all laws, regulations, contracts and grant agreements that could have a direct and material effect on the determination of financial statement amounts, including legal and contractual provisions for reporting specific activities in separate funds.

5. We have complied with all material aspects of laws, regulations, contracts, and grant agreements.

6. We acknowledge our responsibility for establishing and maintaining effective internal controls over compliance with applicable laws and regulations and safeguarding of public resources, including controls to prevent and detect fraud.

7. We have established adequate procedures and controls to provide reasonable assurance of safeguarding public resources and compliance with applicable laws and regulations.

8. We have no knowledge of any fraud, allegations of fraud or suspected fraud involving management, employees or others, except as disclosed to the auditor in accordance with RCW 43.09.185.

9. In accordance with RCW 43.09.200, all transactions have been properly recorded in the financial records.

10. We are responsible for, and have accurately prepared, the summary schedule of prior audit findings to include all findings, and we have provided you with all the information on the status of the follow-up on prior audit findings.

Brenda Chilton

Chairperson
Board of County Commissioners

Brenda Chilton
Benton County Auditor

Kenneth Spencer
Benton County Treasurer

cc: Board of County Commissioners
Brenda Chilton, Benton County Auditor
Kenneth Spencer, Benton County Treasurer
Ryan Brown, Prosecuting Attorney's Office

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Personal Services Contract with Northwest Code Professionals
Presenter:	N/A
Prepared By:	Michelle Johnson
Reviewed By:	Brad O'Brien

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Benton County Building Division desires to enter into a Personal Services Contract with Northwest Code Professionals to provide inspection and plan review services associated with keeping up with the fluctuating building needs within Benton County.

The term of this contract shall begin on the date that the agreement is signed and will expire 2 years after that date.

Fiscal Impact

Amount not to exceed $180,000.00 including WSST. No supplemental is required.

Recommendation

Recommend that the Board of Benton County Commissioners sign the Resolution and the Personal Services Contract – Terms and Conditions, including Exhibit A – Building Code Services Agreement, between Northwest Code Professionals and Benton County.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ENTERING INTO A PERSONAL SERVICES CONTRACT WITH NORTHWEST CODE PROFESSIONALS

WHEREAS, Benton County desires to enter into a contract with Northwest Code Professionals to provide inspections and plan review services associated with keeping up with the fluctuating building needs within Benton County; and

WHEREAS, a contract has been prepared; reviewed, and approved as to form by the Deputy Prosecuting Attorney from the Civil Division; NOW THEREFORE,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby authorizes the Chairman of the Board to sign the attached Personal Services Contract (Terms and Conditions and Exhibit A–Building Code Services Agreement) between Benton County and Northwest Code Professionals, in the amount not to exceed $180,000.00 including WSST; and

BE IT FURTHER RESOLVED, the term of the attached contract commences the date that the contract is signed (January 25, 2022) and will expire 2 years after that date (January 25, 2024).

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

BENTON COUNTY
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **NORTHWEST CODE PROFESSIONALS**, a corporation organized under the laws of the State of Washington with its principal offices at 144 E 14th Ave Eugene, Oregon 97401 (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 for contracted building inspection/plan review work including scope of services, assumptions, and compensation.**

2. DURATION OF CONTRACT

The term of this Contract shall begin on **date that agreement is signed and will expire 2 years after that date.**. 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 inspection and plan review services associated with keeping up with the fluctuating building needs within Benton County. The Scope of Work, Assumptions, and Compensation are is set forth in Exhibit A, which is attached hereto and incorporated herein by reference and generally includes:

Conducts plan review and inspections related to Building permits issued by Benton County.

Conduct Plan Review services related to Building permits issued by Benton County

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

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

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Northwest Code Professionals
Address:	144 E 14th Ave.
	Eugene, Oregon 97401
Phone:	1-541-484-9043
Email:	jacka@nwcodepros.com

b. For COUNTY:

Name:	Benton County Building Department
Address:	102206 E Wiser Parkway
	Kennewick, WA 99338
Phone:	509-735-3500
Email:	brad.obrien@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the

CONTRACTOR shall be paid $88.00 p/hr plus mileage for building inspections, and $88.00 per hour for plan review (3- Hour minimum). Commercial plan review will be 75% of total plan review fees as set forth in Exhibit A, 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 $180,000 ($7,500 p/month X 24 month contract) , including W.S.S.T.

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

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

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

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

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

6. **AMENDMENTS AND CHANGES IN WORK**

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

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

7. **HOLD HARMLESS AND INDEMNIFICATION**

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

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR**

acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

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

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

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

The commercial general liability policy must contain an endorsement naming the COUNTY and its elected and appointed officials, employees, and agents as an Additional Insured and

an endorsement that specifically states that CONTRACTOR's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

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

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

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

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

e. **Cyber Liability:** The CONTRACTOR shall maintain cyber liability insurance for not less than one million dollars ($1,000,000) per occurrence and an annual aggregate of two million dollars ($2,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion, and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to COUNTY and for claims involving any professional services for which the CONTRACTOR is engaged with COUNTY for such length of time as

necessary to cover any and all claims.

f. **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.

g. **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 thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

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

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

the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

privileges afforded to COUNTY employees.

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and

shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

b. 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: _____

FOR: BENTON COUNTY

Chairman

Member

Member

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

Attest: _____
Clerk of the Board

Approved as to Form

Civil Deputy Prosecuting Attorney

Dated: 1/6/2022

FOR: << CONTRACTOR >>

Signature

President/ CEO
Title:

Jack E Applegate
Print Name

Exhibit A

BUILDING CODE SERVICES AGREEMENT

This agreement is made this **9th day of December, 2021,** between NORTHWEST CODE PROFESSIONALS, ("NWCP"), and Benton County, Washington, (Municipality) for and in consideration of the mutual benefits to be derived hereby. The parties hereby agree as follows:

Scope of Services: NWCP will provide project support in addition to plan review and inspection services to the municipality on an as needed basis and non-exclusive basis as directed by the Municipality. The reviews will encompass foundation, structural, plumbing, mechanical, accessibility, energy code and life safety provisions. NWCP will perform inspections and plan reviews per the Municipality's adopted codes. NWCP is not obligated to perform services beyond what is covered under this agreement. Any changes or additions to the scope of work shall be done only in writing and shall specifically state the additional fees, if any, for such changes. NWCP is under no obligation to perform and will not perform any inspection services relating to site infrastructure including roads, parking lots, landscaping, drainage, or other matters not included as building code issues. NWCP will perform work at a level of competency in accordance with industry standards.

NWCP will provide testimony and evidence in any claim or litigation which arises from the services of NWCP under this Agreement. Such shall be provided at no additional expense to the Municipality. This obligation shall survive the expiration and/or termination of this agreement.

Fee Structure: NWCP fees will be adjusted by written notice every two years to reflect increases in staffing costs for services via written addendum sent to Municipality. For this original agreement the fees for services will be as follows:

Project Support Service Fees:

o Commercial Plan Review Fee	**75% of total plan review fees[1, 2]**
o Inspection Fee	**$88.00 Per HR**
o Plan Review Hourly Rate/Residential Plan Review	**$88.00 Per hour. (All [3] Residential Plan Reviews (Minimum 3 hour Fee), All Secondary Reviews, Review of Changes)**



- Inspection Services/Business Lic. **$88.00 per hour. [2] (On Call Service or requested work not covered by permits)**

After Hours/Weekend Inspections **$100.00 per hour– Minimum 2 hr. charge.**

[1]NWCP will determine if a project requires Structural engineered review services. If requested or deemed appropriate by the **Municipality**, these fees will be billed at actual cost and may be billed directly to the applicant by Municipality.

[2]Where NWCP provides full services to the municipality the percentage rates will apply to all building code permits submitted to the County. Hourly rates in full service cities and counties will only apply for investigations for work without permits, building codes enforcement, re-inspections, additional plan review after the second review of submitted corrective items, inspections requested on nonscheduled inspection days or emergency inspection requests and the additional charges may be passed on to the property owner or permit holder at Municipality's discretion.

[3]. All Residential plan review will be billed hourly at a minimum 3 hour review fee for new structures. Alterations and additions will be billed at the hourly rate of $88.00 per hour at the actual time used for review and permit processing.

Project valuation used to determine permit fees shall be based upon the current ICC Valuation tables published by the International Code Council. Final valuation used to determine permit fees shall be determined by the Building Official.

Fees for Review of Changes to Approved Plans:
All review of changes to previously approved plans will be billed at a rate of **$88 per hour**.

On-Call Inspections Fees for <u>partial service contracts[2]</u>: (includes travel time from last location or inspector's office whichever is closest to municipality) Hourly Rate of **$88.00** per hour. Time tracked will include travel time from NWCP office to the municipality. **Mileage will be an additional charge at the current federal mileage rate** per mile to and from inspector's home/office whichever is closer.

Time of Performance: NWCP will perform the services commencing upon execution of this contract. All plan review and inspections will be performed during normal business hours (8:00 a.m. – 5:00 p.m., Monday – Friday).



Project Support: We will attempt to perform all inspections called in by 4pm on the next business day. Inspector availability may be limited in part time service jurisdictions during peak seasons.

On-Call Inspections: A minimum of 48 hours' lead-time is required to guarantee availability; however, NWCP will always do our best to provide inspection services if notice is less than 48 hours.

We are able to commit to the following plan review schedule:

Plan Review Type	First Comments	Second Comments
Residential projects	5 working days or less	5 working days or less
Multi-family projects	10 working days or less	5 working days or less
Small commercial projects (less than $2M in valuation	10 working days or less	5 working days or less
Large commercial projects (Greater than $2M in valuation)	15 working days or less	10 working days or less

List of Inspections being provided as part of this contract:

Yes	No	
☒	☐	Setbacks[3]
☒	☐	Footings[3]
☒	☐	Wall steel (rebar)*
☒	☐	Underground plumbing
☐	☒	Underground electric (inspection done by Washington State Dept. of Labor & Industries)
☒	☐	Under-floor/concrete slab
☐	☒	Rough electric (inspection done by Washington State Dept. of Labor & Industries)
☒	☐	Rough plumbing
☒	☐	Rough mechanical (flues, vents, exhausts, gas piping)
☒	☐	Rough framing
☒	☐	Insulation
☒	☐	Energy Code requirements
☒	☐	Fire-resistant penetrations
☒	☐	Drywall
☐	☒	Final electric (inspection done by Washington State Dept. of Labor & Industries)
☒	☐	Final plumbing
☒	☐	Final mechanical
☒	☐	Final building

[3]For the case of setbacks, footings, and wall steel, NWCP will either perform the inspections or, alternatively, administer a program requiring written engineering approval of the footings and wall steel (i.e., engineer's letters) and a written surveyor's approval of the setbacks (i.e., setback certification or similar document). Setback verification for non-building code requirements are the responsibility of the municipality. NWCP will verify property lines are strung and check other setback requirements of the municipality as a courtesy upon written request however accuracy of property markers, string lines or other methods are the responsibility of the permit holder and property owner. Final setback approval is the responsibility of the jurisdiction and the contractor beyond minimum building code setbacks.

OWNERSHIP AND USE OF RECORDS

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the Municipality. All records maintained by NWCP to the Municipality will be safeguarded by NWCP. NWCP shall make such data, documents, and files available to the Municipality upon the Municipality's request. The Municipality's use or reuse of any of the documents, data and files created by NWCP for this project by anyone other than NWCP on any other project shall be without liability or legal exposure to NWCP.



Invoice & Payment Structure: NWCP will invoice the municipality on a monthly basis. All payments are due to NWCP within 30 days of invoice date.

Late Payment Fee: All payments not made to NWCP within the 30 days following delivery of the invoice from NWCP will incur a monthly rebilling fee of $35.00 and interest will accrue at a rate of 3% each month bill is not paid in full.

Duration: This term of this agreement shall be for a period of (2) years commencing on the date this Contract is signed, and shall automatically renew each year absent notice of one party to the other of intent to cancel pursuant to Termination of Agreement. Fee schedules will be reviewed on a two-year basis and addendums may be issued upon agreement of terms by both parties.

Municipality Obligations: The Municipality shall timely provide all data information, plans, specifications and other materials required by NWCP to perform the Scope of Services.

Insurance:

NWCP shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by NWCP, its agents, representatives, or employees.

NWCP's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of NWCP to the coverage provided by such insurance, or otherwise limit the Municipality's recourse to any remedy available at law or in equity.
NWCP shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01. The Municipality shall be named as an additional insured under this policy.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The Municipality shall be named as an additional insured under NWCP's Commercial General Liability insurance policy with respect to the work performed for the Municipality using an additional insured endorsement at least as broad as ISO CG 20 26.



3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to NWCP's profession.

NWCP shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $2,000,000 per claim and $2,000,000 policy aggregate limit.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII

NWCP upon request shall furnish the Municipality with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of NWCP before commencement of the work. NWCP shall provide the Municipality with written notice of any policy cancellation within two business days of their receipt of such notice.

Failure on the part of NWCP to maintain the insurance as required shall constitute a material breach of contract, upon which the Municipality may, after giving five business days' notice to NWCP to correct the breach, immediately terminate the contract or, at its discretion.

Assignment: NWCP may not assign this contract without the consent of the Municipality which consent shall not be unreasonably withheld. However, NWCP is permitted to subcontract portions of the services to be provided. NWCP remains responsible for any subcontractor's performance. Subcontractors will be subject to the same performance criteria expected of NWCP. Performance clauses will be included in contracts with all subcontractors to assure quality levels and agreed upon schedules are met.

Third Party Reliance: This agreement is intended for the mutual benefit of the parties hereto and no third-party rights are intended or implied.



Independent Contractor: NWCP is an independent contractor and neither NWCP nor its employees will be considered as employed by Municipality. None of the benefits provided by the Municipality to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from the Municipality to the employees, agents, representatives or subcontractors of NWCP. On or before the effective date of this Agreement, NWCP shall file, maintain and/or open all necessary records with the Internal Revenue Service and the State of Washington, as the same are required by RCW 51.08.195 in order to establish NWCP's status as an independent contractor.

Termination of Agreement: A 30 day written notice is required for either party to cancel their Agreement. Upon cancellation NWCP will immediately invoice Municipality, and Municipality agrees to pay, for all authorized and approved services rendered to Municipality prior to cancellation of this Agreement. Services rendered will be determined by monthly progress reports in a format agreed upon between the parties.

Hold Harmless and Indemnification: NWCP shall defend, indemnify and hold the Municipality, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the NWCP in performance of this Agreement, except for injuries and damages caused by the sole negligence of the Municipality.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the NWCP staff and the Municipality, its officers, officials, employees, and volunteers, the NWCP's liability, including the duty and cost to defend, hereunder shall be only to the extent of the **Dispute Resolution:** Any claim, dispute or other matter in question between Municipality and NWCP arising out of or in any way related to this Agreement may be resolved in a manner mutually agreed to by both Municipality and NWCP. In the absence of such a mutual agreement on the manner of resolution, the matter shall be resolved through litigation with venue in Benton County, Washington. The parties hereto agree to engage in mediation as a condition precedent to the commencement of any other dispute resolution process, including litigation. The parties further agree to openly and cooperatively exchange information with one another in preparation for any mediation session. In the event the parties agree to arbitrate any issue, the American Arbitration Rules for Construction Disputes shall apply, whether or not the parties utilize the services of the American Arbitration Association.



Nondiscrimination: Each party agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, political affiliation or belief, sexual orientation as defined in RCW 49.60.040, or the presence of any sensory, mental or physical handicap in violation of any applicable federal or state law or regulation and each party agrees to be an Equal Opportunity Employer.

Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and all services to be provided will be provided in accordance with applicable federal, state and local law.

Written Notice: All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

Effective Date: Contract will become effective upon signed approval of the Municipality. New service rates noted in contract will become effective on January **1st 2022.**

Municipality: Benton County, WA	**Northwest Code Professionals, Inc.**
Signature _____	Signature _____
Name:_____	Name: Jack E Applegate
Title: _____	Title: President/CEO
Date: _____	Date: 12/8/2021

Electronic Signatures Acceptable for this contract.



Please return signed contract by 11/15/2020 to:

Northwest Code Professionals
Att: Jack Applegate, President/CEO
144 E 14th Ave
Eugene, Oregon 97401

Or Email to: Jacka@nwcodepros.com

FINAL PAGE

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF BENTON COUNTY TAX LEVY FOR 2022

WHEREAS, on this 25th[h] day of January, 2022, the Board of Benton County Commissioners, pursuant to the laws of the State of Washington, providing for all assessment of taxes in the State of Washington, does hereby levy a tax on all taxable property in Benton County, and the taxable property within the various districts, as shown by the assessment rolls of said county, said tax being for the purpose of defraying the county, road, municipal drainage, hospital districts, fire protection districts, and other expenses; and

WHEREAS, the directors, supervisors, and commissioners of various school districts, drainage districts, and other districts and municipalities have certified to the county commissioners the amounts needed to meet the expenses for 2021-2022; and

WHEREAS, it is necessary in some districts that a tax be levied to pay interest on bonds and create a sinking fund for the purpose of paying indebtedness; **NOW THEREFORE**,

BE IT RESOLVED, all members concurring, and for the purpose of raising revenue for the county, road, and other purposes, thereby and hereby is levied on all taxable property in the County of Benton, State of Washington, as shown by the assessment roles for the year of 2022, taxes sufficient to raise the following amounts:

See attached Exhibit A

BENTON COUNTY ASSESSED VALUATION FOR 2022……$25,648,055,502

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

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Taxing Districts; Treasurer; Assessor; Public Works; file

L. Ivey

Office of the Assessor

COUNTY OF BENTON EST.1905 WASHINGTON

Bill Spencer, *Assessor*
Danielle Hayes, *Chief Deputy Assessor*

January 20, 2022

RECEIVED
JAN 20 2022
BENTON CO TREASURER

Kenneth Spencer
Benton County Treasurer
620 Market St
PO Box 630
Prosser, WA 99350

RE: 2022 Tax Year Property Tax Certification

Dear Kenneth,

This is to confirm that 2022 tax year property taxes were certified to you via PACS certification process on January 20, 2022.

The total Real and Personal Taxes (excluding omitted property tax and late penalty tax for personal property) is:

$ 270,345,347.31

The attached worksheet shows a breakdown of the various taxing districts within Benton County. Tax dollars are rounded to the nearest dollar for this report.

Sincerely,

Bill Spencer
Benton County Assessor

Cc: Benton County Board of County Commissioners
Benton County Auditor

BENTON COUNTY, WASHINGTON
January 20, 2022

TAXING DISTRICT	*LEVY VALUATION*	*$/1000*	*AMOUNT TO BE COLLECTED IN 2022*
STATE SCHOOL PART 1	25,523,842,102	1.7092860795	$43,627,548
STATE SCHOOL PART 2	25,385,171,208	0.9208541793	$23,376,041
COUNTY-CURRENT EXPENSE	25,648,055,502	0.9751636610	$25,011,052
COUNTY-MENTAL HEALTH	25,648,055,502	0.0250000001	$641,201
COUNTY-VETERAN'S ADMINISTRATION	25,648,055,502	0.0112499998	$288,541
COUNTY ROAD	5,546,785,825	1.3030459654	$7,227,717
BENTON CITY-CURRENT EXPENSE	228,695,876	0.9651638843	$220,729
KENNEWICK - CURRENT EXPENSE	8,429,184,256	1.7099232965	$14,413,259
PROSSER - CURRENT EXPENSE	620,236,507	2.2469293268	$1,393,625
RICHLAND - CURRENT EXPENSE	8,910,318,246	2.1615608745	$19,260,195
RICHLAND - LIBRARY	8,874,143,336	0.1678948044	$1,489,923
WEST RICHLAND - CURRENT EXPENSE	1,912,835,792	1.4240851261	$2,724,041
WEST RICHLAND - POLICE BOND	1,903,902,540	0.2652446695	$505,000
FIRE DISTRICT #1-CURRENT EXPENSE	2,643,916,198	1.4724755618	$3,893,102
FIRE DISTRICT #1-GO BOND	2,690,413,493	0.0275244382	$74,052
FIRE DISTRICT #1- VOTED GO BOND	2,629,591,918	0.0645789899	$169,816
FIRE DISTRICT #2-CURRENT EXPENSE	735,415,940	1.5000000000	$1,103,124
FIRE DISTRICT #2-BOND	728,990,136	0.1697988682	$123,782
FIRE DISTRICT #2 EMS	735,415,940	0.5000000000	$367,708
FIRE DISTRICT #4-CURRENT EXPENSE	2,492,738,369	1.4749747650	$3,676,726
FIRE DISTRICT #4-BOND	2,481,160,731	0.1894274700	$470,000
FIRE DISTRICT #4-EMS	2,492,738,369	0.3560215990	$887,469
FIRE DISTRICT #5-CURRENT EXPENSE	116,181,641	0.6689498386	$77,720
FIRE DISTRICT #6-CURRENT EXPENSE	682,053,579	1.3557527275	$924,696
WEST BENTON REGIONAL FIRE AUTHORITY	1,459,370,186	1.3530706732	$1,974,631
SCHOOL DISTRICT #116-DEBT SERVICE	1,578,181,706	2.5629750317	$4,044,840
SCHOOL DISTRICT #116-ENRICHMENT	1,578,181,706	2.1386065209	$3,375,110
SCHOOL DISTRICT #17-DEBT SERVICE	10,906,102,574	1.5988088652	$17,436,773
SCHOOL DISTRICT #17-ENRICHMENT	10,906,102,574	1.6676127614	$18,187,156
SCHOOL DISTRICT #17-CAPITAL PROJECTS	10,906,102,574	0.3676116351	$4,009,210
SCHOOL DISTRICT #200-DEBT SERVICE	67,293,027	2.4389011886	$164,121
SCHOOL DISTRICT #200-ENRICHMENT	67,293,027	1.6693280822	$112,334
SCHOOL DISTRICT #400-DEBT SERVICE	10,853,832,797	1.8371390432	$19,940,000
SCHOOL DISTRICT #400-ENRICHMENT	10,853,832,797	2.3954671577	$26,000,000
SCHOOL DISTRICT #400-CAPITAL PROJECTS	10,853,832,797	0.3869600793	$4,200,000
SCHOOL DISTRICT #50-ENRICHMENT	509,873,633	0.6792153537	$346,314
SCHOOL DISTRICT #52-DEBT SERVICE	969,639,198	1.2308160937	$1,193,448
SCHOOL DISTRICT #52-ENRICHMENT	969,639,198	1.4908936056	$1,445,629
SCHOOL DISTRICT #53-DEBT SERVICE	624,461,673	1.0823764199	$675,903
SCHOOL DISTRICT #53-ENRICHMENT	624,461,673	1.8835367499	$1,176,197
PROSSER HOSPITAL-CURRENT EXPENSE	2,807,972,584	0.3256298175	$914,360
KENNEWICK HOSPITAL-CURRENT EXPENSE	14,899,269,238	0.1047031217	$1,560,000
PORT OF BENTON-CURRENT EXPENSE	7,767,646,479	0.2598107439	$2,018,118
PORT OF BENTON-BOND 1997	7,767,646,479	0.0895039729	$695,235
PORT OF KENNEWICK-CURRENT EXPENSE	17,880,409,023	0.2620614833	$4,685,767
MID-COLUMBIA LIBRARY SYSTEM	14,204,665,957	0.2942610384	$4,179,880
BENTON CITY LIBRARY CAPITAL FACITLTY AREA	835,574,626	0.0757048120	$63,257
			$270,345,347

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	2022 Historic Preservation Grant Resolution Correction
Presenter:	Shyanne Palmus, Communications Coordinator
Prepared By:	Shyanne Palmus, Communications Coordinator
Reviewed By:	Adam Fyall, Sustainable Development Manager

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

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

Summary / Background Information

The 2022 Historic Preservation Grant RFP was open September 7 – October 8, 2021 and received ten (10) applications for project funding, totaling $85,384.95. The available yearly budget for the Historic Preservation Grant is $50,000, with a total available budget balance of $81,973.60.

Detailed information for each request was provided at the November 16, 2021 Board meeting. However, it came to the attention of staff that the original resolution and presentation had a typographical error, resulting in an incorrect total approval amount.

The approved grant disbursement was a total amount not to exceed $55,505.95. The actual total needed to fund the grants as presented is $55,905.95. A Resolution correcting this error has been drafted and is attached for Board consideration.

Fiscal Impact

$55,905.95 from Historical Preservation Fund 0157-101

Recommendation

Staff recommends approval of the resolution.

Suggested Motion

N/A

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF CORRECTING THE APPROVED DISBURSEMENT FROM THE HISTORICAL PRESERVATION FUND (0157-101) FOR THE 2022 HISTORIC PRESERVATION GRANT AWARDEES

WHEREAS, RCW 36.22.170 states that one dollar of a document recording fee is placed in the Benton County Historical Preservation Fund 0157-101, to be used at the County Commissioners' discretion for promotion of historical preservation and/or programs in the County and the Board of Commissioners is supportive of funding historic preservation projects as solicited from qualified non-profit organizations and government entities; and

WHEREAS, the Board previously approved Resolution 2021-830, approving funding of the 2022 Benton County Historic Preservation Grant awards as presented, in a total amount not to exceed $55,505.95; and

WHEREAS, a typographical error was found in the Resolution and presentation, resulting in an incorrect total approval amount; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners hereby authorizes the County Auditor's Office to make such payments and execute any agreements necessary for the disbursement of the Historic Preservation Grant funds in an amount not to exceed $55,905.95; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners hereby authorizes the County Administrator to sign the 2022 Benton County Historic Preservation Grant Program disbursement agreements for historic preservation projects and programs.

Dated this 25th day of January 2022.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest .....
Clerk of the Board

Cc: Auditor; PA – Contract Compliance; Sustainable Development S Palmus

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/22
Subject:	Bi County Appointment of Angie Pacheco to the Mid-Columbia Libraries Board
Presenter:	--
Prepared By:	P Brown
Reviewed By:	

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

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

Summary / Background Information

The Mid-Columbia Libraries Board of Trustees has a vacancy on its Board. The Library Board advertised this position and completed the interview process. On Dec. 21, 2021, the Library Board unanimously recommended to appoint Angie Pacheco to fill the term ending Dec. 31, 2028.

Fiscal Impact

Recommendation

Approve the attached joint resolution for appointment of Angie Pacheco to the Mid-Columbia Library Board of Trustees to a term expiring Dec. 31, 2028.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. 2022-003

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

IN THE MATTER OF APPROVING THE APPOINTMENT OF ANGIE PACHECO TO THE MID-COLUMBIA LIBRARIES BOARD OF TRUSTEES TO FILL A FULL TERM FOR SUSAN PAYSSE WHOSE SECOND FULL TERM EXPIRES DECEMBER 31, 2021.

WHEREAS, Susan Paysse will complete her second full term as a member of the Mid-Columbia Libraries Board of Trustees and will be ineligible to be reappointed, creating a vacancy; and

WHEREAS, The Library Board advertised this position and has completed the interview process; and

WHEREAS, the Board of Trustees of Mid-Columbia Libraries unanimously voted to recommend Angie Pacheco to fill a full term; **NOW, THEREFORE**,

BE IT RESOLVED the Boards of Commissioners of Benton and Franklin Counties hereby approve the appointment of Angie Pacheco to the Board of Trustees of Mid-Columbia Libraries, with said term expiring on December 31, 2028.

Dated this ____ day of _____, 2022

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

ATTEST:

_____
Clerk of the Board

Dated this 4 th day of January, 2022

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of County Commissioners of Franklin County, Washington

ATTEST:

_____
Clerk of the Board

cc: MCL; file

mid-columbia LIBRARIES

Keewaydin Park Branch
405 S. Dayton St.
Kennewick WA. 99336
(509) 586-3156

RECEIVED
DEC 27 2021
BENTON COUNTY
COMMISSIONERS

December 22, 2021

Benton County Commissioners
Benton County Courthouse
PO Box 190
Prosser WA 99350-0190

Dear Commissioners:

The Mid-Columbia Libraries Board of Trustees has a vacancy on its Board due to the completion of two full terms of service by Susan Paysse. Ms. Paysse is a Franklin County representative and her second full term runs until December 31, 2021. She is not eligible for reappointment.

The Library Board advertised this position and has completed the interview process. On December 21, 2021, the Library Board unanimously recommended Angie Pacheco.

The Board of Trustees for Mid-Columbia Libraries is requesting a joint resolution appointing Franklin County/Pasco resident Angie Pacheco to the Board to fill a full term ending on December 31, 2028.

Thank you for your consideration of this matter. Please let me know if I can be of further assistance.

Sincerely,

Erin Meneely
Operations Director

cc: Franklin County Commissioners

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 120.

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Cindi Kane

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Corrections

Dept Nbr: 120

Fund Name: Current Expense

Fund Nbr: 0000101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
523.210	4915	Home Monitoring System	$91,000
523.294	1814	Custody Officer	$70,548
523.294	2103	Medical Insurance	$16,250
523.294	2104	Retirement	$9,477
523.294	3201	Vehicle Fuel	$3,738
TOTAL			$191,013

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
523.620	1925	Overtime	$191,013
TOTAL			$191,013

Explanation:

Moving funds within department 120 to cover overtime expenses due to staffing shortages in 2021.

Prepared by: Cindi Kane

Date: 13-Jan-2022

Approved ❑

Denied ❑

Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Reappoint Paul Hart to the Civil Service Commission
Presenter:	
Prepared By:	C. Arreola
Reviewed By:	L. Wingfield

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

Paul Hart's Civil Service Commission term expired on December 31, 2021. He has expressed interest in continuing as a member of the Civil Service Commission. His new term will expire December 31, 2022.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners approve and sign the resolution reappointing Paul Hart to the Civil Service Commission.

Suggested Motion

Approve

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF REAPPOINTING PAUL HART TO FILL THE BENTON COUNTY CIVIL SERVICE COMMISSION

WHEREAS; Paul Hart's term expired December 31, 2021; and

WHEREAS; the current Civil Service Commission should consist of 3 members; and

WHEREAS, at the request of the Human Resources Manager and the Civil Service Chief Examiner, the Board of Benton County Commissioners desires to reappoint Paul Hart to the Benton County Civil Service Commission; **NOW, THEREFORE**

BE IT RESOLVED, that Paul Hart is hereby reappointed to fill the Benton County Civil Service Commission position that expires December 31, 2022.

Dated this _____day of_____, 2022.

_____

Chairman of the Board

_____

Member

_____

Member

Attest..... .
Clerk of the Board

Constituting the Board of Commissioners
of Benton County, Washington

CC: HR

Prepared by: C. Arreola

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Reappoint Mary Anne Hutchins to the Civil Service Commission
Presenter:	
Prepared By:	C. Arreola
Reviewed By:	L. Wingfield

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

Mary Ann Hutchins' Civil Service Commission expired on December 31, 2021. She has expressed interest in continuing as a member of the Civil Service Commission. Her new term will expire December 31, 2022.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners approve and sign the resolution reappointing Mary Anne Hutchins to the Civil Service Commission.

Suggested Motion

Approve

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF REAPPOINTING MARY ANNE HUTCHINS TO FILL THE BENTON COUNTY CIVIL SERVICE COMMISSION

WHEREAS; Mary Anne Hutchins' term expired December 31, 2021; and

WHEREAS; the current Civil Service Commission should consist of 3 members; and

WHEREAS, at the request of the Human Resources Manager and the Civil Service Chief Examiner, the Board of Benton County Commissioners desires to reappoint Mary Anne Hutchins to the Benton County Civil Service Commission; **NOW, THEREFORE**

BE IT RESOLVED, that Mary Anne Hutchins is hereby reappointed to fill the Benton County Civil Service Commission position that expires December 31, 2022.

Dated this _____day of_____, 2022.

_____

Chairman of the Board

_____

Member

_____

Member

Attest..... .
Clerk of the Board

Constituting the Board of Commissioners
of Benton County, Washington

CC: HR

Prepared by: C. Arreola

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Neogov/Governmentjobs.com Order Form
Presenter:	
Prepared By:	L. Wingfield
Reviewed By:	K. Ainsworth, Robert Heard, Eric Andrews

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

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

Summary / Background Information

Benton County Human Resources recognizes a need to streamline the billings for Governmentjobs.com dba Neogov services. Human Resources has negotiated with Governmentjobs.com to consolidate billings, and lock in a limited yearly increase. Human Resources recommends signing the Neogov Order Form for continuation of Insight, Onboard, E-Forms, Learn, and Single Sign-On Integration services. The contract duration will be July 10, 2021 through September 30, 2024.

Fiscal Impact

$223,497.75

Recommendation

Recommend the Board of Benton County Commissioners sign the Neogov Order Form for Insight, Onboard, E-Forms, Learn, and Single Sign-On Integration services.

Suggested Motion

Approve

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BENTON COUNTY BOARD OF COMMISSIONERS TO SIGN THE GOVERNMENTJOBS.COM DBA: NEOGOV ORDERING FORM FOR THEIR CONTINUED SERVICES, RESCINDING ALL PRIOR RESOLUTIONS INCLUDING, 2020-515, 2019-496, 2018-330, 2015-494, AND 2012-381

WHEREAS, Benton County has utilized Governmentjobs.com services since 2012 to increase efficiencies throughout a variety of employee matters including job postings, interview scheduling, onboarding, training, and file storage; and

WHEREAS, throughout the years, Benton County has added services and had yearly price increases due to the nature of the market and contracts; and

WHEREAS, Resolution 2019-721 awarded Governmentjobs.com a service agreement for some of the services and included language to co-term all of the services into one agreement, however, services had varying lengths resulting in multiple invoices a year and there was not a locked in yearly rate; and

WHEREAS, the Human Resources Department recognized a need to streamline the invoices and yearly increases for Governmentjobs.com services; and

WHEREAS, the Human Resources Department has been negotiating with Governmentjobs.com to consolidate all Governmentjobs.com services currently in use by Benton County to one order form, with a collective invoice due date for all modules, a process which has taken several months; and

WHEREAS, it was also negotiated to establish a three (3) year term with a five percent (5%) increase cap year over year; and

WHEREAS, the Prosecuting Attorney's office has reviewed the Neogov Order Form as presented and approves as to form; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby authorizes the Chairman of the Board to sign the attached Neogov Order Form for Governmentjobs.com services to include Insight, Onboard, E-Forms, Learn, and Single Sign-On integration, plus applicable sales tax; and

BE IT FURTHER RESOLVED, that the term of the agreement commences July 10, 2021 and expires September 30, 2024; and

BE IT FURTHER RESOLVED, all previous Resolutions and Agreements with Governmentjobs.com are rescinded including 2020-515, 2019-496, 2018-330, 2015-494, and 2012-381.

Dated this ____ day of January, 2022.

_____
Chairman of the Board

_____
Member

_____
Member

Attest.....
Clerk of the Board

Constituting the Board of Commissioners
of Benton County, Washington

cc: HR, Auditor

Prepared by: K. Ainsworth

NEOGOV™

NEOGOV ORDER FORM

NEOGOV:		Customer Name & Address:	
Governmentjobs.com, Inc. (dba "NEOGOV") 300 Continental Blvd., Suite 565 El Segundo, CA 90245 billing@neogov.com		County of Benton 7122 W Okanogan Place, Bldg A Kennewick, WA 99336	
Quote Creation Date:	6/16/2021	Contact Name:	Lexi Wingfield
Quote Expiration Date:	30 days from Quote Creation	Contact Email:	Lexi.Wingfield@co.benton.wa.us
Payment Terms	Annual. Net 30 from NEOGOV invoice.		FTE:

Fee Summary

Service Description	Term	Term Fees
Insight Enterprise Subscription (IN)	07/10/2021 – 09/30/2021	$3,364.36
Insight Enterprise Subscription (IN)	10/01/2021 – 09/30/2022	$15,644.27
Insight Enterprise Subscription (IN)	10/01/2022 – 09/30/2023	$16,426.48
Insight Enterprise Subscription (IN)	10/01/2023 – 09/30/2024	$17,247.80
E-Forms Subscription (EF)	10/01/2021 – 09/30/2022	$16,135.09
E-Forms Subscription (EF)	10/01/2022 – 09/30/2023	$16,941.84
E-Forms Subscription (EF)	10/01/2023 – 09/30/2024	$17,788.93
Onboard Subscription (ON)	10/01/2021 – 09/30/2022	$11,295.11
Onboard Subscription (ON)	10/01/2022 – 09/30/2023	$11,857.87
Onboard Subscription (ON)	10/01/2023 – 09/30/2024	$12,452.86
Learn Subscription (LE)	10/01/2021 – 09/30/2022	$25,817.24
Learn Subscription (LE)	10/01/2022 – 09/30/2023	$27,108.10
Learn Subscription (LE)	10/01/2023 – 09/30/2024	$28,463.51
Single Sign-On Integration (SSO)	10/01/2021 – 09/30/2022	$937.13
Single Sign-On Integration (SSO)	10/01/2022 – 09/30/2023	$983.98
Single Sign-On Integration (SSO)	10/01/2023 – 09/30/2024	$1,033.18
	2021 Total:	**$73,193.20**
	2022 Total:	**$73,318.27**
	2023 Total:	**$76,986.28**
	Total:	**$223,497.75**

A. Terms and Conditions

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement either affixed hereto or the version most recently published prior to execution of this Ordering Form available at https://www.neogov.com/service-specifications. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated, all SaaS Subscriptions shall commence on the Effective Date. This Order Form may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

B. Special Conditions (if any).

NEOGOV™

IN WITNESS WHEREOF, the parties have caused this Order to be executed by their respective duly authorized officers as of the date set forth below, and consent to the Agreement.

Customer	Governmentjobs.com, Inc. (DBA "NEOGOV")
Entity Name:	
Signature:	Signature: 
Print Name:	Print Name: Mike Burns
Date:	Date: 9/20/21

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Overpayments Compliance Settlement Agreement
Presenter:	
Prepared By:	L. Wingfield
Reviewed By:	

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

Type of Agenda Item:	**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

An agreement has been reached in order to settle PERC Case 128595-U-16/128900-U-17 in the matter overpayments to Teamsters 839 employees within the Corrections Department.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution and the Compliance Settlement Agreement for the Overpayments case.

Suggested Motion

On consent.

cc: HR, Auditor, Hallstrom,

Prepared by: L. Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A COMPLIANCE SETTLEMENT AGREEMENT BETWEEN BENTON COUNTY AND TEAMSTERS UNION REGARDING OVERPAYMENTS ULP.

WHEREAS, an agreement has been reached to satisfy PERC compliance; **NOW THEREFORE**,

BE IT RESOLVED, the Benton County Commissioners approve the attached Compliance Settlement Agreement between Benton County and Teamsters Union regarding the Overpayments ULP.

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

cc: HR, Auditor, Hallstrom

Prepared by: L. Wingfield

OVERPAYMENTS ULP COMPLIANCE AGREEMENT
BY AND BETWEEN
BENTON COUNTY AND TEAMSTERS UNION
(PERC CASE NOS. 128595-U-16/128900-U-17)

THIS COMPLIANCE SETTLEMENT AGREEMENT is made and entered into by and between Benton County ("Employer" or "County"), and Teamsters Union ("Union"), and is intended as a full and final, resolution and settlement, of the financial terms of the Compliance Order issued by PERC, and as augmented by reviewing courts, requiring the County to return Union member employees to the *status quo ante* by returning recouped Overpayments with interest, and the County and the Union negotiating a repayment plan for the employees' return of their Overpayments debt to the County. This Agreement is effective as of the date it is fully executed by all parties.

RECITALS:

WHEREAS, the Union filed two unfair labor practice (ULP) complaints alleging the County refused to bargain a repayment plan for employees in receipt of erroneous Overpayments for hours not worked, and that the County unilaterally applied wage deductions from subsequent employee wage periods pursuant to statutory authority in RCW 49.48.200 and .210; and

WHEREAS, PERC ultimately found and determined the County was required to bargain a repayment plan for employees in receipt of erroneous Overpayments for hours not worked to repay the Overpayments debt to the County; and

WHEREAS, the parties engaged in negotiations to comply with their respective obligations pursuant to PERC's ULP compliance order, including payment of interest and return of recouped Overpayments to employees by the County, and negotiations between the County and the Union for return of Overpayments debt by the employees to the County; and

WHEREAS, the parties desire to resolve and settle all disputes arising out of the application of the PERC compliance order, including financial impacts of the compliance order; and

WHEREAS, the parties expressly agree this settlement agreement shall not set precedence in any manner and on any level, nor establish or otherwise be utilized to establish, and/or be utilized as evidence of, "current practice" or "past practice", in any manner, including without limitation, labor negotiations, grievances and/or arbitrations, ULPs, involving the controlling collective bargaining agreement (CBA) and/or a successor CBA, between the parties; and

WHEREAS, during the PERC compliance stage, the parties agreed to settle the financial terms of the compliance order issued by PERC for the identified ULP cases, in accordance with the terms and conditions set forth below.

NOW, THEREFORE, the parties mutually agree as follows:

A. <u>Employer One-Time Interest Payment</u>.

1. <u>Employee One-Time Employer Interest Payment</u>.

   On January 29, 2021, Employer paid all eligible/qualified employees the PERC required one-time interest payment in the amount of twelve percent (12%), calculated on the amount of all Overpayments for hours not worked and recouped by the Employer pursuant to RCW 49.48.200 and .210, forming the basis of the identified ULPs, from the date(s) of recoupment of the Overpayments, through January 29, 2021.

2. <u>Separated Employee (Pre 01/29/21) One-Time Employer Interest Payment.</u>

a. Employer shall pay eligible/qualified, *former* employees, as identified and stipulated by the parties, separating *before* January 29, 2021, and not having received the one-time payment of interest in the amount of twelve percent (12%), calculated on the amount of all Overpayments recouped by the Employer pursuant to RCW 49.48.200 and .210 for hours not worked, and forming the basis of the identified ULPs, from the date(s) of recoupment through January 29, 2021, a one-time interest payment of up to a *maximum* of One Hundred, Fifty and No/100 Dollars ($150.00); with no deductions, subject to the condition identified below (sub-section b.).

   If the one-time interest payment amount owed to an eligible/qualified, (Pre 01/29/21) separated employee, is calculated at *less* than One Hundred, Fifty and No/100 Dollars ($150.00), the eligible/qualified separated employee will receive their one-time payment of interest, with IRS Form 1099, with the total amount rounded down to the lowest dollar amount, with no deductions. Eligible/qualified individuals (separated employees) and amounts are listed in Attachment A.

b. <u>Separated Employee Waiver/Release</u>: Employer shall be provided a fully executed waiver/release from each eligible/qualified, (Pre 01/29/21) separated employee, to include the eligible/qualified, former employee's waiver of Employer's obligation to return all recouped, erroneous Overpayments to employees, and negotiation of the repayment of said public funds by eligible/qualified former employees separated prior to 01/29/21, to Employer, *prior* to delivery of the subject one-time interest payment in the amount of twelve percent (12%), calculated on the amount of all Overpayments recouped by the Employer pursuant to RCW 49.48.200 and .210, forming the basis of these ULPs, up to a maximum one-time interest payment in the amount of One Hundred, Fifty and No/100 Dollars ($150.00).

3. <u>Ineligible/Unqualified (Pre 01/29/21) Separated Employees.</u>

   Employer shall not be required to pay the one-time interest payment to the following ineligible, separated employees: Conrad Stough, Kingsley Appiah-Duku, Catherine Cleveland-Jones and Eric Christian.

4. Separated Employee (Post 01/29/21) One-Time Employer Interest Payment.

Employer timely paid all qualified/eligible employees separating *after* January 29, 2021, while in their "employee" status. (*See above*, Section A.(1.)).

B. Employer's Return Of Recouped Overpayments.

1. Employer Recouped Overpayments Returned To Employees.

On January 29, 2021, Employer returned to all eligible/qualified employees, all Overpayments recouped by Employer pursuant to RCW 49.48.200 and .210, and forming the basis of the identified ULPs, from the date(s) of recoupment through January 29, 2021, less standard deductions pursuant to applicable tax schedules.

2. Separated Employee (Pre 01/29/21) Waiver Of Recouped Overpayments Return.

Qualified/eligible, separated employees shall waive Employer's return of recouped Overpayments and negotiations for repayment of returned, recouped Overpayments to Employer, to receive the one-time interest payment of up to One Hundred, Fifty and No/100 Dollars ($150.00), rounded down to the nearest whole dollar amount. (*See above*, Section A.(2.)(a.)(b.)).

3. Separated Employee (Post 01/29/21) Recouped Overpayments Return.

Employer may deal directly with separated employees individually, including those who have been hired by a Benton County office/department other than the Benton County Corrections Department, without a break in service, for repayment of recouped Overpayment debt returned to employees prior to separation, pursuant to the PERC compliance order. Employer is not limited in any manner as to the pursuit of any and all legal avenues and remedies to recover Overpayment debt owed by separated employees. Separated employees are not represented by the Union in this matter and related issues. Separated Employees and their amounts are listed in Attachment B.

C. Employees Shall Repay Employer Overpayments Debt.

Employees shall repay Employer the full, pre-tax amounts of recouped Overpayments of wages for hours not worked, returned to employees on January 29, 2021, less thirty-six and 49/100 percent (36.49%) of this amount. Employees and their amounts of Overpayments debt owed Employer are listed in Attachment C.

D. Employee Repayment Plan Options For Repayment Of Overpayments Debt.

1. Payroll Deductions.

Debts due to Employer by employees to facilitate Employer recovery of recouped Overpayments of wages for hours not worked, and ordered returned by employees to Employer by PERC, shall be recovered by Employer through deductions from subsequent wage payments

in the amount of One Hundred and No/100 Dollars ($100.00) in a pay period or by providing written authorization to the Benton County Human Resources Department prior to the first wage payment, for the total amount, other than a separating employee's final pay period working for Benton County, until the Overpayments debt ordered returned to Employer by PERC have been fully repaid to Employer by individual employees.

Repayment deductions from employee wages shall commence with the payday in the month following the pay period in which the Agreement is fully executed by all parties, and continue with subsequent pay periods until the recouped overpayment(s) debt ordered returned by PERC is(are) fully repaid.

Employer may deduct the full amount still outstanding from a separating employee's wages in the final pay period. Any balances still remaining after a separating employee's final pay period may be pursued by Employer pursuant to the terms and conditions in Section (Post 01/29/21) Separated Employee (S*ee above,* Section (B.)(3.)), and any other lawful means.

2. Annual Leave Cash-In.

Only current employees who previously "cashed-in" accrued annual leave, as noted in Attachment C, as repayment in full to Employer of erroneous Overpayment amount(s) they received as wages for hours not worked, in lieu of (a) deduction(s) from wages, may utilize this same method to repay in full recouped Overpayments returned to employees pursuant to PERC's compliance order.

E. Separated Employees Repayment Of Overpayments Debt.

1. Separated employees (Pre 01/29/21) One-Time Interest Payment.

Qualified/eligible, separated employees waived their right for Employer's return of recouped erroneous Overpayments and mandated negotiations for a repayment plan of Overpayments debt to Employer, in exchange for eligibility for payment of a one-time interest payment pursuant to this Agreement. (*See above,* Section A.(2.)(a.)(b.)).

2. Separated employees (Post 01/29/21) One-Time Interest Payment.

Employer may deal directly with separated employees individually for repayment of recouped Overpayments debt returned to employees prior to separation, pursuant to the PERC compliance order. Employer is not limited in any manner as to the pursuit of any and all legal avenues and remedies to recover Overpayments debt owed by separated employees. Separated employees are not represented by the Union in this matter and related issues.

F. Counterparts.

Each party agrees that a scanned transmission of the signature page of the original document shall have the same effect as that of the original. Any signature required on an original shall be completed and sent to the other party when a facsimile has been signed. The parties agree that signed scanned copies shall be given full effect as if an original.

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

TEAMSTERS LOCAL NO. 760

Leonard Crouch, Secretary-Treasurer

Date: 1.5.22

TEAMSTERS LOCAL NO. 839

Russell Shjerven, Secretary-Treasurer

Date: _____

UNION COUNSEL

Tom Leahy, Reid McCarthy Ballew & Leahy

Date: 1-7-22

BENTON COUNTY COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Constituting the Board of
Benton County Commissioners

Attest:

_____
Clerk of the Board

Date: _____

Approved as to form:

_____
Stephen Hallstrom, DPA

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

TEAMSTERS LOCAL NO. 760

Leonard Crouch, Secretary-Treasurer

Date: _____

TEAMSTERS LOCAL NO. 839

Russell Shjerven, Secretary-Treasurer

Date: 1-5-2022

UNION COUNSEL

Tom Leahy, Reid McCarthy Ballew & Leahy

Date: _____

BENTON COUNTY COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Constituting the Board of
Benton County Commissioners

Attest:

_____
Clerk of the Board

Date: _____

Approved as to form:

_____
Stephen Hallstrom, DPA

Attachment A

Employee	Status	Owed to Individual
Bales, Kora	839 separated 5/25/2017	$ 150.00
Bernal, Daniel	839 separated 3/12/2017	$ 150.00
Carrigan, Cody	839 separated 11/15/2018	$ 108.00
Cochran, Joshua	839 separated 4/21/2019	$ 150.00
Cover, Samuel	839 separated 4/30/2018	$ 150.00
Cuevas, James	839 separated 9/4/2018	$ 118.00
Goulet, Brandon	839 separated 11/8/2018	$ 150.00
Gustin, Ryan	839 separated 9/30/2018	$ 113.00
Johnson, Randy	839 separated 10/31/2017	$ 150.00
King, Jordan	839 separated 2/10/2019	$ 150.00
Kirk, Jared	839 separated 12/12/2019	$ 150.00
Larios, Eriberto	839 separated 7/24/2017	$ 150.00
Mansfield, Steve	839 separated 11/30/2017	$ 134.00
Ramos Calderon, Ana	839 separated 1/26/2017	$ 150.00
Sharp, Shannon	839 separated 12/2/2018	$ 150.00
Soto Corrales, Mario	839 separated 10/28/2020	$ 150.00
Stewart, Jonathan	839 separated 12/31/2016	$ 150.00
Swift, Donald	839 separated 1/17/2020	$ 150.00
Brooks, James	760 separated 12/2/2019	$ 150.00
Frazier, Paul	760 separated 2/3/2019	$ 150.00

Attachment B

Employee	Status	Owed to County
McDermott, Becki	839 separated 5/26/2021	$ 1,243.39
McDermott, Steven	760 separated 5/2/2021	$ 365.50
Montelongo, Daphne	839 separated 5/31/2021	$ 1,554.23
Young, Cynthia	839 separated 9/10/2021	$ 1,554.23
Clossey, Michael	839 separated 10/31/2021	$ 949.06
French, Ryan	839 separated 1/4/2022	$ 1,126.25
King, Tara	839 separated 12/7/2021	$ 901.00
Montelongo, Albert	839 separated 11/1/2021	$ 901.00
Nelson, Jonathan	760 separated 10/19/2021	$ 903.56
Orellana, Amanda	760 separated 12/5/2021	$ 1,175.51

Attachment C

Employee	Leave Usage Option?	Owed to County
Almaguer III, Pedro	Yes	$ 1,126.25
Armstrong, Matthew	Yes	$ 1,126.25
Bell, Brycen	No	$ 1,226.06
Blair, Chad	No	$ 980.85
Blumenthal, Terry	No	$ 1,126.25
Castellanos, Maria	No	$ 521.02
Clark, Michelle	No	$ 901.00
Cooper, Timothy	No	$ 1,126.25
Davison, Timothy	No	$ 1,126.25
Deleon, Guillermo	No	$ 708.77
Draskovic, Boris	No	$ 901.00
Essman-Cooper, Debbie	No	$ 1,126.25
Finley, Daniel	Yes	$ 1,062.62
Garza, Victor	Yes	$ 521.02
Gilmore, Hubert	No	$ 901.00
Grall, Chad	No	$ 901.00
Grimm, Shane	No	$ 1,351.51
Hannaman, Glenn	No	$ 901.00
Haynes, Brady	No	$ 694.70
Knudson, Cynthia	No	$ 1,126.25
Kvamme, Carl	Yes	$ 1,126.25
Langston, Erik	No	$ 741.05
Lee, Richard	No	$ 675.75
McBride, Dorin	No	$ 379.62
McCullugh, Lori	Yes	$ 1,126.25
McMaster II, Gordon	No	$ 901.00
Morfin, Saul	No	$ 901.00
Munoz, Jon	No	$ 1,226.06
Murry Jr, Dallas	No	$ 940.41
Newton, Brian	No	$ 1,126.25
Nichols, Joel	Yes	$ 901.00
Orellana, Heber	No	$ 901.00
Perez, Maria	No	$ 901.00
Phillips, Zachary	No	$ 759.25
Rees, Jonas	Yes	$ 1,126.25
Rendall, Lance	No	$ 901.00
Rhoades, Mike	No	$ 1,126.25
Rodriguez Jr, Raul	No	$ 1,126.25
Ruiz, Jose	No	$ 901.00
Singer, Summer	No	$ 1,126.25
Slater, Lacey	No	$ 832.59
Smith, Brant	No	$ 1,351.51
Smith, Jesse	Yes	$ 173.67
Vandine, Carrie	No	$ 901.00
Vandine, Chad	No	$ 1,328.28
Weddle-Martinez, Elliot	No	$ 868.37
Williams, Corey	No	$ 901.00
Wyland, Brent	No	$ 1,126.25
Yanez, Shameka	Yes	$ 868.37

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Juvenile Court Guild 2022-2023 CBA
Presenter:	
Prepared By:	L. Wingfield
Reviewed By:	

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

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

Summary / Background Information

In the matter of adopting the 2022-2023 Juvenile Court Guild CBA.

Fiscal Impact

No supplement required

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to approve the 2022-2023 Juvenile Court Guild CBA.

Suggested Motion

I move to approve the resolution in the matter of approving the 2022-2023 Juvenile Court Guild CBA.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON

IN THE MATTER OF THE 2022-2023 AGREEMENT BETWEEN BENTON AND FRANKLIN COUNTIES, AND BENTON-FRANKLIN JUVENILE COURT GUILD, REPRESENTING JUVENILE COURT EMPLOYEES.

WHEREAS, negotiators for Benton and Franklin Counties have negotiated and reached an agreement with Benton-Franklin Juvenile Court Guild, representing Juvenile Court employees negotiating team for the 2022-2023 Agreement; **NOW, THEREFORE,**

BE IT RESOLVED, that the Benton and Franklin Counties Board of Commissioners approve the 2022-2023 Agreement between Benton and Franklin Counties, and Benton-Franklin Juvenile Court Guild, representing Juvenile Court employees as negotiated and are authorized to sign the same; and

BE IT FURTHER RESOLVED, that the agreement is effective January 1, 2022, except as otherwise provided, and shall remain in effect until December 31, 2023.

Dated this ____ day of _____, 20___.

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners of Benton County, Washington

Attest.....
Clerk of the Board

Dated this ____ day of _____, 20___.

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners of Franklin County, Washington

Attest.....
Clerk of the Board

cc: BC Auditor, BC HR, S. Hallstrom, Juvenile, Franklin County **Prepared by: L. Wingfield**

2022 – 2023 AGREEMENT

Between

BENTON-FRANKLIN COUNTIES JUVENILE DEPARTMENT

and the

BENTON-FRANKLIN JUVENILE COURT GUILD

Representing JUVENILE COURT UNIT

cc: Benton County Commissioners
Franklin County Commissioners
Guild President
Benton County Auditor's Office
Benton County Prosecuting Attorney Office
Benton County Human Resources
Franklin County Administration
Franklin County Human Resources
Juvenile Justice Administration

TABLE OF CONTENTS

PREAMBLE 1
ARTICLE 1 – TIMETABLE 1
ARTICLE 2 – RECOGNITION 1
ARTICLE 3 – SUBORDINATE TO STATUTES 2
ARTICLE 4 – EMPLOYEE RIGHTS, RESPONSIBILITIES AND GUILD PRIVILEGES 2
ARTICLE 5 – MANAGEMENT RIGHTS 3
ARTICLE 6 – NO STRIKE AND NO LOCKOUT 4
ARTICLE 7 – HOURS OF WORK – OVERTIME 5
ARTICLE 8 – PAY PLAN PROCEDURES AND SALARY SCHEDULE 8
ARTICLE 9 – INSURANCE BENEFITS 11
ARTICLE 10 – HOLIDAYS 13
ARTICLE 11 – VACATION LEAVE 14
ARTICLE 12 – SICK LEAVE 15
ARTICLE 13 – LEAVE SHARING 17
ARTICLE 14 – LEAVE OF ABSENCE 18
ARTICLE 15 – RETIREMENT 19
ARTICLE 16 – ON-THE-JOB INJURIES 19
ARTICLE 17 – DISCIPLINE 20
ARTICLE 18 – GRIEVANCE PROCEDURE 22
ARTICLE 19 – PROMOTION, TRANSFER, LAYOFF AND RECALL 25
ARTICLE 20 – TERM OF AGREEMENT 28
ARTICLE 21 – SAVINGS CLAUSE 28
ARTICLE 22 – SENIORITY 28
ARTICLE 23 – DUES DEDUCTIONS 28
ARTICLE 24 – TYPES OF EMPLOYMENT 29
ARTICLE 25 – NEPOTISM RESTRICTIONS 31
ARTICLE 26 – DRUG FREE WORKPLACE 31
ARTICLE 27 – COURT AND MILITARY LEAVE 32
ARTICLE 28 – PAYROLL PROVISIONS 32
ARTICLE 29 – EDUCATIONAL ASSISTANCE 32
ARTICLE 30 – GUILD/EMPLOYER RELATIONS 33
ARTICLE 31 – LABOR - MANAGEMENT COMMITTEE 33
ARTICLE 32 – VACANCIES/JOB POSTING 34
ARTICLE 33 – EXPENSE REIMBURSEMENT 35

PREAMBLE

This Agreement is entered into by and between the Benton-Franklin Counties Juvenile Department, a bi-county agency comprised of Benton County and Franklin County, hereinafter referred to as the Employer or the Department, and the Benton-Franklin Juvenile Court Guild, hereinafter referred to as the Guild, and has as its purpose to ensure collective bargaining in respect to wages, hours and other conditions of employment, to promote and ensure harmonious relations, cooperation, understanding between the Employer and the Guild, and the establishment of an equitable and peaceful procedure for the resolution of differences.

ARTICLE 1 – TIMETABLE

1.1 This Agreement shall be effective from January 1, 2022, through December 31, 2023, unless otherwise indicated in this Agreement.

1.2 The parties agree that a target schedule for conferences and negotiations between the parties with respect to extending this Agreement, is as follows:

A) Negotiations are to begin as is mutually convenient for both parties, but no later than October 1st.

B) Submission of the Guild's proposal submitted in writing to the Employer one (1) month prior to the first scheduled session.

C) Submission of the Employer's response submitted one (1) week prior to the first scheduled session.

D) The parties may agree in writing to extend or shorten this timetable.

ARTICLE 2 – RECOGNITION

2.1 The Employer recognizes the Guild as the exclusive bargaining agent for certain Benton and Franklin County Juvenile Department employees as certified by the Public Employment Relations Commission (PERC). The Employer and the Guild agree that the bargaining unit shall be defined as follows:

INCLUDED: Full-time and regular part-time employees within the Accounting Assistant, Counselor, Detention Supervisor, Legal Process Assistant, and Legal Secretary job classifications.

2.2 The Employer will notify the Guild of any new position and the Employer's position regarding inclusion or exclusion of said position. A copy of the classification will be provided to the Guild with the notification.

ARTICLE 3 – SUBORDINATE TO STATUTES

This Agreement shall in all respects, whenever the same may be applicable herein, be subject and subordinate to the ordinances or resolutions of the Employer and shall further be subject and subordinate to the statutes of the State of Washington or statutes or code of the United States government.

It is understood and agreed by the parties that there shall be no ordinance or resolution adopted which shall modify or amend specific provisions of this contract.

ARTICLE 4 – EMPLOYEE RIGHTS, RESPONSIBILITIES AND GUILD PRIVILEGES

4.1 Non-Discrimination: The Employer and the Guild agree that they will not discriminate against any employee by reason of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, political affiliation, or any other protected status, unless based on a *bona fide* occupational qualification reasonably necessary to the normal operation of the Employer or the Guild. Any violation will constitute a breach of this Agreement.

The Employer and the Guild agree that the application of this Agreement and the Employer's oral or written personnel policies, rules, and regulations will be administered in a uniform manner, considering all relevant circumstances. When existing work rules or policy procedures are changed or new rules or procedures established, employees whose work assignment is affected shall be notified orally and in writing (*e.g.,* email), and the new rule or procedure shall be announced or posted on appropriate bulletin boards and website, prior to the effective date. Employees shall comply with all existing reasonable rules that are not in conflict with the express terms of this Agreement, provided the rules are uniformly applied and uniformly enforced.

4.2 No employee shall be discriminated against for exercising the employee's right as a Guild member.

4.3 Guild Activities: Up to three (3) duly elected representatives and the Guild president shall be allowed to attend negotiation meetings with the Employer without loss of pay when negotiations take place during business hours (8:00 a.m. to 5:00 p.m.). The Employer agrees subject to proper notification that accredited representatives of the Guild shall have reasonable access to the premises during working hours for the purpose of investigating and discussing grievances provided the Guild Representative(s) does(do) not interfere with the work of employees.

4.4 Guild Bulletin Boards: The Employer agrees to furnish reasonable bulletin board space to be used by the Guild. The Guild agrees to maintain said bulletin board in a presentable condition. If the bulletin board fails to be maintained appropriately and becomes an eyesore, the Employer shall have the right to discontinue the availability of said Guild bulletin board. The bulletin board shall be used only for official notices and documents with dates and author's signature and sanctioned by the Guild President.

4.5 Personnel File: An employee shall have the right upon request to inspect their official personnel file in the presence of the Juvenile Administrator or designee at a reasonable time during the work day and said request shall be granted not later than one (1) work day after the request. Copies of personnel action documents will be supplied to the affected employee. Material referring to an employee's competence, including performance evaluations and written records of disciplinary action, shall be placed in the employee's personnel file and the employee will be provided an opportunity to sign the material and attach a brief comment in the section supplied for employee comments. If the employee refuses to sign the material, it will nevertheless be placed in the employee's personnel file. The employee has the right to submit a written response to their file regarding disputed material, within seven (7) days of notice of said material.

Either the Employer or employee may request a meeting to discuss a written performance review to be placed in the employee's personnel file. The employee may be accompanied by a Guild representative at such meeting or at other conferences between the employee and management that deals with the employee's performance.

4.6 The off-duty activities of an employee shall not be cause for disciplinary action unless said activity is detrimental to the employee's work performance or the Employer's interests or such activity constitutes abuse of their official position or brings disrepute to the Employer.

4.7 Employees may report what they believe to be an unsafe or unhealthy working condition to Management for investigation without fear of retaliation for doing so.

ARTICLE 5 – MANAGEMENT RIGHTS

5.1 The Guild recognizes and agrees that the Employer has core management rights which the Employer has the unilateral right to decide and implement from time to time, without negotiations about the decision(s) and the implementation thereof. The Employer will notify the Guild in writing of any such decision(s) if the decision(s) involve a change in working conditions. Following the notification, the Guild on shall have thirty (30) days to notify the Employer in writing, if the Guild chooses to negotiate the impact of the decision(s). All matters not expressly or clearly covered by the language of this Agreement shall be administered for the duration of this Agreement by the Employer as the Employer may from time-to-time determine. The Guild agrees that the Employer's core management rights include, but are not limited to:

A) The right to establish oral or written lawful work rules and procedures, as well as the right to modify orally or in writing work rules and procedures. The Employer will notify the affected employees of the changes five (5) days prior to the effective date.

B) The right to schedule any and all work and overtime work, and the methods and processes by which said work is to be performed in a manner most advantageous to the Employer and consistent with the requirements of the public interest.

C) The right to hire, transfer, layoff and promote employees as deemed necessary by the Employer in accordance with the terms of this Agreement.

D) The right to discipline, suspend or discharge an employee for just cause as indicated in Article 17.

E) The right to make any and all determinations as to the size and composition of the work force and the right to make any and all assignments of employees to work locations and shifts.

F) Incidental related duties connected with operations, not enumerated in job descriptions, shall nevertheless be performed by the employee at employer's request.

G) The right to implement new or different procedures resulting from state and federal requirements. Prior notice will be provided to the affected employees.

H) The right to implement new and/or different work procedures to provide efficient and productive services to the public. Prior notice will be provided to affected employees.

I) The right to take any and all types of actions as may be determined by management to be necessary in the event of emergencies. The Employer shall determine whether or not an emergency exists. An emergency shall be a sudden or unexpected happening or situation that calls for action without delay.

J) The unilateral right to determine the budget at all times.

K) The right to close or liquidate an office, branch, operation or facility or combination of facilities, or to relocate, reorganize or combine the work of divisions, offices, branches, operations or facilities.

5.2 Nothing in this Agreement shall be interpreted to limit or restrict the Employer's rights, obligations, and methodologies of providing services to the public.

5.3 Past Practices: The Employer reserves the right to change past practices based on applicable statutes, Superior Court rules, administrative agency rules and regulations and/or revenue sources/contract requirements. If the Employer wishes to change such practices, the Employer shall provide notice to the Guild. The Guild will be provided an opportunity to discuss and make recommendations during a thirty (30) day time frame, prior to the Employer implementing a change.

ARTICLE 6 – NO STRIKE AND NO LOCKOUT

6.1 The Employer and the Guild agree that the public interest requires the efficient and uninterrupted performance of all Employer services, and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. Neither the Guild nor the

employee shall cause, condone or participate in any strike or work stoppage, slow-down or other interference with Employer functions by employees under this Agreement, and should the same occur, the Guild agrees to take appropriate steps to end such interference. Employees who engage in any of the above-referenced activities shall not be entitled to any pay/or benefits during the period in which the employee is engaged in such activity. Employees covered by this Agreement who engaged in any of the foregoing actions shall be subject to appropriate disciplinary action as may be determined by the Employer. The determination as to whether disciplinary action shall be taken is one left to the sole discretion of the Employer.

6.2 The Employer agrees there will be no lockouts during the term of this Agreement.

ARTICLE 7 – HOURS OF WORK – OVERTIME

7.1 Standard Work Week: The standard work week shall consist of no more than four (4) ten (10) hour work days and/or five (5) eight (8) hour work days in a seven (7) day work period. A normal work schedule shall consist of a total of no more than forty (40) hours per seven (7) day work period. This section may be modified by the provisions of Section 7.2 below. For Detention Supervisors, alternative work periods and work schedules are addressed in Section 7.10.

7.2 Flex-Schedule: The work schedule may be altered to a flex-schedule by mutual agreement except if the provisions of Section 7.5 below are applicable.

7.3 Meal/Lunch Periods: Meal/Lunch periods will normally be up to a one (1) hour unpaid period taken at mid shift unless otherwise previously approved by the employer.

7.4 Rest Periods: Employees shall be entitled to one (1) fifteen (15) minute intermittent rest period during each four (4) hours of a shift. Rest periods shall be scheduled no later than the end of the third hour of work. For employees in Detention, rest periods shall be taken at times mutually agreeable to the Employer and the employee, as work load permits.

7.5 Changes in Work Schedule: The Employer has the right to modify the standard work week and standard work day based on its assessment of service needs and requirements. Modifications will be preceded by fifteen (15) calendar days written notification to the affected employees except in the event of an emergency. In an emergency, as much notice as is practical will be provided to the affected employees.

7.6 Overtime: An employee will be entitled to overtime compensation consistent with the FLSA for all hours worked in excess of forty (40) hours in a seven (7) day work period. For the purpose of computing an employee's hourly rate, the employee's monthly rate shall be divided by one hundred, seventy-three and one third (173.33) hours. All hours worked in excess of forty (40) hours will be compensated at the rate of time and one half (1.5) times the regular rate of pay. The employee may request to receive compensatory time off in lieu of overtime pay.

All compensated time shall count towards the overtime threshold.

For Detention Supervisors, overtime will be calculated based on either a seven (7) or fourteen (14) day work period, in accordance with Section 7.10, below.

Employer agrees to distribute overtime as equally as practical among employees within a department. Employees may be required to cancel a scheduled shift to avoid payment of overtime.

7.7 Compensatory Time: The employee may request to receive compensatory time off in lieu of overtime pay. Compensatory time is earned at the same rate as overtime (time and one-half (1/2) for each hour worked). Employees shall not be permitted to carry over more than forty (40) hours of compensatory time from one (1) calendar year to the next. Compensatory time shall be taken at times mutually agreeable to the Employer and the employees. Employee time sheets shall reflect the total compensatory time accrued in addition to any compensatory time used during the pay period.

Compensatory time shall be taken prior to vacation leave unless the employee will "max out" vacation leave thresholds in Article 11.

Any remaining compensatory time balances will be paid upon transfer to a new office/department, position or at termination of employment, at the employee's then regular rate of pay.

7.8 Call Outs: When the Employer calls out or calls back an employee to work, they are entitled to a minimum of two (2) hours call-out time. This section will not be applicable to call-outs occurring one (1) hour or less before the start of the employee's shift. The employee may be required to work the full hour or more as determined by the Employer.

7.9 Standby Status: If the Employer requires in writing an employee to be in Standby Status during said employee's off duty non-scheduled work hours, such employees will be compensated for such time at the rate of one (1) shift of compensatory time per five (5) shifts of standby duty. Standby Status shall mean an employee is available to return or respond to work within thirty (30) minutes of being called.

7.10 For Detention Supervisors, the Employer may elect to implement an alternate work period consisting of either seven (7) or fourteen (14) days. The normal work day and normal work shift hours shall be determined by the Employer from time to time.

A) If the Employer elects to implement twelve (12) hour shifts in detention, Detention Supervisors will work a regularly recurring work period consisting of fourteen (14) consecutive days. If the Employer elects to implement eight (8) hour shifts in detention, the work period for Detention Supervisors will consist of seven (7) consecutive days. If the Employer implements twelve (12) hour shifts, this Agreement otherwise remains based on an eight (8) hour day, including but not limited to leave accrual, holiday pay, bereavement leave, and disciplinary suspensions.

The Employer has the right to determine and change the work period(s) from time to time based on the Employer's assessment of service and personnel requirements. If the Employer changes the employee's work schedule and/or shifts, the Employer will provide at least thirty (30) day notice to the affected employees, except if there is an emergency.

B) Shift hours will be established by the Employer. Shifts will be assigned every six (6) months taking into consideration the proper mix of skills, abilities, experience, and gender requirements. Employees going off shift may be required to remain on duty to inform replacements of operational conditions and status. Employees will be allowed an intermittent one-half (1/2) hour for a meal/lunch period but shall not leave the facility unless prior approval is given by the Employer. The provisions of Section 7.3 above ("Meal/Lunch Periods") shall not apply.

C) If a twelve (12) hour shift (fourteen (14) day work period) is implemented by the Employer, employees typically will be scheduled to work no more than eighty (80) hours per fourteen (14) day work period, meaning that a full-time employee will typically be scheduled to work six (6) twelve (12) hour shifts during the fourteen (14) day work period, along with one (1) eight (8) hour shift, as determined by the Employer. Only actual time worked beyond eighty (80) hours in a fourteen (14) day work period will be compensated at a rate of time and one-half (1.5x).

D) Employees shall be allowed to trade shift schedules by mutual agreement, subject to gender requirements based on the shifts involved as determined by the Employer. Exchanges shall be submitted to the Juvenile Administrator for approval in advance of the exchange. Such voluntary trades shall not result in overtime premium. The employee agreeing to the exchange assumes all responsibility for the shifts being traded.

E) If the Employer decides to fill a position on a temporary basis, said position will be temporarily filled on the basis of seniority subject to gender requirements based on the shift involved as determined by the Employer.

F) If the Employer elects to implement twelve (12) hour shifts, sick leave and vacation leave shall accrue and be utilized as provided in Articles 11 and 12 of this Agreement.

G) For employees who actually work during the daylight savings time conversion in the spring and thereby lose one (1) hour of work time, employees will not be paid for that hour, although employees may elect to use any accrued vacation or compensatory time for that hour. For employees who work during the daylight savings time conversion in the fall and thereby work one (1) additional hour, those employees will be paid for an additional hour of work.

H) Detention Supervisors:

1. Detention Supervisors will take intermittent lunch/meal periods and intermittent rest periods at their discretion and in accordance with Articles 7.4 and 7.10 (B) herein.

2. Each Detention Supervisor is solely and expressly, personally responsible for notifying the Detention Operations Manager, the Detention Manager or, the Juvenile Administrator, immediately upon determination that the Detention Supervisor is unable to make the necessary arrangements to take a Meal/Lunch Period and/or Rest Period(s), as defined in Articles 7.4 and 7.10 (B) herein.

3. Each Detention Supervisor is solely and expressly, personally responsible for accurately completing a written, monthly time sheet that reflects and otherwise records any work day(s) during the month in which Rest Periods as defined in Article 7.10 (B) herein were not taken by the Detention Supervisor, and otherwise acknowledges that Meal/Lunch Periods and Rest Periods as defined in Articles 7.4 and 7.10 (B) herein, were taken during the month recorded in the time sheet.

4. The parties hereto stipulate CBA text pertaining to Meal/Lunch Periods and Rest Periods, is lawful, and that Article 3 – "Subordinate To Statutes" does not operate to invalidate Article 7. The parties' desire to obtain a mutually agreeable resolution which brings closure to matters involving Meal/Lunch Periods and Rest Periods.

ARTICLE 8 – PAY PLAN PROCEDURES AND SALARY SCHEDULE

8.1 New employee is defined as a first time employee or a former employee with one or more years separation from this Employer.

8.2 2022: Effective January 1, 2022, the 2021 Salary Schedule will be increased by Three percent (3.0%). This calculation and process shall be determined and established by the Benton County Commissioner's Office. The 2022 Salary Schedule is attached as Appendix A.

The parties agree to meet and discuss the findings and implementation of the salary survey results on or before July 1, 2022.

2023: This Agreement will be open for limited negotiations to determine any wage adjustments to the Salary Schedule.

To be eligible for any pay increases, the employee must be employed by the Benton-Franklin Counties Juvenile Justice Center on the date of last signature on the agreement. Employees who are no longer employed by the Employer in this bargaining unit on that date are not entitled to any of the increases in wages and benefits.

8.3 Pay Plan Progression. Progression through the steps of the pay plan is subject to successful performance validated by a written annual performance review (PR). Performance reviews are to be completed no later than thirty (30) days prior to the employee's anniversary pay date. Anniversary pay date is defined as the date when an employee is eligible to move to the next step. An employee's progression from one step to the next will be subject to the outcome of the performance review process and in accordance with the following provisions:

A) The pay plan consists of nine (9) steps to be referenced as Steps "A", "B", "C", "D", "E", "F", "G", "H", and "I". Implementation of pay steps will be provided on the first day of the month following either successful completion of the probationary period or successful completion of the normal performance review period. Eligibility for each step will be subject to a written performance appraisal establishing successful completion of the probationary or normal step period.

B) Entrance Pay Rate - Persons selected to fill vacant positions may be hired by the Administrator at pay step A or B of the appropriate pay range for the classification in which they are hired. Persons selected may be paid at a pay step higher than Step B, based on related experience, education and qualifications relating to the appropriate classifications subject to prior written determination and approval by the Boards of County Commissioners. Said determination and approval shall be final and binding on all parties.

If an employee begins at Step A then the employee shall remain at that step for a minimum of six (6) consecutive months or longer depending on whether the Employer determines that probation should be extended before becoming eligible to move to the next step with said movement being subject to successful completion of the probationary period as confirmed in writing. Regular part-time employees must remain in Step A for minimum of one thousand, forty (1,040) hours or more before said employee may move to the next step subject to the successful completion of their probationary period.

If an employee begins at Step B (or higher) of the pay plan, the employee shall remain in that Step for a minimum of twelve (12) consecutive months before becoming eligible to move to the next step; subject to successful completion of their six (6) month probationary period as confirmed in writing and six (6) additional months of successful service. Regular part-time employees must remain in Step B or a higher step for a minimum of two thousand, eighty (2,080) hours (one thousand, forty (1,040) hours for their probationary period and one thousand, forty (1,040) hours of additional successful service) before said employee is eligible to move to the next step; subject to successful completion of their probationary period as confirmed in writing.

C) Subsequent Pay Steps – In addition to successful performance, in order to be eligible for subsequent steps from Step B to Step I, an employee shall serve a minimum of twelve (12) consecutive months within a step, or two thousand, eighty

(2,080) hours for regular part-time employees, before becoming eligible to move to the next step. An employee may be denied advancement for unsatisfactory performance until and unless employee's performance improves to the satisfaction of the employer.

An employee denied advancement or denied continuation in any Step by reason of unsatisfactory performance or failure to maintain satisfactory service, will not be eligible for consideration for advancement for a period of up to twelve (12) consecutive months from the date of denial. In order for the employee to be re-considered for advancement, the employee must demonstrate satisfactory performance for a period sufficient to show sustained performance. Such action is to insure an employee is paid at their level of performance, and is not intended to be disciplinary.

Once an employee has reached Step I, in order for the employee to continue to be eligible for Step I, the employee will be subject to annual written performance appraisals which must reflect satisfactory service in order to continue in Step I. If an employee fails to maintain a satisfactory service rating the employee may be returned to Step H. In order for the employee to return to Step I, the employee must demonstrate satisfactory performance for a period sufficient to justify the return to Step I. Such action is to insure an employee is paid at their level of performance, and is not intended to be disciplinary.

Denials and the basis for denial are subject to the grievance procedure up to Step 2. If either party seeks to invoke Step 3 (final and binding arbitration) the outcome of such arbitration shall be advisory only and shall not be binding on either party except if the arbitration relates to the second denial for the same pay step.

D) The above provisions relate to only the horizontal progression through the pay plan (*i.e.,* movement from Step A to Step B to Step C, etc.) and does not imply or mean vertical progression through the pay plan from Grade 1 to 2 to 3, etc. There is no vertical progression through the pay plan.

8.4 Promotion - Promotions are subject to the determination of the Juvenile Administrator or designee and subject to prior approval by the Employer. An employee promoted to a new classification will be placed at the starting rate/step of the new classification if higher than the current lower classification step. If the starting step is not higher, the employee will be placed at the next higher step that results in a pay increase, provided, however, that the step increase cannot exceed a Step H pay rate. The promoted employee will be assigned a new anniversary date consistent with the date of promotion. In the event the promoted employee's pay increase is less than two percent (2%), the current anniversary date remains unchanged. An employee promoted to an A step is eligible for a step increase in six (6) months if the current anniversary date falls after that six (6) month period.

8.5 Lateral Transfer - Movement from one position to another position within the same pay grade (*i.e.,* grade 4 to grade 4). Any employee so transferred will maintain pay step within

grade (*i.e.*, if Step C, employee stays at Step C) unless Step I is involved in which case the employee will be moved to Step H effective on the date of transfer. If an employee is at Step I and transfers causing movement on the salary schedule to Step H, the employee will be eligible for advancement to Step I only if the employee is clearly qualified to perform at that level based on the Juvenile Administrator's evaluation and the employee's demonstrated ability.

8.6 Demotion - The movement of a bargaining unit employee from one position to another position (with reduced duties and responsibilities) at a lower grade (*e.g.*, Grade 5 to Grade 4). A demotion may be voluntary or involuntary. Demoted employees shall move to the Step in the lower pay grade that results in the smallest decrease in pay, except when demotion is associated with disciplinary action. The employee will be given a new anniversary date.

8.7 Out of Class Pay - Employees temporarily transferred to a position paid at a lower pay grade will remain at their current rate of pay. Employees shall be eligible for payment at a higher rate of pay when temporarily assigned to the full responsibilities of a position in a higher pay classification subject to the Employer's determinations of qualifications, performance and extent of job responsibility fulfillment.

All temporary assignments will be made in writing at least twenty-four (24) hours in advance, barring emergency circumstances as determined by the Employer. Prior to acceptance of such an assignment, employees will be provided direction regarding the work load assignments and expectations, and the expected duration of the assignment. The rate of pay for out of class assignments to a higher classification shall be determined according to Article 8.4 (Promotion).

ARTICLE 9 – INSURANCE BENEFITS

9.1 The Employer gives employees the opportunity to participate in health, dental and vision insurance, and group life insurance plans that have been approved and accepted by the Board of Benton County Commissioners. Each employee must select one of each type plan, and the Employer will contribute the amount stated in Section 9.2 toward the employee's premium costs for the coverage selected. Employees may change their plan options annually during Benton County's open enrollment period. All employees are required to participate in the Employer's designated life insurance plan. The Benton-Franklin Counties Juvenile Guild has elected to have Thirty-Six Thousand Dollars ($36,000) face value life insurance coverage.

The Employer contributions indicated in Section 9.2 will be applied first towards employee life, vision, dental, and medical insurance. Any remaining balance will be applied toward dependent coverage or to the employee's VEBA account. Any additional amounts above the Employer's contribution necessary to pay life, medical, dental and vision insurance premiums shall be the sole responsibility of the employee and accomplished by payroll deduction.

9.2 The Employer will provide the United Employees Benefit Trust (UEBT) Plan A6 (Composite) and the Kaiser high deductible plan as the plans for medical and hospital coverage available to all employees.

9.2.1 2022: Effective the date of the last signature affixed to this agreement, the Employer agrees to pay up to a maximum of One Thousand, Forty-Nine and 59/100 Dollars ($1,049.59) per month towards medical, dental, vision, and life insurance coverage.

9.2.2 2023: Effective January 1, 2023, the Employer's contribution will change to cover the employee only premium towards medical, dental, vision, and life insurance up to ten percent (10%) based on the 2022 baseline of One Thousand, Forty-Nine and 59/100 Dollars ($1,049.59). Any and all increases in premiums over the 2022 baseline in excess of ten percent (10%) shall be borne one hundred percent (100%) by the employees. In the event the premium is reduced, the employer will reduce their contribution by that amount.

9.3 The Employer is not liable for direct payment of any insurance claims.

9.4 In accordance with the Employer's medical/dental/optical/life insurance program requirements employees who elect to receive the Employer's contribution towards any of these coverages must have those contributions applied to the Employer's insurance programs. No employees can have the dollar amount contributions apply to any other insurance programs other than those provided by the Employer.

9.5 For UEBT coverage, the employee is eligible on the first of the month, if they are a regular full-time employee and had forty (40) or more compensable hours (worked, vacation, sick leave, holiday pay) in the previous calendar month. If the employee is a regular full-time employee and elects Kaiser (Washington Counties Insurance Fund or "WCIF") and is hired on the 1st of the month, coverage begins on the 1st of that month; if hired on the 2nd through the 31st, coverage begins the 1st of the following month. If the first falls on a weekend or holiday and the employee reports to work on the first business day following, coverage is retroactive to the first of the month.

9.6 The eligibility of an employee for insurance benefits terminates at the end of any month that the employee fails to meet the above eligibility and enrollment requirements. If the employee has benefits with UEBT and had at least forty (40) or more compensable hours during the last calendar month of employment, coverage extends through the end of the month following termination. If the employee has WCIF benefits, coverage ends the last day of the month in which employment terminated.

9.7 WA Paid Family and Medical Leave Act. Chapter 50A.04 RCW requires premium deductions for WA Paid Family and Medical Leave beginning January 1, 2019. January 1, 2019, deductions will commence in accordance with the statutory splits for employer and employee contributions. As rule making progresses the parties acknowledge either party can request to meet and bargain any associated impacts.

ARTICLE 10 – HOLIDAYS

10.1 Effective after the date of ratification by both parties, the following are holidays with pay:

New Years' Day	January 1st
Martin Luther King Jr. Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19th
Independence Day	July 4th
Labor Day	First Monday in September
Veteran's Day	November 11th
Thanksgiving Day	Fourth Thursday in November
	Day after Thanksgiving
Christmas Day	December 25th
Christmas Eve	Last workday before Christmas
One (1) Floating Holiday	Employee's discretion

An employee will not receive holiday pay if the employee is absent on their last scheduled work day prior to or the first scheduled work day following the holiday if the absence is without pay due to insufficient accrued paid leave or if the employee is on a leave of absence without pay. If an employee is scheduled to work a holiday and calls in sick, the employee will be charged sick leave and will not receive holiday pay. Holidays are based on an eight (8) hour day.

10.2 Floating Holiday: Each employee shall be entitled to one (1) floating holiday after completion of the probationary period. In order for the employee to use said floating holiday, they must obtain prior approval from the Employer. The floating holiday must be used within the calendar year. An unused floating holiday shall be paid to employees upon termination and/or resignation or their estate upon death, except for probationary employees. The floating holiday may be taken only in full.

10.3 If a holiday falls on a Saturday, it shall be observed on the preceding Friday. If a holiday falls on a Sunday, it shall be observed on the following Monday.

10.4 If a holiday should occur while an employee is on a paid leave such leave will not be charged for the holiday.

10.5 Detention Supervisors: Detention Supervisors will observe holidays on the actual day on which the holiday falls as set forth in Section 10.1 with the provisions of Section 10.3 not being applicable. Detention Supervisors scheduled to work on a holiday will be paid in accordance with Article 10.6. Detention Supervisors not scheduled to work a holiday will be paid eight (8) hours of holiday pay. Detention Supervisors may choose to bank the eight (8) hours of holiday pay for each holiday identified in Article 10.1.

10.6 Employees who work on the holiday (for Detention Supervisors, on the actual holiday; for other employees, on the observed day in accordance with Section 10.3) will receive only

(a) time and one-half (1/2) pay for each hour worked on the holiday (*e.g.*, starting on July 4th at 12:01 a.m. and ending at 12:00 midnight); and (b) eight (8) hours of holiday pay. Employees will not receive any other pay or salary for the holiday or work on that day. There is no pyramiding of overtime and one and one-half (1.5x) holiday pay.

10.7 Employees will receive no holiday pay if the employee has accepted scheduled work on a holiday and fails to report to work except for an excused absence.

10.8 By mutual agreement, compensatory time may be given in lieu of holiday pay.

ARTICLE 11 – VACATION LEAVE

11.1 Vacation leave with pay is earned at the following monthly rates depending on the employee's length of service with the employer.

Years of Service	Working Hours Leave / Month or Major Portion Thereof	Annual Leave Hours
1 through 5	10.00	120
6 through 10	12.00	144
11 through 15	15.00	180
16 through 19	16.5	198
20 and over	18	216

11.2 Vacation leave credit may be accumulated during the first six (6) months of service with the Employer, however, said vacation leave credit may not be used. During the seventh month, or any subsequent month, vacation leave may be allowed up to the limits of the amount earned. Vacation leave credited for any month of service beyond the first six (6) months of service may be allowed during the month earned or any subsequent month. The employee must request, and said request is subject to prior approval from the Employer, before the employee can utilize said accrued vacation leave.

Monthly accrual shall commence at the completion of a major portion of a month of continuous service.

Under this Agreement, "major portion" and "majority" of the month are defined as follows: More than half the number of full-time hours the employee is scheduled to work in the particular month.

11.3 Only regular full-time and regular part-time employees who have successfully completed six (6) months of service shall upon separation from the Employer for any reason, be compensated for all accumulated vacation leave, subject to Section 11.5 below, at the rate of basic monthly salary divided by one hundred, seventy-three and one third (173.33) hours. In case of death all accumulated leave is paid to the estate of the employee.

11.4 All requests for leave are subject to approval by the Juvenile Administrator or designee. The employee with the greater seniority shall be given their choice of vacation in the event

of a conflict regarding vacation scheduling. Supervisory personnel shall arrange vacation leave for employees on such schedules that will least interfere with the functions of the department.

11.5 Vacation leave may be accumulated to a maximum of two hundred forty (240) hours. This means that no more than two hundred forty (240) hours may be accumulated at any one time. When an employee accumulates two hundred forty (240) hours of vacation leave, the employee will lose any additional days as they are earned until some of the accumulated vacation leave is used, thus bringing the total to less than the two hundred forty (240) hour limit. At no time shall any employee accrue more than two hundred (240) hours of vacation leave.

Any employee hired after June 1, 1995, shall not be entitled to accrue more than two hundred (200) hours of vacation leave at any time.

11.6 An employee is eligible to cash out twenty (20) or forty (40) hours of vacation leave if the employee has used a minimum of eighty (80) hours vacation leave since December 1st of the previous calendar year, through November of the current calendar year. Employees with twenty (20) or more years of service with the Employer, may cash out twenty (20), forty (40), or eighty (80) hours. This cash out will be paid in December, with the November payroll. Vacation donated under leave sharing will be included in the eighty (80) hours used to qualify for a cash out.

ARTICLE 12 – SICK LEAVE

12.1 Sick Leave Policy for Employees: Sick leave is provided to employees as a protection against loss of income in the event of absence from work for medical reasons, including extended absence on account of illness or injury. Its use is restricted to health-related pursuant to the application of RCW 49.46 in accordance with state and federal laws.

In accordance with the cooperative spirit of the Agreement, the Guild and the Employer agree that they will work jointly to prevent misuse and/or abuse of sick leave. This means consultation with the appropriate Guild President or designee in regard to a specific problem.

12.2 Eligibility for sick leave use shall commence at the completion of a major portion of a month of continuous service.

12.3 Effective January 1, 1994, regular full-time employees shall earn credit at the rate of eight (8) hours of sick leave with pay per month of continuous service. Every January 1st, employees can carryover a maximum of one thousand, forty (1,040) hours; provided, however, employees hired after June 1, 1995, may only be compensated upon separation from the Employer based on a maximum of eight hundred (800) hours subject to the provisions of Section 12.7 below. The hours between eight hundred (800) and one thousand, forty (1,040) have no cash value and may only be used for a catastrophic illness. Regular part-time employees shall accrue sick leave on a *pro rata* basis or pursuant to RCW 49.46, whichever is greater.

12.4 Earned sick leave with pay may be taken for the following reasons:

A) Pursuant to the application of RCW 49.46, or

B) Bereavement Leave: Death of family members meeting the definition of "immediate family" in Section 12.5 below, - five (5) days maximum per death.

C) Death of a friend or relative not covered by Section 12.4D, above -- one (1) day maximum per death.

12.5 "Immediate family" is defined pursuant to the application of RCW 49.46.

12.6 Sickness shall be reported to the employer at the beginning of any period of sick leave prior to the beginning work hour. Upon return to work, the employee shall submit a leave form requesting approval for the leave so taken. Any employee who is off work due to illness in excess of three (3) consecutive work days, may be required to provide a qualified health care provider's verification of the illness as well as the qualified health care provider's approval to return to work.

Employees on sick leave in excess of three (3) consecutive workdays are required to call the Juvenile Administrator or designee weekly and are required to furnish progress reports of their health or illness condition.

Prior to being eligible to return to work, the employee will be required to provide satisfactory evidence and if determined to be necessary by the Employer, may be required to provide a qualified health care provider's statement explaining that the employee is capable of performing the position's duties at normal levels of efficiency.

Should an employee become ill while on vacation and require medical attention or hospitalization, the time ill may be charged to accumulated sick leave, provided the employee furnishes a certificate issued by a licensed physician or practitioner, or other satisfactory evidence of illness, if the requested sick leave is in excess of three (3) days.

12.7 Employer will allow employees to participate in an HRA VEBA Medical Reimbursement Plan for Public Employees in the Northwest (hereinafter, "VEBA"), subject to the provisions of this Agreement.

A) Employees hired prior to January 1, 1994, will be paid for fifty percent (50%) of unused sick leave at voluntary termination or retirement from employment with Benton County, or to their estate upon death, capped at one thousand forty (1,040) hours. For retirement, this payment will be to the employee's VEBA account.

B) Employees hired on or after January 1, 1994, who voluntarily terminate or retire from their employment with the Employer under the Employer's retirement program shall receive payment, into the employee's VEBA account, for twenty-five percent (25%) of their unused sick leave, or to their estate upon death. For voluntary

termination, such payment shall be limited to employees with ten (10) or more years' service. For voluntary termination or retirement, payment shall not exceed Three Thousand Dollars ($3,000.00).

C) For employees with PERS I, the Employer will exclude from the VEBA the sum of unused sick leave accruals used by the Department of Retirement Systems in calculating the employee's average final compensation.

12.8 Family and Medical Leave. The Employer provides Family and Medical Leave to employees to the extent provided by and in accordance with the Family and Medical Leave Act (FMLA), other applicable state and federal laws and regulations, and the Benton County Family and Medical Leave Policy (Benton County Resolution 09-503, or subsequent replacement Benton County resolutions and policies).

12.9 Employees who have accrued sick leave in excess of the maximum allowed eight hundred (800) hours will be allowed to convert the excess sick leave over eight hundred (800) hours to vacation leave on a four (4) to one (1) basis (*i.e.*, each increment of thirty-two (32) hours accumulated in excess of eight hundred (800) hours may be converted to eight (8) hours of vacation leave). Exercise of such an option shall be by written request.

ARTICLE 13 – LEAVE SHARING

13.1 Leave Sharing: The purpose of the program is to allow an employee to transfer any portion of their vacation leave, to another employee in need of such leave due to family or medical emergency, or a lengthy illness or injuries, or a qualifying condition under the Family and Medical Leave Act. Leave Sharing shall be implemented as provided in this Article.

13.2 Policy: The leave sharing policy shall be implemented as follows:

A) The recipient employee shall exhaust all accrued paid leave, or shall be able to demonstrate that all accrued paid leave will soon be exhausted, before becoming eligible to receive any transferred vacation leave.

B) The transferring party must have:

i. taken at least forty (40) hours of vacation leave in the previous twelve (12) months, or

ii. have no less than forty (40) hours of accrued paid leave after the transfer is completed.

C) All requests for transfer of vacation leave shall be submitted on a Voluntary Transfer of Vacation Leave form to the Unit Managers for each party, and to the Juvenile Administrator. Each request shall include:

i. The amount of vacation leave to be transferred;

ii. The names, signatures, and Units/Departments of the employees requesting the transfer;

iii. A statement that the receiving party has exhausted or will exhaust all accrued paid leave.

D) Approval of the transfer is at the discretion of the Juvenile Administrator or designee for the donating employee. The Juvenile Administrator or designee may request written confirmation from the recipient employee that they qualify for leave sharing under this Leave Sharing policy, including but not limited to a health care provider's statement confirming the need for the employee to be off work. If the transfer is approved, the Juvenile Administrator or designee shall sign the request, and copies of the request shall be submitted for processing, with a copy to the Human Resources Department.

E) The Juvenile Administrator or designee shall be responsible for monitoring the use of the transferred leave and for keeping the appropriate records. This includes keeping a copy of the Voluntary Transfer of Vacation Leave form, monitoring and approving the amount of leave transferred and used, monitoring when transferred leave is exhausted, and monitoring when the transferee's need for transferred leave ceases. To the extent possible, the Unit Manager will deduct the time used evenly among the donors: *e.g.*, if eight (8) people donate ten (10) hours apiece, and the recipient takes one (1) day off, one (1) hour would be deducted from each donor.

F) An employee may accumulate no more than two hundred (200) hours of transferred leave at one time. An employee may remain eligible to receive transferred leave if necessary once the accumulated balance of transferred leave is less than two hundred (200) hours. In the event the transferred leave is no longer needed, or upon cessation of employment by the receiving employee, any and all remaining transferred leave shall be returned in equal portions, if applicable, to the employee(s) donating the leave.

G) Donation and return of vacation leave hours is based solely on the number of hours and not on the donating and/or receiving employee's wages. Names of those donating leave will be kept confidential.

ARTICLE 14 – LEAVE OF ABSENCE

14.1 Leave of Absence Without Pay: An employee may be granted leave of absence without pay not to exceed twelve (12) months. An employee must request such leave of the Juvenile Administrator. The Juvenile Administrator may approve or disapprove said leave. Such leave requests shall be made thirty (30) days prior to the anticipated start of leave except in the event of sickness. Prior to approval of such leave, the employee and Administrator shall reach a mutually acceptable agreement with regard to the date of return and if the Administrator determines it is possible the work position to which the employee will return.

In order to be approved for a leave of absence without pay, an employee must first exhaust all banked vacation time. If the reason for a leave of absence without pay is a qualified sick leave usage, an employee must also exhaust their sick leave prior to being on a leave of absence without pay unless the law provides otherwise. A disciplinary suspension without pay may be granted prior to the utilization of an employee's leave bank(s).

While on a leave of absence without pay that benefit continuation is not pursuant to applicable statues, the Employer's insurance contribution ceases, the employee is eligible for COBRA benefits, and the employee's anniversary date will be adjusted. If the employee is on unpaid leave for a major portion of a month, vacation and sick leave do not accrue, and the employee's anniversary date will be adjusted accordingly.

If the Employer determines that there is a need for such information, the employee shall present satisfactory evidence of capability of resuming job duties at proper levels of efficiency before returning to work.

No leave of absence, whether with or without pay, shall be allowed unless authorized in advance by the Employer.

14.2 Special Meetings and Training: Subject to the approval of the Employer an employee may be granted time off with or without pay to attend professional, technical institutes, conferences, and/or special educational training directly appropriate to the employee's position.

ARTICLE 15 – RETIREMENT

15.1 The Employer will continue to pay its contribution towards the Public Employees Retirement System for eligible employees in accordance with state statutes.

15.2 The Employer shall maintain its contribution towards Social Security for the employees covered by this Agreement in accordance with federal laws.

ARTICLE 16 – ON-THE-JOB INJURIES

An employee who suffers a compensable on-the-job injury resulting in their absence from work will be permitted to apply accumulated sick leave to the first three (3) workdays of the absence, less any state compensation that may be applicable. If the employee qualifies for time loss payments, their accumulated leave will apply toward the base wage difference between the time loss payment and their normal base wage. The total of the two payments will not exceed the employee's normal wage for a normal workday. During the employee's absence, they will be listed as being "on leave of absence - compensable injury." If the employee is receiving workers' compensation pay for the majority of the month, the employee will not accrue vacation or sick leave, and the employee's anniversary date will be adjusted accordingly. While the employee is supplementing their time loss payments with accumulated leave or while covered under the Family Medical Leave Act (FMLA), the Employer will continue to pay the Employer's contribution towards the employee's insurance premiums. Time loss payments are not considered compensation like sick leave and/or vacation leave. If, however, the employee runs out of

compensated leave and FMLA leave, they will be eligible for COBRA benefits and the Employer's insurance contribution will cease. While on workers compensation, the employee's time loss pay will be administered by the Human Resources Office; however, the employee must keep their supervisor informed of their status and prognosis for return to work on a weekly basis.

ARTICLE 17 – DISCIPLINE

17.1 The parties believe progressive discipline is a beneficial approach because it provides the employee with an opportunity to correct deficiencies and to improve their conduct. Management personnel may discipline an employee for just causes, inclusive of but not limited to:

A) Neglect of duty
B) Inefficiency
C) Insubordination
D) Incompetence
E) Insolence
F) Conviction of a crime that may affect work performance.
G) Malfeasance or misfeasance of job requirements
H) Misconduct
I) Violation of Employer and/or departmental rules and/or regulations, whether written or oral
J) Conflict of interest off-duty activities vs. job duties
K) Excessive tardiness (two (2) or more) and/or absenteeism (two (2) or more) not protected by law
L) Sexual harassment
M) Violation of the Drug & Alcohol Policy or Procedures or Fit for Work Program
N) Suspension and/or revocation of licenses, certifications, and any other prerequisites as required by the job and/or applicable laws.
O) Such other causes which normally serve as a basis for discipline in labor and personnel relations.

17.2 The degree of disciplinary action depends on the severity of the infraction. It is the responsibility of the Employer taking such action to objectively evaluate the circumstances and facts involved before beginning disciplinary action. In order of increasing severity, the disciplinary actions which the Employer may take against an employee are as follows:

A) Verbal warning: The Employer will discuss the offense and warn the employee not to repeat the behavior, and will document the occurrence by making a note in the employee's personnel file.

B) Written reprimand: The employee will receive a signed letter from the Employer listing the violations and stating the corrective action that must be taken by the employee. If there is no recurrence of the conduct prompting discipline, records of oral and written reprimands shall be removed from the employee's personnel file after a one (1) year period, following written request by the employee.

C) Disciplinary Probation: The Employer has the right to use this disciplinary action as a further step for multiple written reprimands. The Employer shall notify the employee that they are on disciplinary probation for a specified length of time, not to exceed six (6) months and provide a corrective action plan. An employee on disciplinary probation is on notice that further disciplinary actions against them could result in discharge or termination.

E) Suspension without pay: An employee shall be suspended without pay when the offense is of a serious nature as determined by the Employer, or warranted by progressive discipline. Such suspension without pay will not exceed thirty (30) working days.

F) Discharge or Termination: The Employer shall hold a pre-discharge conference or meeting with the employee at which time the employee shall be provided with written notice of the charges, an explanation of the evidence, and afforded the opportunity to respond. The purpose is for the employer to explain their perspective regarding the charges prior to the Employer finalizing disciplinary action.

17.3 The Employer may take any of the stated disciplinary actions at any time depending on the circumstances. The Employer is not restricted to taking disciplinary action by way of a progression from (A) through (F) referenced in Section 17.2, but rather the Employer may choose any one and/or combination of said disciplinary actions.

17.4 The Employer may immediately warn, reprimand, suspend without pay, and/or discharge or terminate an employee for cause. The specified charges shall be made available to the employee and the Guild in writing at the Employer's office not later than one (1) working day after the action became effective. In the event the Employer preliminarily believes that an employee may be suspended without pay or discharged/terminated, the Employer will notify the employee and the Guild representative of the alleged misconduct(s) and potential discipline in writing. At the conclusion of the Employer's investigation, the Employer will hold a pre-disciplinary meeting to provide the employee and the Guild representative an opportunity to respond to the allegations. The employee's attendance at the pre-disciplinary meeting is mandatory, unless the employee's absence from the meeting receives prior approval of the Employer. Thereafter, or concurrent therewith, the Employer shall make a determination as to whether to proceed with disciplinary action.

The Employer will make a reasonable effort to ensure that the investigation and notice of pre-disciplinary meeting occur within a reasonable amount of time. However, this process is dependent upon the complexity of the misconduct and the availability of witnesses and/or evidence. No pre-disciplinary action meeting with the employee and Guild representative is necessary for an oral and/or written reprimand.

In addition to, or in lieu of filing a grievance pursuant to Article 18, an employee may submit a written response to any documentation placed in their personnel file pursuant to this section, within seven (7) calendar days.

17.5 Any disciplinary action of a non-probationary employee may be grieved through the grievance procedures.

Discipline shall be carried out in a private meeting with the employee having the right to representation. The actions taken shall be documented and signed by the Employer and employee. Employee's signature denotes acknowledgment and receipt of the reprimand.

17.6 Probationary employees may be discharged or terminated without just cause and without recourse at any time during the probationary period.

17.7 Administrative Leave: At the discretion of the Employer, an employee may be placed on administrative leave with pay pending investigation of allegations of misconduct, when such allegations compromise the ability of the employee to perform their duties, and when a substantial period of time will be required to complete an investigation or legal action. Such leave is not a disciplinary action and may not be appealed. If the charges are substantiated, the appropriate disciplinary action will be taken.

ARTICLE 18 – GRIEVANCE PROCEDURE

18.1 The parties hereto recognize the need for fairness and justice in the adjudication of employee and/or Employer grievances. The parties will attempt to adjust such actions at the lowest level. If, however, a grievance cannot be solved through normal means, the grievance will be settled as hereinafter provided.

18.2 A grievance is defined as a question or challenge raised by an employee or group of employees or the Guild or the Employer as to the correct interpretation and/or application of the terms and conditions of this Agreement.

18.3 Through the procedure set forth in this Article, a grievance may be presented by an employee, or the Employer accompanied by a representative if desired.

18.4 Grievances shall be heard at any time where practical and feasible.

18.5 The parties agree that the time limitations provided are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations, unless an extension of time is mutually agreed to in writing.

18.6 No grievance shall be valid unless it is submitted at Step 1 within twenty (20) working days after the occurrence of the grievance or knowledge of its occurrence. Employer grievances shall be submitted at Step 2 within twenty (20) working days after occurrence of the grievance or knowledge of its occurrence. If a grievance is not presented within the time limitations referenced herein, said grievance shall be considered forever waived. The grievance document will indicate the facts involved in the grievance, the sections of the contract violated and the remedy sought. If there is a failure to meet the time limits or extended time limits in the grievance procedure, then and in that event, the final resolution of the grievance shall be in accordance with the last responding party.

18.7 The grievance procedure shall be as follows:

Step 1:

The grievance shall be presented in written form by the aggrieved employee or their representative to the employee's Unit Manager within twenty (20) working days after the occurrence of the grievance or knowledge of its occurrence. The aggrieved employee and/or their representative and Unit Manager will meet to discuss and attempt to resolve the issues within twenty (20) working days after notification. Both parties may or may not be represented. If the matter cannot be resolved at the conciliation step, then the matter may be referred to Step 2. None of the settlement proposals, oral or written, are admissible in any arbitration proceeding.

Step 2:

If the grievance has not been resolved at Step 1, the aggrieved employee and/or their representative and/or the Unit Manager may refer the dispute to Step 2, within twenty (20) working days of the response in Step 1. The grievance, in written form, shall be presented to the Juvenile Administrator or designee. Thereafter, the Juvenile Administrator or designee shall respond in writing to the aggrieved employee and/or their representative within twenty (20) working days after receipt of the grievance. If the Employer files a grievance against an employee, or the Guild, it shall be presented to the Guild President within twenty (20) working days per Section 18.6 above. The Guild President shall respond in writing to the Employer within twenty (20) working days after receipt of the grievance.

Step 3:

A) FINAL AND BINDING ARBITRATION

If the grievance has not been resolved at Step 2, in accordance with the conditions set forth herein above, the Guild or the Employer may refer the dispute to final and binding arbitration.

B) NOTICE - TIME LIMITATION

The submitting party shall notify the other party in writing by mail and email within twenty (20) working days after the receipt of the Step 2 response.

C) ARBITRATOR - SELECTION

After timely notice, the arbitrator will be selected as follows:

i. The parties shall attempt to select an arbitrator within twenty (20) working days after receipt of the written notice of submission to arbitration. Thereafter, the hearing of the matter shall be conducted at the earliest possible date. If the parties cannot agree on an arbitrator, the following procedure will be applicable.

ii. In the event either party does not agree on an arbitrator, the party advancing the grievance to arbitration shall request a panel of eleven (11) arbitrators from the Federal Mediation and Conciliation Service, "copying" the other party with the written request. This list shall be limited to arbitrators who are members of the National Academy of Arbitrators from the nearest sub-region. If the parties cannot mutually agree on an arbitrator from the list of eleven (11) names, then the two (2) parties shall meet or confer by telephone and the non-grieving party shall elect or defer to the grieving party, to first strike one (1) name from the list of neutrals, and communicate that party's choice to the other party. The party not striking first will then strike one (1) name from said list and so forth, proceeding in an alternating order until each party has struck five (5) names from the list. The remaining name shall be the arbitrator, and will be so notified in writing by the party advancing the grievance to arbitration, copying the other party on the notice to the selected arbitrator.

D) DECISION - TIME LIMIT

The arbitrator will meet and hear the matter at the earliest possible date. After completion of the hearing, a decision shall be rendered within thirty (30) calendar days of the hearing or from post hearing briefs. The parties may agree to other time frames.

E) LIMITATIONS, SCOPE AND POWER OF ARBITRATOR

i. The arbitrator shall not have the jurisdiction to add to, subtract from, alter, change or modify the terms and/or provisions of this Agreement.

ii. The power of the arbitrator shall be limited to interpretation of or application of the terms of this Agreement or to determine whether there has been a violation of the terms of this Agreement by either the Guild or the Employer.

iii. The arbitrator will consider and decide only the question or issue raised at Step 1 or Step 2, as determined by the Step where the grievance was first initiated, and the arbitrator will not have the authority to consider additions, variations and/or subsequent grievances beyond the initial grievance submitted at Step 1 or Step 2 per Article 18.

iv. In conducting the hearing, the arbitrator will have the power to administer oaths, issue subpoenas, receive relevant evidence, compel production of books and papers relevant to the hearing, and question witnesses.

v. Summary Judgment. The arbitrator will have the power to hear summary judgment motions as set forth herein, for grievance arbitration matters not

involving the discipline of a Guild represented employee. A party may submit a summary judgment motion to the arbitrator, who will issue a briefing schedule. The arbitrator may decide the matter after oral argument based upon the summary judgment written record, if the written record shows that there is no genuine issue as to any material fact, and the moving party is entitled to summary judgment as a matter of law, in which case the arbitrator will issue a detailed, written decision, order and award.

F) ARBITRATION AWARD - DAMAGES – EXPENSES

i. Arbitration awards shall not be beyond the date of the occurrence upon which the grievance is based, that date being twenty (20) working days or less prior to the initial filing of the grievance.

ii. The arbitrator will retain jurisdiction of the grievance until such time as the award has been complied with in full.

iii. The arbitrator shall not have the authority to award punitive damages.

iv. The expenses of the arbitrator will be split between the parties. Each party shall bear their own expenses of presentation of their respective cases.

v. Either party may request that a stenographic record of the hearing be made. The party requesting such a record shall bear the cost thereof, provided, however, if the other party requests a copy, such cost to prepare the stenographic record, including without limitation, hearing costs, shall be shared equally.

vi. In the event that either party evaluates and determines that the arbitration award was beyond the jurisdiction of the arbitrator, the award may be appealed to Superior Court.

ARTICLE 19 – PROMOTION, TRANSFER, LAYOFF AND RECALL

19.1 Promotion: It is the policy of the Employer to provide promotional opportunities to current qualified personnel. The Employer retains the right to select the individual best suited to the job requirements, considering skills, ability, past performance, seniority, and any other applicable factors. The provisions of Article 32, Job Vacancies and Posting, shall apply to the application procedure for promotions. Each bargaining unit member who applies for a promotional opportunity and meets the minimum requirements for the position, including any tests, scores, and interviews if applicable, will be interviewed for the position, unless the Juvenile Administrator or designee assigns the position to an employee within the work unit under Article 32.1 (A).

19.2 Lateral Transfer: If the Employer determines a vacancy exists in a particular work unit, the Employer may allow employees in the same job classification and pay grade from any other work unit in juvenile operations to apply for a lateral transfer before the Employer

opens the vacancy for applications under Article 32. The Employer will post the notice of lateral transfer opportunity, minimum and special requirements for the position, and the application requirements for the transfer at least three (3) days prior to the closing date. Each employee who meets the minimum and special requirements for a position will receive an interview. The Employer has the right to select the individual determined is the best person for the job, taking into consideration skills, abilities, past performance, seniority, and any other applicable factors.

19.3 Layoff And Recall

A) The Employer shall be the sole determiner of when layoffs are necessary. The Employer may lay off employees when such action is made necessary by reason of a lack of work, lack of funds and/or reorganization.

B) The Employer shall give as much notice as practicably possible to designated employees within the affected job classification chosen for layoff.

C) The Juvenile Administrator will lay off in order of seniority within the affected job classification. In a layoff, within an affected job classification, seniority with the Employer will be first consideration, seniority within the job classification will be the second consideration and seniority within the bargaining unit third. Employees who remain within the department must be able to fulfill job requirements. The determination as to whether or not remaining employees are capable of fulfilling job requirements shall be at the discretion of the Employer and shall not be grievable.

i. In the event of a layoff, extra help/temporary employees in the affected classification shall be laid off before bargaining unit employees. This will not apply to interns or positions that are subject to other collective bargaining agreements.

ii. If extra help/temporary employees are being utilized in a classification in the Department which is not affected by the layoff, the extra/help temporary work shall be offered to qualified bargaining unit employees who are affected by the layoff. The bargaining unit employees to whom the position is offered shall be determined by the Employer, and such determination shall not be grievable. This shall not apply to positions that are subject to other collective bargaining agreements.

D) The Employer will offer the following options, if available within the bargaining unit only, to an employee who receives a reduction-in-force notice:

i. The right to bump the least senior occupant in a classification in the bargaining unit for whose position the employee meets the required qualifications at the same pay grade as the reduction-targeted classification. To qualify for this option, the employee shall have greater seniority with the

Employer than the occupant being bumped, shall meet the minimum qualifications for the position with minimal additional training as solely determined by the Employer, and shall either have previously held the position or have demonstrable familiarity with the position and/or job functions as determined by the Employer. If the employee is offered and accepts the option, the employee shall receive the corresponding reduction in salary, if any.

ii. The right to bump the least senior occupant in a classification in the bargaining unit for whose position the employee meets the required qualifications at a lower pay grade as the reduction-targeted classification. To qualify for this option, the employee shall have greater seniority with the employer than the occupant being bumped, shall meet the minimum qualifications for the position with no additional training, and shall either have previously held the position or have demonstrable familiarity with the position and/or job functions as determined by the Employer. If the employee is offered and accepts the option, the employee shall receive the corresponding reduction in salary, if any.

iii. If an employee is permitted to bump an occupant as outlined above; the employee shall be required to complete the four (4) month trial period in compliance with other sections of this Agreement.

E) The Employer will place the names of employees laid off on a recall list.

F) No new employees within the laid off job classification shall be hired by the Employer until available employees placed on layoff have been offered re-employment, provided the layoff period does not exceed one (1) year and that the employees keep the Employer advised of their current address. An offer of re-employment shall be in writing and sent by mail and email to the employee. The employee shall be deemed to have received notice within three (3) days after the Employer mailed said notice. An employee so notified must indicate their acceptance of said re-employment within ten (10) days of receipt of notice and shall be back on the job within thirty (30) days of acceptance of said offer or forfeit all call back rights under this Article.

G) Employees recalled from layoff shall not lose previously accumulated seniority or time in service, accrued vacation or sick leave provided all other provision of this Article are complied with, including that the employee must be re-employed within one (1) year to retain these call-back rights and that the employee has successfully completed their six (6) months probationary period. However, employees shall not have vacation time or sick leave time reinstated where the employee has been compensated for said time by the employer as a result of the layoff.

ARTICLE 20 – TERM OF AGREEMENT

20.1 This Agreement is effective January 1, 2022, except where otherwise indicated, and shall remain in effect until December 31, 2023.

20.2 If the parties have not reached agreement pursuant to the provisions of the Article pertaining to timetable, then either party may request a mediator from the Public Employment Relations Commission (PERC). The determination of the mediator from the PERC shall be advisory only and not binding on either party.

20.3 In the event that negotiations for a new Agreement extend beyond the term of this Agreement, the terms of this Agreement shall remain in full force and effect until a new Agreement is consummated; provided, however, either party may give thirty (30) calendar days written notice of termination of this Agreement in the event mediation does not result in the mutually satisfactory resolution of all negotiable issues.

ARTICLE 21 – SAVINGS CLAUSE

If an article or section of this Agreement or any addendum thereto shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Agreement and addendum shall not be affected thereby.

ARTICLE 22 – SENIORITY

22.1 Seniority is defined as the employee's length of continuous service (not counting unpaid leave) with the Employer in a benefited position. For lay off purposes, within an affected job classification, an employee's length of continuous service with the Employer shall be given first consideration, and the employee's length of continuous service in their current job classification shall be second.

22.2 New employees do not have seniority until after successful completion of the probationary period, at which time they are added to the seniority list. All employees will be classified as regular employees upon completion of their probationary period.

22.3 Temporary employees are not entitled to seniority.

22.4 Once each year the Employer shall post a seniority list showing the continuous service of each employee.

ARTICLE 23 – DUES DEDUCTIONS

23.1 Dues. The Employer agrees to deduct, once each month, dues from the pay of those employees who authorize in writing that such deductions be made. Dues deductions authorized by Guild employees shall begin the first day of the calendar month after authorization.

23.2 Revocation. An employee may revoke their authorization for payroll deduction of

payments to the Guild by written notice to the Guild and the Employer. Every effort will be made to end the deduction effective on the first payroll, but not later than the second payroll, after the Employer's receipt of the written notice.

23.3 Termination of Employment. If employment terminates on or before the 15th day of the month, dues will not be deducted for that month; if the termination is after the 15th, dues will be deducted.

23.4 Fee Processing. The aggregate deductions of all employees shall be remitted, by EFT, to a Guild designated financial account, together with an emailed, itemized statement, to the Guild after such deductions are made. The Guild agrees to notify the Employer at least thirty (30) days in advance of any increase in Guild dues.

23.5 Indemnification. The Guild agrees to indemnify, defend and hold harmless the Employer from any liability resulting from any claims arising out of this dues deductions system due to errors knowingly caused by the Guild. If an improper deduction is made, the Guild shall refund any over-deduction within thirty (30) days directly to said employee. If a less than adequate deduction occurs, then the Employer shall deduct the appropriate amount from the next paycheck.

ARTICLE 24 – TYPES OF EMPLOYMENT

24.1 Regular Employee: All employees in the bargaining unit working full-time or part-time who have successfully completed their probationary period other than temporary employees.

24.2 Full-Time Employees: An employee working forty (40) hours per workweek.

24.3 Part-Time Employee: An employee hired in a regular position but working less than forty (40) hours per workweek. A part-time employee is only entitled to pro-rated sick leave, vacation leave, and paid holidays, and no other benefits. Part-time employees hired on or prior to February 21, 2001, shall remain eligible for insurance benefits.

24.4 Probationary Employee: An employee shall be on a trial basis during the first six (6) months of full-time employment in each job classification. An employee may be terminated without cause and without recourse during the probationary period. The Employer may elect to extend the probationary period for up to six (6) months by notifying the employee in writing prior to the expiration of the probationary period. If an employee is granted a leave of absence or leave without pay during the probationary period, the time equal to the total time on such leave of absence shall be added to the probationary period.

24.5 Trial Service Period: An employee shall serve a four (4) month trial service period when changing positions due to a promotion or transfer. If the Employer determines that the employee is unable to satisfactorily perform the duties of the new position prior to the completion of the trial period, the employee shall be reinstated to their former position if a vacancy exists, or to a position of like status if a vacancy exists.

24.6 Temporary Employee: An employee hired for a specific period of time not to exceed five (5) consecutive calendar months or five (5) calendar months in a calendar year (or up to eight hundred, sixty-seven (867) hours in any twelve (12) month period). Temporary employees are not entitled to fringe benefits described in this Agreement, *i.e.*, paid holidays, paid vacation, paid sick leave, medical insurance, etc. A five (5) consecutive calendar month period satisfactorily worked, will count towards completion of the probationary period if the temporary employee is hired as a regular employee for the same or substantially similar work. Temporary employees shall be paid on an hourly basis.

24.7 Extended Temporary Employee: A Temporary Employee in a position with an expected duration of more than five (5) months and less than two (2) years, usually for the purpose of completing a specific project, grant, seasonable work, etc. The Guild will be notified of extended temporary employees.

24.8 Contract Personnel: Personnel hired for a specific duration, specific project, or a specific grant period. These personnel are not covered by the terms and conditions of this labor agreement.

24.9 Interns and Volunteer Personnel: Personnel performing duties for the Employer who meet the following criteria:

A) Interns:

i. The training, even though it includes actual operation of the facilities of the Employer, is similar to that which would be given in a vocation school;

ii. The training is for the sole benefit of the trainees;

iii. The trainees do not displace current regular employees, but work under their close supervision;

iv. The Employer that provides the training derives no immediate advantage from the activities of the trainee; and on occasion their operations may actually be impeded;

v. The trainees are not necessarily entitled to a job at the conclusion of the training period; and,

vi. The Employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

B) Volunteers:

One who volunteers to perform services for a public agency or civic organization for civic, charitable or humanitarian reasons, and who does not expect to be compensated for those services.

These personnel are not considered employees and are not covered by the terms and conditions of this labor agreement.

ARTICLE 25 – NEPOTISM RESTRICTIONS

25.1 No more than one (1) member of the family or one (1) close relative shall be eligible for employment at the same time if:

A) One member of the family or one close relative would be responsible for supervising another family member or close relative, or

B) One member of such family or close relative would be responsible for auditing or monitoring the work of the other family member or close relative, or

C) Circumstances exist which would place a family member or close relative in a situation of actual or reasonable foreseeable conflict between interest of the Employer and interest of the employee in family harmony and/or in their common interests of the family or as close relatives.

25.2 Those persons affected by the terms of the foregoing sections shall be permitted to decide which spouse or relative shall get or keep employment, provided, however, if they do not decide within a reasonable time the Employer shall decide, provided further that a sex neutral standard shall be used in making such a decision.

25.3 None of the foregoing regulations shall have any effect on persons employed at the time of the adoption of this section but shall only pertain to appointments after the passage of this section.

25.4 Definitions:

A) "Family member" means that husband or wife or that person living as husband or wife and children, whether natural, adoptive or step.

B) "Close relative" means the natural, adoptive or step brother, sister, mother, or father, aunt, uncle, niece, nephew, or a relative by marriage (*i.e.*, mother, father, brother, sister, son and/or daughter-in-law).

ARTICLE 26 – DRUG FREE WORKPLACE

The parties agree that the safety and security of the Juvenile Justice Department employees and clients is of utmost importance. To further that goal, those entrusted with the care and custody of the juveniles under the Juvenile Justice Court must be free of the influences of alcohol and drugs. To that end, the Employer has adopted a Drug Free Workplace policy and procedure.

ARTICLE 27 – COURT AND MILITARY LEAVE

27.1 Jury and Court Duty: An employee shall be granted leave with pay while required to perform jury service or serve as a witness in a work-related criminal case.

A) The employee will receive their normal daily earnings for jury service and court leave time. All fees received for jury duty shall be submitted to the Employer except payment received for mileage and other travel related expenses.

B) An employee shall report to work during all hours the employee is released from jury or witness service. If less than one (1) hour remains from the time of such release to the end of their regular shift, the employee shall call their supervisor for instructions.

C) When employees receive notice of jury duty they shall notify their supervisor within two (2) working days of receipt of the notice.

27.2 Military Leave: Employees who are members of the Military Reserve or National Guard shall be granted leave for a period not exceeding twenty-one (21) days during each year beginning October 1st and ending the following September 30th. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as they may be ordered to active duty or active training duty. During the period of military leave, the employee shall receive their normal pay. This provision shall be subject to applicable State and Federal laws.

ARTICLE 28 – PAYROLL PROVISIONS

Employees will be paid for any earned time off taken during the month in accordance with the provisions of this Agreement and additional time off during the month will be considered as unearned. Compensation for any month in which unearned time off is taken by an employee will be determined for that month by dividing the monthly salary by one hundred, seventy three and one third (173.33) to obtain an hourly rate of pay. All time taken in a month as leave without pay will be multiplied by the employee's hourly rate to obtain the amount that will be deducted from the employee's monthly salary. The salaries of employees will be paid in accordance with past practices. If the Employer elects to change paydays and payroll systems, then thirty (30) days' notice of the implementation will be provided to affected employees.

ARTICLE 29 – EDUCATIONAL ASSISTANCE

29.1 The Employer may reimburse a portion of an employee's tuition for pre-approved "off duty" classes and/or course in accordance with the following provision:

A) The class and/or course is subject to prior written approval by the Juvenile Administrator and will only be approved if funds are available within the limits of the Department's current yearly approved budget.

B) Any class and/or course shall be directly related and/or contribute to the employee's present position or logical professional progression in the Juvenile) classes and/or courses are considered directly related and/or contribute to the employee's position, which decision is final and binding on all parties.

C) All costs associated with the class and/or course will be prepaid by the employee after written pre-approval is received from the employer. A written receipt for the tuition only shall be presented to the employer within five (5) days of payment to be retained for reimbursement at the end of the successful completion of the class and/or course.

D) At the successful completion of the approved class and/or course, if the employee has received a passing final grade and/or a passing final grade and/or score (equivalent to a "B" or higher) and can present such documentation to the employer, the Employer will reimburse the employee as follows: classes and /or courses designated as directly related will be reimbursed at eighty percent (80%) of the tuition paid; and classes and/or courses designated as only contributory will be reimbursed at forty percent (40%) of the tuition paid

E) Reimbursement shall apply to tuition based upon in-state resident rates. Any difference between resident and non-resident tuition rates shall be the responsibility for the employee.

F) Employees leaving the Benton-Franklin Juvenile Justice Center employment are obligated to refund in full any funds received under this policy within the preceding twelve (12) months. The Employer reserves the right to deduct such reimbursement from the employee's final paycheck.

ARTICLE 30 – GUILD/EMPLOYER RELATIONS

30.1 All collective bargaining with respect to wages, hours and general working conditions shall be conducted by authorized representatives of the Guild and authorized representatives of the Employer.

30.2 Agreements reached between the parties to this Agreement shall become effective only when signed by designated representatives of the Guild and the Employer.

ARTICLE 31 – LABOR - MANAGEMENT COMMITTEE

31.1 The purpose of this Agreement is to ensure collective bargaining between the parties in order to promote and ensure harmonious relations, cooperation, and understanding between the Employer and its employees.

In order to accomplish these goals, a Labor - Management Committee shall be established consisting of up to three (3) Guild members chosen by the Guild and up to three (3) Management members as chosen by the Employer.

31.2 The Labor - Management Committee shall schedule meetings at the written request of a member of the Labor - Management Committee. The Committee shall meet at mutually agreeable times, but not sooner than five (5) working days from the date of the request, and not later than fifteen (15) working days from the date of the request, unless otherwise agreed by the parties. Requests shall be submitted to the Juvenile Administrator, in writing, and shall include a written agenda for the requested meeting. Personnel matters relating to particular employees will not be open for discussion in the Labor - Management Committee meetings.

Disposition of matters covered in the Labor - Management Committee meeting shall not contradict, add to, or otherwise modify the terms and conditions of the contract between the Employer and the Guild but, shall approach the matter(s) at issue with a problem-solving effort.

ARTICLE 32 – VACANCIES/JOB POSTING

32.1 The filling and posting of vacant bargaining unit positions shall be subject to the following provisions:

A) The Juvenile Administrator or designee shall first make a determination as to whether or not a job vacancy or new position will be made available to current bargaining unit employees. The Juvenile Administrator or designee may laterally transfer an employee within the affected work unit to any vacant position in accordance with Section 19.2. If the Juvenile Administrator or designee determines that said position may be filled by a current bargaining unit employee within the affected work unit other than through a lateral transfer, then a work unit notice of such opening will be posted on one work unit bulletin board a minimum of five (5) days prior to the closing date for applications or, if sufficient applicants are not received, the Juvenile Administrator or designee may use one of the alternative methods of posting outlined in this section. “Work Unit” as used in this section refers particular divisions within the Employer’s operations; for example, Intervention Services, Community Supervision Services, Accounting, and Legal Process are distinct work units.

B) If the Juvenile Administrator or designee determines that said vacancy or new position may be filled by employees in other work units of Juvenile operations covered by this bargaining agreement, then the Juvenile Administrator or designee may permit those employees to apply for said position. Notice of such openings shall be posted on all bargaining unit departmental bulletin boards in Juvenile Operations a minimum of five (5) days prior to the closing date for application or, if sufficient applicants are not received, the Juvenile Administrator or designee may use one of the alternative methods of posting outlined in this section.

C) If the Employer determines that said vacancy or new position may be filled by employees in other departments covered by this bargaining agreement or other Unions of the juvenile operations, then, the Employer may permit any employees to apply for said position. In addition to the above method of disseminating notice,

notice of such openings shall be posted on the Employer's website a minimum of five (5) days prior to the closing date for application or, if sufficient applicants are not received the Employer may use one of the alternative methods of posting outlined in this section.

If the Employer determines that they wish to receive applications from the public for vacant positions, then the public and bargaining unit employees may make application in accordance with the following provision. Notice of such opening shall be published by listing on the Employer's website a minimum of ten (10) days notice prior to the closing date of such vacancy applications.

32.2 A vacancy announcement will contain the position title and a brief description of the job duties, requirements and procedure for applying for the vacant position (*i.e.*, submission of an application or resume, etc.).

32.3 The Employer has the right to select the individual determined the best person for the job. The number of applicants deemed sufficient shall be at the sole discretion of the Employer.

ARTICLE 33 – EXPENSE REIMBURSEMENT

33.1 Travel and training expenses are subject to the Employer's prior approval, consistent with Benton County Policy.

33.2 Loss of Personal Property: Repair or replacement of employee property lost or damaged while on duty is subject to approval by the Employer.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties indicate their agreement to the terms and conditions of this Agreement by their signatures below:

BENTON-FRANKLIN COUNTIES, JUVENILE DEPARTMENT

_____
Presiding Superior Court Judge

_____
Darryl Banks, Juvenile Administrator

BENTON-FRANKLIN JUVENILE COURT GUILD

_____
Patrick Luce, President

BOARD OF BENTON COUNTY COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Constituting the Board of
Benton County Commissioners

Attest:

_____
Clerk to the Board

Date: _____

BOARD OF FRANKLIN COUNTY COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Constituting the Board of
Franklin County Commissioners

Attest:

_____
Clerk to the Board

Date: _____

Approved as to form:

_____
Stephen Hallstrom, Benton County DPA

2022 SALARY SCHEDULE

2022 - 2023
Agreement by and between
Boards of Benton and Franklin County Commissioners
and
Benton-Franklin
Juvenile Court Guild

COVERING JUVENILE CLERICAL GUILD

	STEPS in $…..								
GRADE	A	B	C	D	E	F	G	H	I
15	4850	4947	5120	5299	5484	5676	5875	6081	6294
14	4618	4710	4875	5046	5223	5406	5595	5791	5994
13	4398	4486	4643	4806	4974	5148	5328	5514	5707
12	4188	4272	4422	4577	4737	4903	5075	5253	5437
11	3989	4069	4211	4358	4511	4669	4832	5001	5176
10	3799	3875	4011	4151	4296	4446	4602	4763	4930
9	3618	3690	3819	3953	4091	4234	4382	4535	4694
8	3445	3514	3637	3764	3896	4032	4173	4319	4470
7	3281	3347	3464	3585	3710	3840	3974	4113	4257
6	3125	3187	3299	3414	3533	3657	3785	3917	4054
5	2975	3035	3141	3251	3365	3483	3605	3731	3862
4	2834	2891	2992	3097	3205	3317	3433	3553	3677
3	2699	2753	2849	2949	3052	3159	3270	3384	3502
2	2571	2622	2714	2809	2907	3009	3114	3223	3336
1	2449	2498	2585	2675	2769	2866	2966	3070	3177

2022 SALARY SCHEDULE

2022 - 2023
Agreement by and between
Boards of Benton and Franklin County Commissioners
and
Benton-Franklin
Juvenile Court Guild

COVERING JUVENILE CLERICAL GUILD

TITLE	GRADE
COUNSELOR III	15
COUNSELOR II	13
DETENTION SUPERVISOR	13
ACCOUNTING ASSISTANT III	09
ACCOUNTING ASSISTANT II	07
LEGAL PROCESS ASSISTANT IV	07
LEGAL SECRETARY IV	07
LEGAL PROCESS ASSISTANT III	06
LEGAL SECRETARY III	06
LEGAL PROCESS ASSISTANT II	04

cc: Juvenile, Payroll, Human Resources, Guild, BCPA, BC/FC Administration

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Amendment I for the 2019-2022 CBA for the Courthouse Union
Presenter:	L. Wingfield
Prepared By:	L. Wingfield
Reviewed By:	

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

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

Summary / Background Information

The Benton County negotiating team has successfully negotiated Amendment I for the 2019-2022 Agreement Between Benton County and the Courthouse Union.

Fiscal Impact

No supplement required

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution and Amendment I to the 20219-2022 Agreement between Benton County and Local 874HC, Council 2 American Federation of State, County and Municipal Employees, representing Courthouse employees.

Suggested Motion

On consent agenda

cc: HR, Auditor, Hallstrom,

Prepared by: L. Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDMENT I TO THE 2019-2022 AGREEMENT BETWEEN BENTON COUNTY AND LOCAL 874HC, COUNCIL 2 AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, REPRESENTING COURTHOUSE EMPLOYEES.

WHEREAS, negotiators for Benton County have negotiated and reached an agreement with Local 874HC, Council 2 American Federation of State, County and Municipal Employees, representing Courthouse employees, for Amendment I to the 2019-2022 Collective Bargaining Agreement; **THEREFORE**,

BE IT RESOLVED, the Benton County Commissioners approve Amendment I to the 2019-2022 Collective Bargaining Agreement between Benton County and Local 874HC, Council 2 American Federation of State, County and Municipal Employees, representing Courthouse employees as negotiated and are authorized to sign the same; and

BE IT FURTHER RESOLVED, that the amendment is effective January 1, 2022, except as otherwise provided, and shall remain in effect until December 31, 2022.

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

cc: HR, Auditor, Hallstrom,

Prepared by: L. Wingfield

AMENDMENT I
to

2019 – 2022 AGREEMENT
Between
BENTON COUNTY
And
LOCAL 874HC, COUNCIL 2
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Representing COURTHOUSE EMPLOYEES

Benton County (Employer) and Washington State Council of County and City Employees, Local 874 HC, affiliated with Council 2, American Federation of State, County and Municipal Employees, AFL-CIO Representing Courthouse Employees (Union), hereby agree to amend the Collective Bargaining Agreement (CBA) in effect from January 1, 2019, through December 31, 2022, as follows:

1. Section 8.7 is hereby amended to read:

Effective September 1, 2019, the 2018 Salary Schedule will be increased by five percent (5%). This calculation and process shall be determined and established by the Benton County Commissioner's Office. The 2019 Salary Schedule is attached as Appendix A.

Effective January 1, 2020, the 2019 Salary Schedule will remain in full force and effect.

Effective January 1, 2021, the 2020 Salary Schedule will be increased by two and a half percent (2.5%). This calculation and process shall be determined and established by the Benton County Commissioner's Office.

Effective January 1, 2022, the 2021 Salary Schedule will be increased by three percent (3.0%). This calculation and process shall be determined and established by the Benton County Commissioner's Office.~~For 2022, this Agreement will be open for limited negotiations to determine any wage adjustments on the Salary Schedule. The opening date for negotiations will be no earlier than October 1st of each year.~~

2. Section 9.2 is hereby amended to read:

Employer will provide the United Employees Benefit Trust (UEBT) Plan A6 Composite and Kaiser Options as the plans for medical and hospital coverage available to all employees.

a. Effective with the first payroll cycle following the date of the last signature below, the Employer agrees to make the following health and welfare contributions, totaling One Thousand, One Hundred, Forty and 60/100 Dollars ($1,140.60) per month towards medical, dental, vision, and life insurance coverage.

b. Effective January 1, 2020, the Employer agrees to pay up to five percent (5%) based on the 2019 baseline of One Thousand, One Hundred, Forty, and 60/100 dollars ($1,140.60). Any and all increases in UEBT premiums over the 2019 baseline in excess of five percent (5%) shall be borne one hundred percent (100%) by the employees. In the event the premium is reduced, the employer will reduce their contribution by that amount.

c. Effective January 1, 2021, the Employer agrees to pay up to five percent (5%) based on the 2020 baseline. Any and all increases in UEBT premiums over the 2020 baseline in excess of five percent (5%) shall be borne one hundred percent (100%) by the employees. In the event the premium is reduced, the employer will reduce their contribution by that amount.

~~c.~~d. Effective the pay period following the date of the last signature, the County will pay One Thousand One Hundred Nineteen and 60/100 Dollars ($1,119.60) per month towards medical, dental, vision, and life insurance coverage.

~~For 2022, this Agreement will be open for limited negotiations to determine Employer and employee contributions toward insurance costs. The opening date for negotiations will be no earlier than October 1st.~~

3. Section 10.1 is hereby amended to read:

The following are holidays with pay:

New Year's Day	January 1st
Martin Luther King, Jr.'s Day	3rd Monday in January
Presidents Day	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19th
Independence Day	July 4th
Labor Day	1st Monday in September
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
The Friday after Thanksgiving	
Christmas Eve	December 24th
Christmas Day	December 25th

Holidays are based on an eight (8)-hour day and may only be taken in full.

The District Court and Superior Court Clerk's Offices must remain open December 24th. The Elected Official or Department Manager will determine an alternative date as a replacement day for the day before Christmas Day.

An employee will not receive holiday pay if the employee is absent on their last scheduled work day prior to or the first scheduled work day following the holiday if the absence is without pay due to insufficient accrued paid leave or if the employee is on a leave of absence without pay.

4. No other language in the CBA is amended or intended to be changed or modified.

5. Except as otherwise stipulated above, this Amendment is effective as of January 1, 2022.

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions of this Amendment and have caused it to be signed by their duly constituted and legal representatives as follows:

BENTON COUNTY

Chair, Board of Commissioners	Benton County Clerk Date:
Member, Board of Commissioners	Benton County Prosecuting Attorney Date:
Member, Board of Commissioners	Benton County Treasurer Date:
Constituting the Board of Benton County Commissioners Attest:	Approved as to form:
Clerk to the Board Date:	Stephen Hallstrom Deputy Prosecuting Attorney
Presiding District Court Judge Date:	**WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, AFL-CIO**
Benton County Assessor Date:	
Benton County Auditor Date:	Steve Pinkerton, Area Representative Date:

2022 SALARY SCHEDULE

2019 - 2022
Agreement by and between
Board of Benton County Commissioners
and
Local 874HC, Council 2
American Federation of State, County and
Municipal Employees, AFL-CIO

COVERING "COURTHOUSE"

GRADE	STEPS in $….. A	B	C	D	E	F	G	H	I
17	5453	5562	5757	5959	6168	6384	6607	6838	7077
16	5194	5298	5483	5675	5874	6080	6293	6513	6741
15	4946	5045	5222	5405	5594	5790	5993	6203	6420
14	4712	4806	4974	5148	5328	5514	5707	5907	6114
13	4486	4576	4736	4902	5074	5252	5436	5626	5823
12	4273	4358	4511	4669	4832	5001	5176	5357	5544
11	4070	4151	4296	4446	4602	4763	4930	5103	5282
10	3876	3954	4092	4235	4383	4536	4695	4859	5029
9	3691	3765	3897	4033	4174	4320	4471	4627	4789
8	3516	3586	3711	3841	3975	4114	4258	4407	4561
7	3347	3414	3534	3658	3786	3919	4056	4198	4345
6	3188	3252	3366	3484	3606	3732	3863	3998	4138
5	3037	3098	3206	3318	3434	3554	3678	3807	3940
4	2891	2949	3052	3159	3270	3384	3502	3625	3752
3	2754	2809	2907	3009	3114	3223	3336	3453	3574
2	2623	2675	2769	2866	2966	3070	3177	3288	3403

cc: All Elected Officials, Payroll, Human Resources, Steve Pinkerton and Stephen Hallstrom

TITLE	GRADE
INFORMATION SYSTEMS ANALYST IV	17
INFORMATION SYSTEMS ANALYST III	16
INFORMATION SYSTEMS ANALYST II	14
VICTIM WITNESS COORDINATOR	11
VICTIM ADVOCATE	11
TREASURY SUPPORT SPECIALIST	11
PAYROLL SPECIALIST	11
LEGAL SUPPORT ANALYST	11
ELECTION SPECIALIST	11
ARCHIVE RECORDS SPECIALIST	11
ACCOUNTING SUPPORT SPECIALIST	11
LEGAL SECRETARY VII	10
RECORDS/OFFICE MANAGER	9
PERMIT TECHNICIAN	9
OFFICE ASSISTANT IV	9
LEGAL SECRETARY VI	9
ACCOUNTING ASSISTANT III	9
TAX COLLECTION SPECIALIST	8
SENIOR SECRETARY	8
LEGAL SECRETARY V	8
LEGAL PROCESS ASSISTANT V	8
LEGAL SECRETARY IV	7
LEGAL PROCESS ASSISTANT IV	7
COLLECTIONS DEPUTY	7
ACCOUNTING ASSISTANT II	7
PART TIME SECRETARY	6
OFFICE ASSISTANT III	6
LEGAL SECRETARY III	6
LEGAL PROCESS ASSISTANT III	6
ACCOUNTING ASSISTANT I	6
LEGAL SECRETARY II	5
LEGAL PROCESS ASSISTANT II	4

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	2022 CBA for the Sheriff's Office and Corrections Department Clerical Employees
Presenter:	L. Wingfield
Prepared By:	L. Wingfield
Reviewed By:	

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

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

Summary / Background Information

The Benton County negotiating team has successfully negotiated the 2022 Agreement Between Benton County and the Sheriff's Office and Corrections Department Clerical Employees.

Fiscal Impact

No supplement required

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution and the 2022 Agreement between Benton County and Teamsters Local 839, representing Sheriff's Office and Corrections Department Clerical employees.

Suggested Motion

On consent agenda

cc: HR, Auditor, Hallstrom

Prepared by: L. Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE 2022 AGREEMENT BETWEEN BENTON COUNTY AND TEAMSTERS 839, REPRESENTING SHERIFF'S OFFICE AND CORRECTIONS DEPARTMENT CLERICAL EMPLOYEES.

WHEREAS, negotiators for Benton County have negotiated and reached an agreement with Teamsters 839, representing Sheriff's Office and Corrections Department Clerical employees, for the 2022 Collective Bargaining Agreement; **THEREFORE**,

BE IT RESOLVED, the Benton County Commissioners approve the 2022 Collective Bargaining Agreement between Benton County and Teamsters 839, representing Sheriff's Office and Corrections Department Clerical employees, as negotiated and are authorized to sign the same; and

BE IT FURTHER RESOLVED, that the amendment is effective January 1, 2022, except as otherwise provided, and shall remain in effect until December 31, 2022.

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

cc: HR, Auditor, Hallstrom

Prepared by: L. Wingfield

2022 AGREEMENT

Between

BENTON COUNTY

And

TEAMSTERS LOCAL NO. 839

Representing the

SHERIFF'S OFFICE and CORRECTIONS DEPARTMENT CLERICAL EMPLOYEES

cc: Local 839
Prosecuting Attorney's Office
Sheriff's Office
Corrections Department
Human Resources Department

TABLE OF CONTENTS

ARTICLE 1 – CONSIDERATION 1
ARTICLE 2 – CONDITIONS AND DURATION OF AGREEMENT 1
ARTICLE 3 – NEGOTIATIONS 1
ARTICLE 5 – SUBORDINATE TO STATUTES, ETC. 2
ARTICLE 6 – RECOGNITION 2
ARTICLE 7 – LIMITATIONS UPON UNION ACTIVITY 2
ARTICLE 8 – MANAGEMENT RIGHTS 2
ARTICLE 9 – EMPLOYEE RIGHTS 3
ARTICLE 10 – UNION SECURITY 4
ARTICLE 11 – NO STRIKE AND NO LOCKOUT 5
ARTICLE 12 – POLITICAL ACTIVITY 5
ARTICLE 13 – SAVINGS CLAUSE 5
ARTICLE 14 – ENTIRE AGREEMENT 5
ARTICLE 15 – VACATIONS 6
ARTICLE 16 – SICK LEAVE 7
ARTICLE 17 – HOLIDAYS 9
ARTICLE 18 – PENSIONS AND RETIREMENT 10
ARTICLE 19 – JURY DUTY, MILITARY LEAVE 10
ARTICLE 20 – HOURS OF WORK AND OVERTIME 11
ARTICLE 21 – GRIEVANCE PROCEDURE 13
ARTICLE 22 – TRAVEL 16
ARTICLE 23 – MEDICAL, HOSPITAL AND LIFE INSURANCE 16
ARTICLE 24 – COMPENSABLE (ON-THE-JOB) INJURIES 17
ARTICLE 25 – DISCIPLINE AND DISCIPLINARY PROCEDURES 18
ARTICLE 26 – LAYOFF AND RECALL 19
ARTICLE 27 – WAGE RATES AND OTHER COMPENSATIONS 20
ARTICLE 28 – ABSENCE WITHOUT DULY AUTHORIZED LEAVE 24
ARTICLE 29 – LEAVE OF ABSENCE WITHOUT PAY 24

ARTICLE 30 – LEAVE SHARING 25
ARTICLE 31 – NON-DISCRIMINATION 26
ARTICLE 32 – TYPES OF EMPLOYMENT 26
ARTICLE 33 – TERM OF AGREEMENT 27
APPENDIX A **29**
APPENDIX B: OTHER COMPENSATION 30

THIS AGREEMENT is made pursuant to the provisions of chapter 41.56 RCW, by and between the Sheriff's Office (SO), the Board of County Commissioners and Teamsters Local 839, representing the Sheriff's Office and Corrections Department (Corrections) Clerical employees.

WITNESSETH:

WHEREAS, the parties wish to enter into a complete agreement covering rates of pay, hours of work, and conditions of employment; and,

WHEREAS, it is intended that the following agreement will be an implementation of the provisions of law consistent with the legislative authority that evolves from the statutes, and insofar as applicable, the rules and regulations promulgated by the Benton County Civil Service Commission for Sheriff's Office employees; and,

WHEREAS, it is intended by the provisions of this Agreement that there be no abrogation of the duties, obligations or responsibilities of any agency of county government which is expressly provided for respectively by state statutes and county ordinances and resolutions except as expressly limited herein; and,

WHEREAS, it is intended by the parties hereto that the employer-employee relationship which exists now and has heretofore existed by and between the Sheriff's Office, the Corrections Department, and the members of the Union who are employed by the Sheriff's Office or the Corrections Department will continue to be the same in the event this Agreement is terminated, or by virtue of its termination:

ARTICLE 1 – CONSIDERATION

The consideration for this agreement is the covenants mutually bargained and agreed to by the parties as expressed herein.

ARTICLE 2 – CONDITIONS AND DURATION OF AGREEMENT

This Agreement will be in full force and effect for the period commencing on January 1, 2022, except as otherwise indicated in this Agreement, and terminating on the 31st day of December, 2022.

ARTICLE 3 – NEGOTIATIONS

Either party to this Agreement may select for itself such negotiator or negotiators for purposes of carrying on conferences and negotiations under the provisions of law, as such party may determine. No consent from either party will be required in order to name such negotiator or negotiators.

ARTICLE 4 – TIMETABLE

The parties agree that a target schedule for conferences and negotiations between the parties with respect to extending this Agreement, is as follows:

4.1 Negotiations, if required, begin scheduling by September 1st, or as soon thereafter as the parties agree.

4.2 Submission of the Union proposal, if required, to the Employer one (1) month prior to the first scheduled session.

4.3 Submission of the Employer's counter proposal, if required, to the Union one (1) week prior to the first scheduled session.

ARTICLE 5 – SUBORDINATE TO STATUTES, ETC.

This Agreement will in all respects, wherever the same may be applicable herein, be subject and subordinate to the ordinances of Benton County, the Benton County Civil Service Commission (Sheriff's Office employees only), regulations within its statutory jurisdiction and will further be subject to the statutes of the State of Washington.

ARTICLE 6 – RECOGNITION

The Employer recognizes Local 839 as the certified bargaining agent for the purposes of negotiating and establishing salaries, wages, hours and working conditions of employment for the current positions:

Sheriff's Office: Records Sergeant, Evidence Technician, Lead Civil Clerk, Administrative Clerk, Public Records Clerk, and Records Clerk

Corrections Department: Jail Records Sergeant, Administrative Clerk, Jail Public Records Clerk, and Jail Records Clerk

ARTICLE 7 – LIMITATIONS UPON UNION ACTIVITY

No Union meetings will be held on the Employer's time.

ARTICLE 8 – MANAGEMENT RIGHTS

8.1 The Union recognizes the prerogative of the Employer to operate and manage its affairs in all respects in accordance with its responsibilities, lawful powers and legal authority except as limited by the terms of this Agreement. All matters not expressly or clearly covered by the language of this Agreement will be administered for the duration of this Agreement by the Employer as the Employer from time-to-time may determine. Affairs of the Employer concerning such prerogative includes, but is not limited to, the following matters:

A. The right to establish and institute reasonable lawful work rules and procedures, and the right to make changes to personnel rules and policies.

B. The right to schedule work and overtime work, and the methods and processes by which said work is to be performed in a manner most advantageous to the Employer and consistent with the requirements of the public interest.

C. The right to hire, transfer, suspend, discharge for just cause, layoff, recall, promote, or discipline employees as provided by this Agreement and/or as provided by the General Rules and Regulations of the Benton County Civil Service Commission (Sheriff's Office employees) or Corrections Department (Corrections employees).

D. The right to determine the size and composition of the work force and to assign employees to work locations and shifts.

E. The right to determine what law enforcement duties will be performed by various Sheriff's Office and Corrections personnel, as appropriate.

F. The parties understand that incidental duties connected with operations, not enumerated in job descriptions, will nevertheless be performed by the employee when requested by a superior officer.

G. The right to take any and all types of actions as may be determined by Management to be necessary in the event of emergencies. The Employer will determine whether or not an emergency exists. An emergency will be a sudden or unexpected happening or situation that calls for action without delay.

H. The right to close, relocate, reorganize, or eliminate an office, branch, operation, or facility.

I. The right to receive notice to "Employer" delivered to the Sheriff's Office or the Corrections Department, as appropriate, unless otherwise specified herein.

8.2 Nothing in this Agreement will be interpreted to detract or circumscribe the trust placed in the elected officials, in this case, the Board of Benton County Commissioners and the Sheriff of Benton County, and the rights and obligations owed thereby to the electorate.

8.3 Past Practices: The Employer reserves the right to change past practices based upon applicable statutory and case law, or state or federal regulatory rules and regulations.

If the Employer wishes to change such practices, the Employer will provide notice to the Union. The Union will be provided an opportunity to discuss and make recommendations during a thirty (30) daytime frame prior to the Employer implementing a change.

ARTICLE 9 – EMPLOYEE RIGHTS

9.1 An employee has the right upon request to inspect their personnel file in accordance with their Office/Department's Personnel Records Policy.

9.2 The off-duty activities of an employee will not be cause for disciplinary action unless said activity is detrimental to the employee's work performance, or is harmful to the Employer's business.

9.3 Bulletin Boards: The Employer agrees to furnish reasonable bulletin board space to be used by the Union in the Sheriff's Office and Corrections Department. The Union agrees to maintain said bulletin board(s) in a presentable condition. If the bulletin board(s) fail to be maintained appropriately and becomes an eyesore, the County will have the right to discontinue the availability of said Union bulletin board(s).

9.4 Employees may report what they believe to be an unsafe or unhealthy working condition to Management for investigation.

9.5 Work Rules: Work rules and policies shall be uniformly applied. When existing work rules or policy procedures are changed or new rules or procedures established, an employee whose work assignment is affected will be notified at a reasonable time prior to the effective date. Employees shall comply with all existing reasonable rules that are not in conflict with the express terms of this Agreement, provided the rules are uniformly applied and uniformly enforced. Any unresolved complaint as to the reasonableness of any new or existing rule, or any complaint involving discrimination in the application of new or existing rules will be resolved through the grievance procedure.

ARTICLE 10 – UNION SECURITY

10.1 Dues and Fees. Upon the written authorization of an employee within the bargaining unit, the Employer shall deduct from the payments to the employee the monthly amount of dues or fees as certified by the Secretary-Treasurer of the Union and shall transmit the amounts deducted to the Union by the 15th day of the month. Every effort will be made to commence the deduction on the first payroll, but no later than the second payroll, after the Employer's receipt of the employee's written authorization. The Union agrees to notify the Employer at least thirty (30) days in advance of any increase in Union dues.

The Union shall indemnify and hold the Employer harmless against any suit instituted against the Employer on account of any dues or fees deductions for the Union except for error or omissions by the Employer.

An employee may revoke their authorization for payroll deduction of payments to the Union by written notice to the Secretary-Treasurer of the Union with a copy to the Employer. Every effort will be made to end the deduction effective on the first payroll, but no later than the second payroll, after the Employer's receipt of the employee's written notice.

10.2 New Employees and Orientation Meeting. Upon employment of a new employee covered by this Agreement, the Employer shall notify the Union, in writing, of the hiring of a new employee.

The Union shall provide the new employees with the necessary forms regarding dues, initiation fees and voluntary deductions, and timely deliver completed forms to Human Resources. The County shall allow a Union representative thirty (30) minutes of a newly hired employee's regular working time for purposes of presenting information about the Union and bargaining representation. This shall generally occur within the first two (2) weeks of hiring the new employee, but in no instance later than ninety (90) calendar days. If the Union orientation does not occur during the employee's initial orientation by Human Resources, the Union shall make the necessary arrangements with the Sheriff's Office or Corrections Department. Newly hired employees have the option to attend or not attend Union orientation.

ARTICLE 11 – NO STRIKE AND NO LOCKOUT

11.1 Neither the Union nor the represented employees shall cause, condone or participate in any strike or work stoppage, slow-down or other interference with Employer functions, and should such events occur, the Union agrees to take appropriate steps to end such interference. Represented employees who engage in any of the above-referenced activities shall not be entitled to any pay and/or benefits during the period in which they are engaged in such activity. Employees covered by this Agreement who engaged in any of the foregoing actions shall be subject to disciplinary action as may be determined by the Employer.

11.2 The Employer agrees there will be no lockouts during the term of this Agreement.

11.3 The Employer may seek relief in Superior Court inclusive of injunctive relief and/or damages.

ARTICLE 12 – POLITICAL ACTIVITY

Employees of the Sheriff's Office subject to this Agreement shall be governed by the Rules and Regulations of the Benton County Civil Service Commission as to political activities. Employees of the Corrections Department subject to this Agreement shall be governed by County policy.

ARTICLE 13 – SAVINGS CLAUSE

If any Article or Section of this Agreement or any addendum thereto should be held invalid by operation of law or by any court of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such court, the remainder of this Agreement and Addendum will not be affected thereby.

ARTICLE 14 – ENTIRE AGREEMENT

The terms and conditions of this agreement constitute the entire agreement between the parties and no verbal statements will supersede any of its provisions.

ARTICLE 15 – VACATIONS

15.1 Effective the first of the month following the date of last signature on this Agreement, annual leave with pay (vacation) is earned at the following monthly rates depending on the employee's length of service with Benton County:

Years of Service	Working Hours Leave or Major Portion Thereof
1 through 5	10 hours
6 through 10	12 hours
11 through 15	15 hours
16 through 19	16.5 hours
20 and over	18 hours

15.2 Annual leave credit may be accumulated during the first six (6) months of regular full-time service with the Employer, however, it may not be used in the first six (6) months. During the seventh month, or any subsequent month, annual leave may be allowed up to the limit of the amount earned. Annual leave credited for any month of service beyond the first six (6) months of service may be allowed during the month earned or any subsequent month. The employee must request and receive prior approval from the Employer before the employee can use accrued annual leave.

15.2.1 Annual leave may be accumulated during the first one thousand, forty (1,040) hours of regular part-time service with the Employer; however, said annual leave credit may not be used during that period. After the first one thousand, forty hours (1,040), or any subsequent month, annual leave may be allowed up to the limits of the amount earned. Annual leave credited for any month of service beyond the first one thousand, forty hours (1,040) of service may be allowed during the month earned or any subsequent month. The employee must request and receive prior approval from the Employer before the employee can use accrued annual leave.

NOTE: Monthly accrual will credit at the completion of a major portion of a month of continuous service. Total accumulated annual leave will not exceed two hundred forty (240) hours at any time. Any employee hired after January 1, 2022, will not be entitled to accrue more than two hundred (200) hours of annual leave at any time.

15.2.2 Upon separation from Benton County for any reason, only regular full-time employees who have completed six (6) months of service or regular part-time employees who have completed one thousand, forty (1,040) hours of service, will be allowed to cash out the employee's accumulated annual leave but not to exceed two hundred forty (240) hours, or two hundred (200) hours, depending upon the date of hire.

15.4 Vacation time for employees will be arranged and approved by the employee's supervisor on schedules that will least interfere with the functions of the Sheriff's Office or the Corrections Department, as applicable. Vacation may be taken on days sequential with employees' scheduled days off provided that employees as a group propose a schedule which will provide coverage equal to that heretofore provided.

15.5 In accordance with Article 32, regular part-time employees will be credited with annual leave in an amount equal to the number of hours worked divided by one hundred, seventy-three and a third (173-1/3) and multiplied by the applicable accrual rate, to the nearest one-half hour. For example, an employee with two (2) years of service who works one hundred, sixty (160) hours during July would receive annual leave credit for July as follows: one hundred, sixty divided by one hundred, seventy-three and a third (160/173-1/3 or ninety-two percent (92%) of ten (10) hours which would be nine (9) hours.

15.6 An employee is eligible to cash out forty (40) hours of annual leave if the employee has used a minimum of eighty hours of annual leave since January 1st of the current calendar year, through November of that year. This cash out will be paid in December, with the November payroll. Vacation donated under leave sharing will be included in the eighty (80) hours used to qualify for a cash out.

ARTICLE 16 – SICK LEAVE

16.1 Eligibility for paid sick leave use will begin after the employee completes one (1) month of continuous service but earning sick leave credit will start with date of employment.

Sick leave is provided to employees as prevention against loss of income from absence from work for medical reasons, including extended absence due to illness or injury. Employees are encouraged to accumulate sick leave pursuant to the application of RCW 49.46 and the authority interpreting same.

16.2 Regular full-time employees will earn credit at the rate of eight (8) hours of paid sick leave per month of continuous service (ninety-six (96) hours per year). Every January 1st, employees can carryover a maximum of one thousand, forty (1,040) hours. However, upon separation from Benton County, employees hired after July 1, 1995, may only be compensated based on a maximum of eight hundred (800) hours subject to the provisions of Section 16.6 below. For those employees only, the hours between eight hundred (800) and one thousand, forty (1,040) have no cash value and may only be used for a catastrophic illness. Sick leave credit will accrue after working the majority of a given month.

16.3 Paid sick leave may be used for only the following reasons when the facts are verified by the employee's supervisor:

A. Pursuant to the application of RCW 49.46 and authority interpreting same; or

B. Bereavement Leave: Death in the immediate family (defined in Section 16.4, below) – forty (40) hours maximum per death, regardless of whether the deceased resided in the employee's household (for purposes of this section only, immediate family includes a child of any age); or

C. Death of a friend or relative not meeting the definition of immediate family (defined below), (8) hours maximum per death.

16.3.1 The need to use sick leave shall be reported to the employee's supervisor at the beginning of any period of sick leave prior to the start of the employee's scheduled work shift. Upon return to work the employee shall submit a written statement to their immediate supervisor explaining the nature of the sickness or injury and requesting approval for the leave so taken. Any employee who is off work due to illness in excess of five (5) work days, or less if sick leave abuse is an issue as determined by the Employer, shall be required to provide a qualified health care provider's verification of the illness as well as their qualified health care provider's approval to return to work.

16.3.2 In accordance with Article 32, regular part-time employees will be credited with sick leave in an amount equal to the number of hours worked divided by one hundred, seventy-three and a third (173 1/3) and multiplied by eight (8) hours to the nearest one-half (1/2) hour. For example, an employee works one hundred sixty (160) hours during July. Sick leave credit for July would be one hundred, sixty (160/173 1/3) or ninety-two percent (92%) of eight (8) hours, which would be seven and one-half (7 ½) hours.

16.3.3 Employees on sick leave in excess of five (5) workdays are required to call their immediate supervisor or designee weekly (every Monday between the hours of 8:00 a.m. and 10:00 a.m.) and are required to furnish progress reports of their health or illness condition.

16.3.4 Prior to being eligible to return to work, the employee will be required to provide satisfactory evidence, and if determined necessary by the Employer, will be required to provide a qualified health care provider's statement explaining that the employee is capable of performing all job duties contained in the job description and that the employee is capable of performing those duties at normal levels of efficiency.

16.4 "Immediate family" is defined pursuant to the application of RCW 49.46 and authority interpreting same.

16.5 Family and Medical Leave: The Employer provides Family and Medical Leave to employees to the extent provided by and in accordance with the Family and Medical Leave Act (FMLA), other applicable laws and regulations, and the Benton County Family and

Medical Leave Policy (Benton County Resolution 09-503, or subsequent replacement resolutions and policies). In addition, the Employer provides Washington Family Care Leave, Washington Family Leave Act leave, Pregnancy Disability Leave, Domestic Violence Leave and Military Spouse Leave in accordance with state law.

16.6 Employees upon voluntary termination or retirement from Benton County, shall receive payment for twenty-five percent (25%) of their unused sick leave. Such payment shall be limited to employees with ten (10) or more years of service and shall not exceed Three Thousand and No/100 Dollars ($3,000.00). This payment will be to the employee's HRA VEBA account (Health Reimbursement Account).

16.7 The Employer may provide light duty assignments and reasonably accommodate employees. The concept of reasonable accommodation is subject to the availability of a position and the ability of the employee to perform the essential duties of that position.

ARTICLE 17 – HOLIDAYS

17.1 The following are holidays with pay:

New Year's Day	January 1st
Martin Luther King Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19th
Independence Day	July 4th
Labor Day	1st Monday in September
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Friday After Thanksgiving	
Christmas Eve	December 24th
Christmas Day	December 25th

An employee will not receive holiday pay if the employee is absent on their last scheduled work day prior to or the first scheduled work day following the holiday if the absence is without pay due to insufficient accrued paid leave or if the employee is on a leave of absence without pay.

17.2 In addition, each employee is entitled to one (1) floating holiday annually after six (6) months of employment. In order for the employee to use the floating holiday, they must

give the Employer sufficient notice so that the Employer can properly plan for continuity of service.

17.3 If a holiday falls on a Saturday, it will be observed on the preceding Friday. If a holiday falls on a Sunday, it will be observed on the following Monday. For those employees whose regular work schedule work is Tuesday through Saturday, they will observe a Monday holiday on a Tuesday directly following the Monday holiday. If a holiday falls on a Sunday, they will observe the holiday on the preceding Saturday.

17.4 The floating holiday may be taken only in fully, or cashed out in December, with the November payroll. Deferred Holidays: Employees may elect to receive their holiday pay in the December paycheck. Deferred holidays may include the regular holidays and one (1) floating holiday but will not include Christmas Eve or Christmas Day. If an employee elects to defer a holiday, they will make the request in writing at a time to be determined by the Sheriff, Chief of Corrections, or designee. Deferred holidays will be paid annually in the December paycheck. If an employee elects to defer a holiday but then wishes to take the holiday off, they must submit a leave request. If the employee does not elect in writing to defer holidays, the holiday pay will be included in the regular monthly pay period in which it was earned.

17.5 An employee who is authorized by the Sheriff, or designee, Chief of Corrections, or designee, as appropriate, to work on a Holiday (the observed day) will be paid at one and one-half (1-1/2) times the employee's regular straight time rate for the amount of hours worked on the observed day. The employee will also receive the additional eight (8) hours holiday pay at the employee's regular straight time rate.

ARTICLE 18 – PENSIONS AND RETIREMENT

Employees will participate in the State Employees Retirement Plan as set forth in chapter 41.40 RCW.

ARTICLE 19 – JURY DUTY, MILITARY LEAVE

19.1 Employees who are members of the Military Reserve or National Guard will be granted leave for a period not exceeding twenty-one (21) days during each year beginning October 1st and ending the following September 30th. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as they may be ordered to active duty or active training duty. During the period of military leave, the employee shall receive their normal pay. This provision shall be subject to applicable State and Federal laws.

19.2 Employees called to jury duty will provide a copy of their jury notification to their supervisor the first working day following receipt. Employees residing in Benton County who serve on jury duty in Benton County will not receive jury pay, but will receive their regular pay for each day served. Employees who reside outside Benton County will receive their regular pay minus the jury pay. It will be the employee's responsibility to present

satisfactory evidence of serving on jury duty and the amount received as jury pay. The Sheriff, or designee, or Chief of Corrections, or designee, reserves the right to contact the court involved to seek relief from the summons. An employee shall report to work during all hours they are released from jury duty. If jury duty ends before the end of the employee's regular shift, the employee shall call their immediate supervisor or chain of command for instructions.

If an employee has been summoned to jury duty and/or is chosen to serve on a jury and the jury duty conflicts with a pre-approved vacation, the employee will be allowed to cancel the vacation and have those hours credited back to their vacation accrual.

ARTICLE 20 – HOURS OF WORK AND OVERTIME

20.1 The normal workday will consist of eight (8), nine (9), or ten (10) consecutive hours out of the calendar day. Normal shift hours will be generally in accordance with past practices; provided however, the Sheriff, or designee, Chief of Corrections, or designee, may modify the normal schedule of hours of work according to their determination of the service needs. The normal workday and normal work shift hours for ten (10) hour shifts will be determined by the Employer as follows:

A. If the Sheriff, or designee, Chief of Corrections, or Chief's designee, chooses to implement ten (10) hour shifts, the normal work week will be comprised of up to four (4) consecutive workdays within the period of one (1) calendar week. Employees will be paid at the rate of time and one-half (1½) for hours worked in excess of forty (40) hours in the seven (7) day work period or in excess of ten (10) hours per day, but not both.

B. If the Employer elects to implement ten (10) hour shifts, this Agreement otherwise remains based on an eight (8) hour day, including but not limited to sick leave accrual, annual leave accrual, holiday pay, bereavement leave, disciplinary suspensions, and computation of hourly pay rates.

C. All employees regularly scheduled to work on holidays that occur during the ten (10) hour shift schedule will receive eight (8) hours holiday pay consistent with the following provisions:

1. Whenever an employee is scheduled to work and does work on an actual holiday, they will be paid the regular hourly rate for eight (8) hours in addition to the normal salary.
2. Whenever an actual holiday falls on an employee's scheduled day off and they work either the day preceding or the day following the regular scheduled days off the employee will be paid the regular hourly rate for eight (8) hours in addition to the normal salary.

20.2 The normal work week will comprise four (4) or five (5) normal workdays, as just defined, within the period of one (1) calendar week.

20.3 The normal work month will comprise whatever total of normal workdays result from a regular scheduling of five (5) days per calendar week, but this total will in no month exceed twenty-three (23) days.

20.4 Shift hours will be established by the Sheriff, or designee, Chief of Corrections, or designee. Employees will be allowed sufficient time for lunch, normally one-half (1/2) hour, but it is understood that they remain in duty status during such time. In the event the employee is unable to take the one-half (1/2) hour meal period, it is the responsibility of the employee to timely report how much was not taken to their supervisor before the end of that shift permitting the supervisor to make appropriate arrangements to complete the intermittent meal period.

20.5 Subject to the approval of the Sheriff, or designee, Chief of Corrections, or designee, each division within the Sheriff's Office and Corrections Department may vote by a majority for rotating, permanent or other shift arrangements for their respective Office or Department.

20.6 Employees will be paid at the rate of time and one-half (1 1/2) for hours worked in excess of forty (40) hours per seven (7) day work period or in excess of eight (8) hours per day, but not both. Paid or unpaid leave shall not constitute time worked for overtime purposes.

In lieu of overtime pay, an employee may request compensatory time off at the overtime rate. If taking compensatory time off would interfere with normal work requirements or providing public services, as determined by the Sheriff, or designee, Chief of Corrections, or designee, then overtime will be paid. Employees shall be allowed to accrue no more than twenty (20) hours of compensatory time. An employee must use banked compensatory time off prior to using annual leave, except when an employee has accrued the maximum amount of annual leave allowed. Compensatory time can be used within the same month as it was earned.

Any remaining compensatory time balances will be paid upon transfer to a new office/department, position, or at termination of employment at the employee's then regular rate of pay.

20.7 Employees who are required to respond in person back to work outside of their regular shifts will be paid the applicable hourly rate for such time with a minimum of two (2) hours for each such event.

20.8 Members of the bargaining unit shall be given first consideration to fill open shifts in the Sheriff's Office or Corrections Department, as appropriate. Open shift shall mean a shift or partial shift left vacant due to the short-term absence of a bargaining unit employee. The immediate supervisor for the absent employee may assign an employee to the open shift. Any such assignment will be based on seniority, ability to perform the job, and knowledge of the job duties.

ARTICLE 21 – GRIEVANCE PROCEDURE

21.1 The parties recognize the need for fairness and justice in the adjudication of employee and/or Employer grievances and enter into this Agreement in a cooperative spirit to adjust such actions promptly and fairly at the lowest level possible. If, however, a grievance cannot be resolved through normal means, the grievance will be settled as hereinafter provided.

21.2 A grievance is defined as a dispute involving the interpretation, application or alleged violation of any provision of this Agreement, except for actions of a disciplinary nature pursuant to the terms of this Agreement. All questions or issues involving disciplinary action will be subject only to the Civil Service Commission Rules and Regulations for Sheriff's Office employees. No disciplinary action may be grieved by a Sheriff's Office employee except through the Civil Service Commission Rules and Regulations.

21.3 Using the procedure set forth in this Article, a grievance may be presented by an employee or the Union, but not both, or the Employer. A grievance brought by the Employer or the Union must be initiated at Step 2 of this Article. All grievances shall outline the facts and alleged violation(s) of the contract, when filed.

21.4 Grievances may be heard at any time where practical and feasible.

21.5 The parties agree that the time limitations provided herein are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations, unless an extension of time is agreed to in writing. The Sheriff, or designee, or Chief of Corrections, or designee, and the employee or their representative may extend the time limits by written agreement.

21.6 No grievances, other than grievances initiated by the Employer, shall be valid unless submitted at Step 1 within fifteen (15) working days from its occurrence. If a grievance is not presented within fifteen (15) working days from its occurrence, the grievance will be waived and forever lost. If a grievance is not appealed to the next step within the specified time limit or an agreed extension thereof, it will be considered waived and forever lost. If the Employer does not respond within the specified time limits, the Employer will lose the grievance.

21.7 The grievance procedure shall be as follows:

Step 1:

The grievance must be presented in writing to the employee's immediate supervisor within fifteen (15) working days from its occurrence. The immediate supervisor must then respond in writing within fifteen (15) working days after receiving it.

Step 2:

If the grievance is not resolved to the satisfaction of the concerned parties at Step 1, within fifteen (15) working days of the response in Step 1, the grievance must be presented in writing to the Sheriff, or designee, or Chief of Corrections, or designee. Thereafter, the Sheriff, or designee, or Chief of Corrections, or designee, must respond in writing to the aggrieved employee and Union within fifteen (15) working days after receipt of the grievance.

A grievance filed by the Employer against the Union must be submitted in writing to the Union, within fifteen (15) working days after the Employer knew or reasonably should have known of the event giving rise to the grievance. Thereafter, the Union Secretary-Treasurer must respond in writing within fifteen (15) working days after receipt of the grievance.

Step 3:

A. Final and Binding Arbitration: If the grievance has not been resolved at Step 2, the aggrieved employee/Union or the Employer will refer the dispute to final and binding arbitration.

B. Notice - Time Limitation: The Union or the Employer will notify the other in writing of submission to arbitration within ten (10) calendar days after receipt of the Step 2 response.

C. Arbitrator - Selection: After timely notice, the parties will select an arbitrator as follows:

1. The parties will attempt to select the arbitrator within twenty (20) working days after receipt of the grievance at Step 3. The parties agree to work together to have the matter heard at the earliest possible date. If the parties cannot agree upon an arbitrator, the arbitrator will be selected using the procedure described in (2), below.

2. In the event the parties cannot agree on an arbitrator, the party advancing the grievance to arbitration shall request a panel of eleven (11) arbitrators from the Federal Mediation and Conciliation Service, "copying" the other party with the written request. The list shall be limited to arbitrators who are members of the National Academy of Arbitrators from the nearest sub-region. If the parties cannot agree on an arbitrator from the list of eleven (11) names, then the parties will meet or confer by telephone. The non-grieving party will elect to either exercise the first strike of one name from the list (or defer the first selection to the other party) and communicate that party's choice to the other party. The party not selecting first will then strike one (1) name from the list and so on, proceeding in an alternating order until each party has struck five (5) names from the list. The person remaining will be notified of their selection as the arbitrator by the party advancing the grievance to arbitration.

D. Decision - Time Limit: The arbitrator will hear the matter as soon as the parties and the arbitrator can agree. After the hearing is completed, the arbitrator will enter a decision within thirty (30) calendar days, unless an extension of time is agreed to at the end of the hearing.

E. Limitations, Scope and Power of Arbitrator:

1. The arbitrator will not have the authority to add to, subtract from, alter, change or modify the provisions of this Agreement.

2. The power of the arbitrator will be limited to interpretation of or application of the terms of this Agreement or to determine whether there has been a violation of the terms of this Agreement by either the Employer or the Union.

3. The arbitrator will consider and decide only the question or issue raised at Step 1 or Step 2, as determined by the Step where the grievance was first initiated, and the arbitrator will not have the authority to consider additions, variations and/or subsequent grievances beyond the grievance submitted at Step 1 or Step 2.

4. In conducting hearing, the arbitrator will have the power to administer oaths, issue subpoenas, receive relevant evidence, compel the production of books and papers relevant to the hearing, and question witnesses.

F. Arbitration Award - Damages - Expenses:

1. Arbitration awards will not be made beyond the date of the occurrence upon which the grievance is based, that date being five (5) working days or less prior to the initial filing of the grievance.

2. The arbitrator will retain jurisdiction of the grievance until such time as the award has been complied with in full.

3. The arbitrator will not have authority to award punitive damages.

4. In the event that either party evaluates and determines that the arbitration award was beyond the jurisdiction of the arbitrator, the award may be appealed to Superior Court.

5. Each party hereto will pay the expenses of their own representatives, witnesses, and other costs associated with the presentation of their case as well as one-half (1/2) the expense of the arbitrator and court reporter.

ARTICLE 22 – TRAVEL

It is necessary that employees whose usual duty station is in the Kennewick area be assigned duty at times in the Prosser area or Benton City. It is also necessary at times that employees whose usual duty station is in the Prosser area be assigned duty in the Kennewick area. The Sheriff's Office will exert its best efforts to equalize such assignments among the employees and, except in emergency situations, will provide transportation in Employer vehicles for such assignments. For employees whose usual duty station is in the Tri-Cities and who are scheduled for training to take place in the Tri-Cities, the employee will report directly to the training and will be not be paid for travel time to or from the employee's home and the training location.

ARTICLE 23 – MEDICAL, HOSPITAL AND LIFE INSURANCE

23.1 The Employer gives employees the opportunity to participate in health, dental, vision, and time loss insurance plans, and group life insurance plans that have been approved and accepted by the Board of Benton County Commissioners. Each employee must select one type of plan, and the Employer will contribute to the employee's premium costs for the coverage up to the amounts reflected in Section 23.2. Employees may change their plan options annually during the Employer's open enrollment period. The bargaining unit has elected to have Twenty-Four Thousand Dollars ($24,000) face value life insurance coverage.

The Employer's contributions indicated in Section 23.2 will be applied first towards employee life, time loss, vision, dental, and medical insurance. Any remaining balance will be applied toward any dependent coverage or to the employee's VEBA account. Any additional amounts above the Employer's contribution necessary to pay medical, dental, vision, time loss, and life insurance premiums shall be the sole responsibility of the employee and will be accomplished by payroll deduction.

23.2 The Employer will provide the United Employees Benefit Trust (UEBT) Plan A6 (Composite) with Time Loss and Kaiser as the medical and hospital plans for medical insurance coverage available to Sheriff's Office and Corrections Department Clerical employees.

The Employer agrees to maintain employees' current health and welfare benefits by and through Employer's monthly contribution of One Thousand, One Hundred, Twenty-Three and 66/100 Dollars ($1,123.66).

23.3 For UEBT coverage, the employee is eligible on the first of the month, if they are a regular full-time employee and had forty (40) or more compensable hours (worked, vacation, sick leave, holiday pay) in the previous calendar month. If the employee is a regular full time employee and elects Kaiser (Washington Counties Insurance Fund or "WCIF") and is hired on the 1st of the month, coverage begins on the 1st of that month; if hired on the 2nd through the 31st, coverage begins the 1st of the following month. If the first falls on a weekend or holiday and the employee reports to work on the first business day following, coverage is retroactive to the first of the month.

The eligibility of an employee for insurance benefits terminates at the end of any month that the employee fails to meet the above eligibility and enrollment requirements. If the employee has benefits with UEBT and had at least forty (40) or more compensable hours during the last calendar month of employment, coverage extends through the end of the month following termination. If the employee has WCIF benefits, coverage ends the last day of the month in which employment terminated.

23.4 If the insurance company or companies or applicable brokers/agents notifies the employer of changes in the benefits structure, benefit level and/or premium level, the employer will notify union of said changes. If the changes are mandated on the employer then the employer will so notify the union and the parties will meet for informational purposes. Thereafter, the employer will implement the mandated changes. If the changes are not mandated and if there are options for changes then the employer will communicate with the union to discuss these options and thereafter will implement the changes taking into consideration the interest of the employer and the employees.

23.5 The union and/or the employees will indemnify and hold the employer harmless from any and all claims made and against any and all suits instituted, against an insurance carrier regarding a disagreement with said carrier relating to a claim and/or coverage. Any and all disputes or disagreements and/or claims regarding insurance claims and/or coverage are not grievable by the union and the employees.

ARTICLE 24 – COMPENSABLE (ON-THE-JOB) INJURIES

An employee who suffers a compensable on-the-job injury resulting in their absence from work will be permitted to apply accumulated sick leave to the first three (3) workdays of the absence, less any state compensation that may be applicable. If the employee qualifies for time loss payments, their accumulated leave will apply toward the base wage difference between the time loss payment and their normal base wage. The total of the two payments will not exceed the employee's normal wage for a normal workday. During the employee's absence, they will be listed as being "on leave of absence – compensable injury." If the employee is receiving workers compensation for the majority of the month, the employee will not accrue vacation or sick leave. While the employee is supplementing their time loss payments with accumulated leave or while covered under the Family Medical Leave Act (FMLA), the Employer will continue to pay the Employer’s contribution towards the employee’s insurance premiums. Time loss payments are not considered compensation like sick leave and/or vacation leave. If, however, the employee runs out of compensated leave and FMLA leave, they will be eligible for COBRA benefits and the Employer’s contribution to insurance will cease. While on workers compensation, an employee's time loss pay will be administered by the Human Resources Department; however, the employee must keep their supervisor informed about their status and prognosis for return to work on a weekly basis.

ARTICLE 25 – DISCIPLINE AND DISCIPLINARY PROCEDURES

25.1 The Sheriff, or designee, or Chief of Corrections, or designee, may discipline an employee only for just cause inclusive of such events as may be deemed to be just cause as set forth in the Rules and Regulations of the Benton County Civil Service Commission (Sheriff's Office employees only) as well as absenteeism, abuse of sick leave and such other just causes consistent with labor arbitration findings and case law, and Corrections Department rules and regulations (Corrections employees only). Discipline will be carried out in a manner least likely to embarrass the employee before other employees or the public to the extent possible.

25.2 Disciplinary action or measures will include only the following:

A. Oral reprimand,

B. Written reprimand,

C. Suspension without pay,

D. Demotion,

E. Discharge.

25.3 The parties agree that progressive and escalating levels of discipline are preferable to allow an employee proper notice of misconduct and the opportunity to improve performance and to allow the Employer to document prior disciplinary matters. The level or degree of discipline imposed will be appropriately based on an employee's prior record of service, length of service, severity of offense and prior record of discipline inclusive of field notes referencing oral warnings relating to misconduct. The order in which these criteria appear is not indicative of their priority. An employee may be suspended without pay when the employee has first received one (1) written warning relating to the employee's previous work or conduct. An employee may be discharged when the employee has first received a suspension relating to the employee's previous work or conduct. All previous disciplinary actions in an employee's file may be evaluated and considered in a disciplinary action. The following illustrates the disciplinary actions and options available to the Sheriff, or designee, or Chief of Corrections, or designee, under this concept:

A. First offense - oral reprimand, written reprimand.

B. Second offense - written reprimand, suspension without pay.

C. Third offense - written reprimand, suspension without pay, demotion, discharge.

25.4 Notwithstanding Subsection 25.3, the Sheriff, or designee, or Chief of Corrections, or designee, may immediately suspend without pay or discharge an employee for a serious event which constitutes just cause for discipline inclusive of such events as are deemed to be just cause by the Benton County Civil Service Commission as set forth in the Commission's Rules and Regulations or as amended for Sheriff's Office employees, or Corrections Department rules and regulations, for Corrections employees.

25.5 The Employer may discipline an employee for just cause, but in no event may the Employer issue a complaint regarding an employee's work or conduct later than thirty (30) calendar days following the work, incident, or conduct which gave rise to the complaint, or later than thirty (30) calendar days of such work, incident or conduct being known to the Employer by way of investigatory proceedings.

25.6 Any employee under investigation for disciplinary action which may result in a permanent notation in their personnel file or which may result in suspension without pay, demotion or discharge, will, before being required to respond or answer questions pertaining thereto, be informed of the existence and nature of the investigation.

25.7 The provisions of this Article will not apply to newly hired employees serving a probationary period. Probationary employees will work under the provisions of this Agreement, but will be only on a trial basis, during which period they may be discharged without just cause and without any recourse.

25.8 Any disciplinary action, except verbal reprimands, by a supervisor other than the Sheriff, or designee, or Chief of Corrections, or designee, will not be effective unless affirmed in writing by the Sheriff, or designee, or Chief of Corrections, or designee. Notations or copies of any disciplinary action will be sent to the Union at the time it is given to the employee.

25.9 Unless circumstances exist which warrant immediate suspension or discharge, the employee will, before the disciplinary action is finalized, have the opportunity to discuss the matter with their immediate supervisor and the Sheriff, or designee, or Chief of Corrections, or designee, and be informed of the nature of the charges, and the facts supporting them. The employee will be given an opportunity to respond to the charges, including a reasonable time (not to exceed ten (10) calendar days) to consult a Union representative.

25.10 A Sheriff's Office employee will have the right to have a disciplinary action against them reviewed by the Benton County Civil Service Commission. The employee must make the request within ten (10) calendar days of the disciplinary action otherwise the disciplinary action will be final and binding. The Sheriff's Office employee must file a written demand for an investigatory hearing regarding the disciplinary action through the Benton County Civil Service Commission, and the matter will be handled in accordance with applicable procedures as contained in the Rules and Regulations of the Benton County Civil Service Commission (Sheriff's Office employees only).

ARTICLE 26 – LAYOFF AND RECALL

26.1 The Employer will be the sole determiner of when layoffs are necessary. The Employer may lay off employees when such action is determined to be necessary by reason of lack of work, lack of funds and/or reorganization.

26.2 The Employer will give as much notice as practicably possible to designated employees.

26.3 When the Employer determines that a lay off is necessary, the Employer will determine the affected classifications and the number of employees to be laid off. The Union's area representative will be notified of the classifications and number of employees designated for reduction as soon as the determination is made. When the Employer determines which employee(s) and classification(s) are to be laid off, the Employer will implement a layoff in accordance with Civil Service Rules and Regulations (Sheriff's Office employees only).

The least senior employee within a rank or classification designated for reduction shall be laid off from that rank or classification. Persons laid off within each rank or classification shall revert to the next lowest rank or classification in which they have previously served. In the event that such entry requires or results in a reduction of force in the lower rank, such reduction shall be accomplished by a demotion or layoff of the person or persons in said lower classification or rank having the least seniority. Time spent in all higher classifications or ranks within the bargaining unit shall count towards seniority for purposes of layoff within an affected classification.

26.4 Employees laid off will be eligible for a period of one (1) year for reinstatement to a higher classification or rank previously held. Employees demoted for performance related issues will not be eligible for reinstatement to the higher grade. No new full-time employees will be hired in the bargaining unit until the Sheriff, or designee, or Chief of Corrections, or designee, determines that available, qualified employees within the classification placed on layoff have been offered re-employment. It will be the employee's responsibility to keep the Employer (Sheriff's Office or Corrections Department, as appropriate) advised of their current mailing address and email address. An offer of re-employment will be in writing and sent by mail and email to the employee. The employee will be deemed to have received notice within five (5) days after the Employer mailed the offer. An employee so notified must indicate they accepts re-employment within ten (10) days of receiving the offer; and will be back on the job within ten (10) days of accepting the offer or forfeit all call-back rights under this Article.

26.5 Employees recalled from layoff will not lose previously accumulated time in service, provided all other provisions of this article are complied with, including that the employees must be re-employed within one (1) year to retain these call-back rights and that the employee has successfully completed their one (1) year probationary period.

26.6 Employees laid off will be compensated for unused accumulated annual leave and sick leave in accordance with the terms of this Agreement.

ARTICLE 27 – WAGE RATES AND OTHER COMPENSATIONS

27.1. Effective January 1, 2022, the 2021 Salary Schedule will be increased by Three percent (3.0%) for 2022. This calculation and process shall be determined and established by the Benton County Commissioners Office.

Any retroactive wage increases pursuant to this section are applicable to only those employees who are employed and in the Union on the date of last signature to the agreement. Employees who terminate employment for any reason prior to the date of last signature to the agreement will not receive any pay increases.

27.2 Each employee will be evaluated by performance review prior to each employee's anniversary date. The outcome of the performance review will determine whether or not an employee progresses to the next step.

27.3 Sections 27.1 and 27.2 will be administered in accordance with the following provisions:

A. The pay plan consists of nine (9) steps to be referenced as Steps "A", "B", "C", "D", "E", "F", "G", "H", and "I". Succeeding pay steps will start on the first day of the month following either successful completion of the probationary period, or successful completion of the performance review period. Eligibility for succeeding pay steps will be subject to a written appraisal establishing successful completion of the probationary period, or successful performance documented in a performance review for a normal step increase.

B. Entrance Pay Rate - Persons selected to fill vacant positions may be hired by the Sheriff, or designee, or the Chief of Corrections, or designee, at pay step A or B of the appropriate pay range for the classification in which they are hired. Persons selected may be paid at a higher pay step, higher than Step B, based on related experience, education and qualifications relating to the appropriate classifications subject to prior written determination and approval by the Board of County Commissioners. Said determination and approval shall be final and binding on all parties.

1. If an employee begins at Step A, then said employee shall remain at that step for six (6) consecutive months, after which the employee moves to the next step. Regular part time employees must remain in Step A for one thousand, forty (1,040) hours or more before moving to the next step. The probationary period is twelve (12) months, in accordance with Article 32 (Probationary Period), and movement to the next step does not affect the probationary period.

2. If an employee begins at Step B (or higher) of the pay plan, the employee shall remain in that step for a minimum of twelve (12) consecutive months before becoming eligible to move to the next step, subject to successful completion of their twelve (12) month probationary period as confirmed in writing. Regular part time employees must remain in the step for a minimum of two thousand, eighty (2,080) hours or more before said employee is eligible to move to the next step, subject to successful completion of their probationary period as confirmed in writing.

C. Subsequent Pay Steps - In order to be eligible for subsequent steps from Step B to Step I, an employee shall serve a minimum of twelve (12) consecutive months within a step, or two thousand, eighty (2,080) hours for regular part-time employees, before becoming eligible to move to the next step, and eligibility for movement shall be subject to a successful job performance based on the issuance of a written performance appraisal. In order for an employee to continue to be eligible for Step I, said employee will be subject to annual written performance appraisals prior to their anniversary date which must reflect sustained quality performance in order to continue in Step I. If an employee fails to maintain a successful service rating reflected in a written performance appraisal, then said employee will be returned to Step H for the next consecutive twelve (12) month period. The subsequent pay step salary may be pro-rated if the hire date or promotion date is mid-month. For example:

An employee is promoted to Records Sergeant on November 5, 2021, the employee will be paid their prior Records Clerk salary from November 1, 2021, through November 4, 2021, and paid the new Records Sergeant rate from November 5, 2021, through November 4, 2022. The step increase will commence on November 5, 2022.

D. The above provisions relate to only the horizontal progression through the pay plan (*i.e.*, movement from Step A to Step B to Step C, etc.) and does not imply or mean vertical progression through the pay plan from Grade 1 to 2 to 3, etc. There is no vertical progression through the pay plan.

E. An employee denied advancement by reason of unsatisfactory performance will be given a written statement by the Sheriff, or designee, Chief of Corrections, or designee, explaining the reasons for the denial of the step increase. The employee will not be eligible for further consideration for a period of at least twelve (12) consecutive months from the date of denial. Denials and the basis for denial are subject to the grievance procedure up to Step 2. If either party seeks to invoke Step 3 (final and binding arbitration) the outcome of such arbitration will be advisory only and will not be binding on either party except if the arbitration relates to a second denial for the same pay step.

F. Promotion: Promotions are subject to the determination of the Sheriff, or designee, Chief of Corrections, or designee. The promoted employee will receive the starting rate/step of the new classification if higher than the current lower classification step. If the starting step is not higher, the employee will be placed at the next appropriate higher step that provides an increase, provided that the step does not exceed the pay rate at Step H of the higher grade. If the resulting pay increase is less than two percent (2.0%) per month, then the current anniversary date will remain unchanged. An employee promoted to an A step is entitled to a step increase in six (6) months if the current anniversary date falls after that six (6) month period. The probationary period is twelve (12) months, in accordance with Article 32

(Probationary Period), and movement to the next step does not affect the probationary period.

G. Demotion: The movement of a bargaining unit employee from one (1) grade to a lower grade (*e.g.,* Grade 9 to Grade 8). A demotion may be voluntary or involuntary. Employees so demoted shall move to the step in the lower pay grade that results in the smallest decrease in pay, except when demotion is associated with disciplinary action. If the resulting pay decrease is less than two percent (2 %) per month, then the current anniversary date will remain unchanged; otherwise, the employee will be given a new anniversary date.

H. Lateral Transfer: A lateral transfer is movement from one (1) position to another position within the same pay grade (*e.g.*, Grade 9 to Grade 9). Any employee so transferred will maintain pay step within grade.

27.4 Service Pay: An employee will be eligible for service pay after the employee has completed five (5) years of service with the Sheriff's Office or the Corrections Department, as appropriate, in any classification. The service pay will start at Ten Dollars ($10.00) per month for each year of service after the first five (5) years of service, up to a maximum of One Hundred, Twenty Dollars ($120.00) per month.

For example, if an employee has completed five (5) years of service, the employee will receive Ten Dollars ($10.00) per month for the year. After six (6) years of service, the employee will receive Twenty Dollars ($20.00) per month, and so on.

27.5 Hourly Rates: When any situation arises that involves compensation based upon hourly rates, these rates will be obtained by dividing the sum of the basic salary plus service pay and all other regular pay, when applicable, by one hundred, seventy-three and one-third (173 1/3). Medical contribution, uniform allowance and other allowances will not be considered in computing hourly rates.

27.6 Pay Day: Salaries and wages will be paid monthly through mandatory direct deposit, including the final paycheck at the discretion of the Auditor's Office, not later than the fifth day of the following calendar month. Draw-pay provisions exist which permit partial payment at mid-month on request, provided the employee has worked the majority of the month. Implementation of the payroll date being later than the fifth day of the following calendar month or bi-monthly payroll will be preceded by a thirty (30) day notice to the union and the employees.

The Employer will have the right to implement a different payroll framework, for example bi-weekly payroll, based on the implementation of a new payroll system when it becomes administratively possible for the Employer to do so. The Employer will provide thirty (30) days written notice to the affected employees of the date when the new payroll system would begin.

27.7 Pay increases, whether by percentage cost-of-living provisions or by pay plan progressions subject to satisfactory performance reviews, are applicable only to employees who are employed with Benton County in the Sheriff's Office or Corrections Department, on the last date signed below, in a job covered by this collective bargaining agreement. Employees hired after the last date signed below will be entitled to the salary schedule established in the contract.

27.8 Progression through the pay steps are subject to successful job performance documented in a written performance appraisal prior to an employee's anniversary date. Eligibility for step increases is subject to the provisions of this Article.

ARTICLE 28 – ABSENCE WITHOUT DULY AUTHORIZED LEAVE

No leave of absence, whether with or without pay, will be allowed unless authorized in advance. Absence without duly authorized leave shall be treated as leave without pay and shall constitute grounds for disciplinary action up to and including termination. An unauthorized absence from duty for three (3) consecutive days shall constitute separation or termination from service and result in immediate termination.

ARTICLE 29 – LEAVE OF ABSENCE WITHOUT PAY

29.1 An employee may be granted a leave of absence without pay up to twelve (12) months subject to the Sheriff's, or designee's, or the Chief of Corrections', or designee's, determination and confirmation by the Civil Service Commission for Sheriff's Office employees. An employee must request such leave from the Sheriff, or designee, Chief of Corrections, or designee. The Sheriff, or designee, Chief of Corrections, of designee, may approve or disapprove such leave. Leave requests will be made thirty (30) days prior to the anticipated start of leave, when possible. Prior to approval of such leave, the employee and the Sheriff, or designee, Chief of Corrections, or designee, will reach a mutually acceptable agreement with regard to the date of return and work position to which the employee will return. Leave of absence without pay will not be authorized in any case where such leave will operate to the detriment of the Sheriff's or Chief of Corrections' ability to provide service to the public. A leave of absence may or may not be granted at the discretion of the Sheriff, or designee, Chief of Corrections, or designee. Such leave will not be granted for purpose of the employee gaining personal advantage or profit.

29.2 In order to be approved for a leave of absence without pay, an employee must first exhaust all banked vacation time. Employees may not use leave without pay for vacation or other short-term absences resulting from not having sufficient leave banked. If the reason for a leave of absence without pay is a qualified sick leave usage, an employee must also exhaust their sick leave prior to being on a leave of absence without pay unless the law provides otherwise. A disciplinary suspension without pay may be granted prior to the utilization of an employee's leave bank(s).

29.3 While on a leave of absence without pay that is not FMLA leave, the Employer's insurance contribution ceases, and the employee is eligible for COBRA benefits. If the employee is

on unpaid leave for a major portion of a month, vacation and sick leave do not accrue, and the employee's anniversary date will be adjusted accordingly. An anniversary date will not be adjusted if the leave of absence without pay is covered by FMLA or PFML.

29.4 If the Employer determines there is the need for such information, the employee will present satisfactory evidence of capability of resuming job duties at proper levels of efficiency before returning to work.

ARTICLE 30 – LEAVE SHARING

30.1 The purpose of the program is to allow an employee to transfer any portion of their vacation leave, to another employee in need of such leave due to a family or medical emergency, or a lengthy illness or injuries, of a qualifying event/condition under the Family and Medical Leave Act (FMLA). Leave sharing will be implemented as provided in this article and the Benton County policy on Voluntary Transfer of Vacation Leave.

30.3 Policy: Leave sharing shall be implemented as follows:

A. The recipient employee will exhaust all accrued paid leave, or will be able to demonstrate that all accrued paid leave will soon be exhausted, before becoming eligible to receive any transferred annual leave.

B. The transferring party must either:

1. Have taken at least forty (40) hours of vacation leave in the previous twelve (12) months; or

2. Have no less than forty (40) hours of accrued paid leave after the transfer is completed.

C. All requests for transfer of vacation leave will be submitted on a Voluntary Transfer of Vacation Leave form to the Sheriff, or designee, or Chief of Corrections, or designee. Each request will include:

1. The amount of vacation leave to be transferred;

2. The names, signatures, and departments (if applicable) of the employees requesting and receiving the transfer;

3. A statement that the receiving party has exhausted or will exhaust all accrued paid leave.

D. Approval of the transfer is at the discretion of the Sheriff, or designee, or Chief of Corrections, or designee. If the transfer is approved, the Sheriff, or designee, or Chief of Corrections, or designee, will sign the request and the request will be

submitted to the Auditor's Office for processing, with a copy to the Human Resources Department.

E. The Employer will be responsible for monitoring the use of the transferred leave and for keeping the appropriate records. This includes keeping a copy of the Voluntary Transfer of Annual Leave Request form on file, monitoring and approving the amount of leave transferred and used, monitoring when transferred leave is exhausted, and monitoring when the transferee's need for leave ceases. To the extent possible, the Employer will deduct the time used evenly among the donors (*e.g.*, if eight (8) people donate ten (10) hours of leave each and the recipient takes one (1) day off, one (1) hour will be deducted from each donor.

F. An employee may accumulate no more than two hundred (200) hours of transferred leave at one time. An employee may remain eligible to receive transferred leave if necessary once the accumulated balance of transferred leave is less than two hundred (200) hours. In the event the transferred leave is no longer needed, or upon cessation of employment with the Employer by the receiving employee, any and all remaining transferred leave will be returned, in equal portions if applicable, to the employee(s) who donated the leave. The return of leave share will be in one quarter (1/4) hour increments only, with uneven amounts "rounded up or down" to the most appropriate hour.

G. Leave sharing will not apply to probationary employees.

H. Donation and return of annual leave is based solely on the number of hours and not on the donating and/or receiving employee's wages. The names of employees donating leave will be kept confidential and are not to be released for any reason.

ARTICLE 31 – NON-DISCRIMINATION

The Employer and the Union agree that they will not discriminate against any employee on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, political affiliation, or any other protected status, unless based on a *bona fide* occupational qualification reasonably necessary to the normal operation of the Employer or the Union.

No employee will be required to support or to make a contribution to a political party and/or candidate for political office.

ARTICLE 32 – TYPES OF EMPLOYMENT

Regular Employee: All employees in the bargaining unit working full-time or part-time other than temporary employees.

Full-time Employee: An employee working forty (40) hours per work week.

Part-time Employee: An employee hired in a regular position but working less than forty (40) hours per work week but at least ninety (90) hours per calendar month. A part-time employee is entitled to pro-rated sick leave, vacation, and paid holidays.

Probationary Employee: An employee will be on probation during the first twelve (12) months of full-time employment in each job classification and/or department. The probationary employee may either be terminated without cause and without recourse or the probationary period may be extended for up to another six (6) month period as determined by the Employer. All part time employees will serve a probationary period of two thousand, eighty hours (2,080). If an employee is granted a leave of absence during the probationary period, the time equal to the total time on such leave of absence will be added to the probationary period.

Temporary Employee: An employee hired to fill a position either full-time or part-time not to exceed five (5) months of seventy (70) or more hours of compensated employment per month during a twelve (12)-month period. Temporary employees will not be entitled to the fringe benefits described within this Agreement; *i.e.*, insurance, vacation, etc.

ARTICLE 33 – TERM OF AGREEMENT

33.1 This Agreement will become effective on January 1, 2022, except as otherwise indicated in this Agreement, and will remain in effect until the 31st day of December, 2022.

33.2 If the parties have not reached agreement pursuant to the provisions of the article pertaining to contract negotiations, then either party may request a mediator from the Public Employment Relations Commission (PERC). The determination of the mediator from the PERC will be advisory only and not binding on either party.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

BENTON COUNTY SHERIFF'S OFFICE

_____
Tom Croskrey, Sheriff

Date: _____

TEAMSTERS UNION LOCAL 839

_____
Russell Shjerven, Secretary/Treasurer

Date: _____

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Attest:

_____
Clerk to the Board

_____
Date

Approved as to form:

_____
Stephen Hallstrom
Deputy Prosecuting Attorney

2022 SALARY SCHEDULE

2021
Agreement by and between
Board of Benton County Commissioners
and
Teamsters Local 839
Warehousemen, Garage Employees, and
Helpers Union

COVERING SHERIFF'S OFFICE AND CORRECTIONS DEPARTMENT CLERICAL

GRADE	STEPS in $….. A	B	C	D	E	F	G	H	I
12	4263	4348	4500	4658	4821	4990	5165	5346	5533
11	4060	4141	4286	4436	4591	4752	4918	5090	5268
9	3682	3756	3887	4023	4164	4310	4461	4617	4779
8	3507	3577	3702	3832	3966	4105	4249	4398	4552

TITLE	GRADE
Records Sergeant	12
Jail Records Sergeant	12
Evidence Technician	12
Lead Civil Clerk	11
Administrative Clerk	9
Public Records Clerk*	9
Records Clerk	8
Jail Records Clerk	8

*Public records clerk is effective no earlier than 1/1/2023

cc: Sheriff's Office, Payroll, HR, Teamsters #839 and Stephen Hallstrom

APPENDIX B: OTHER COMPENSATION

A. UNIFORM ALLOWANCE AND EQUIPMENT PROVISIONS:

1. Uniforms will be issued in a style as determined by the Sheriff or designee for the Sheriff's Office and the Chief of Corrections or designee for the Corrections Department. It is the prerogative of the Sheriff, or designee, Chief of Corrections, or designee, to set standards for uniform style, make-up, components, condition and appearance which employees will meet. An annual allowance of up to Three Hundred Dollars ($300.00) per calendar year will be provided for employees to purchase clothing in conformance with the style as determined by the Sheriff, or designee, Chief of Corrections, or designee.

2. Uniform cleaning will be provided as determined by the Sheriff, or designee, or Chief of Corrections, or designee. The Sheriff, or designee, or Chief of Corrections, or designee, will determine whether or not a uniform requires normal cleaning, dry cleaning and/or repair due to soiling or damage occurring in the line of duty.

B. ACTING SHIFT SUPERVISOR PAY:

If the Sheriff, or designee, or Chief of Corrections, or designee, specifically assigns an employee as an acting shift supervisor for an entire shift then the employee will receive an additional Five Dollars ($5.00) for serving that shift in the acting shift supervisor capacity. Such pay will not be included in overtime calculations. Such pay is subject to budgetary allocation and availability as determined by the Sheriff, or designee, or Chief of Corrections, or designee.

C. ACTING ASSIGNMENT PAY:

If the Sheriff, or designee, or Chief of Corrections, or designee, specifically assigns an employee to work in a higher classification for an entire shift then the employee will receive an additional Five Dollars ($5.00) for serving that shift after the fourth consecutive workday. Such pay will not be included in overtime calculations. Such pay is subject to budgetary allocation and availability as determined by the Sheriff, or designee, or Chief of Corrections, or designee.

D. TEMPORARY PROMOTION TO NON-BARGAINING POSITION:

A temporary promotion is defined as an employee being temporarily assigned to a non-bargaining classification higher than the employee's current classification for thirty (30) or more days. The employee receives, in addition to the employee's regular salary, a supplemental payment equal to five percent (5%) of the "A" step of the temporary assignment's grade.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Bailiffs 2022-2024 CBA
Presenter:	
Prepared By:	L. Wingfield
Reviewed By:	

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

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

Summary / Background Information

In the matter of adopting the 2022-2024 Bailiffs CBA.

Fiscal Impact

No supplement required

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to approve the 2022-2024 Bailiffs CBA.

Suggested Motion

I move to approve the resolution in the matter of approving the 2022-2024 Bailiffs CBA.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON

IN THE MATTER OF THE 2022-2024 AGREEMENT BETWEEN BENTON AND FRANKLIN COUNTIES, AND TEAMSTERS LOCAL 839, REPRESENTING BAILIFFS.

WHEREAS, negotiators for Benton and Franklin Counties have negotiated and reached an agreement with Teamsters Local 839, representing Bailiffs negotiating team for the 2022-2024 Agreement; **NOW, THEREFORE,**

BE IT RESOLVED, that the Benton and Franklin Counties Board of Commissioners approve the 2022-2024 Agreement between Benton and Franklin Counties, and Teamsters Local 839, representing Bailiffs as negotiated and are authorized to sign the same; and

BE IT FURTHER RESOLVED, that the agreement is effective January 1, 2022, except as otherwise provided, and shall remain in effect until December 31, 2024.

Dated this ____ day of _____, 20___.

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners of Benton County, Washington

Attest.....
Clerk of the Board

Dated this ____ day of _____, 20___.

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners of Franklin County, Washington

Attest.....
Clerk of the Board

cc: BC Auditor, BC HR, S. Hallstrom, Juvenile, Franklin County **Prepared by: L. Wingfield**

2022 – 2024 AGREEMENT

Between

BENTON-FRANKLIN COUNTIES SUPERIOR COURT, BENTON COUNTY, FRANKLIN COUNTY

And

TEAMSTERS UNION LOCAL NO. 839

Representing: BAILIFFS

c: Benton County Commissioners
Franklin County Commissioners
Superior Court Administration
Local 839
Benton County Human Resources
Benton County Payroll
Benton County Prosecutor's Office
Franklin County Administrator
Franklin County Human Resources

TABLE OF CONTENTS

PREAMBLE **2**
ARTICLE 1 – TIME TABLE **2**
ARTICLE 2 – RECOGNITION **2**
ARTICLE 3 – SUBORDINATE TO STATUTES, ETC. **3**
ARTICLE 4 – EMPLOYEE RIGHTS **3**
ARTICLE 5 – MANAGEMENT RIGHTS **4**
ARTICLE 6 – NO STRIKE AND NO LOCKOUT **6**
ARTICLE 7 – HOURS OF WORK, OVERTIME **6**
ARTICLE 8 – WAGE RATES AND OTHER COMPENSATIONS **8**
ARTICLE 9 – INSURANCE BENEFITS **8**
ARTICLE 10 – HOLIDAYS **9**
ARTICLE 11 – VACATION LEAVE **10**
ARTICLE 12 – SICK LEAVE **11**
ARTICLE 13 – LEAVE SHARING **13**
ARTICLE 14 – LEAVE OF ABSENCE WITHOUT PAY **14**
ARTICLE 15 – PENSIONS AND RETIREMENT **15**
ARTICLE 16 – COMPENSABLE (ON-THE-JOB) INJURIES **15**
ARTICLE 17 – DISCIPLINE AND DISCIPLINARY PROCEDURES **15**
ARTICLE 18 – GRIEVANCE PROCEDURES **18**
ARTICLE 19 – LAYOFF AND RECALL **21**
ARTICLE 20 – CONDITIONS AND DURATION OF AGREEMENT **22**
ARTICLE 21 – ENTIRE AGREEMENT **22**
ARTICLE 22 – SAVINGS CLAUSE **22**
ARTICLE 23 – UNION MATTERS AND DUES **23**
ARTICLE 24 - DRUG FREE WORKPLACE **23**
ARTICLE 25 - MILITARY LEAVE **23**
ARTICLE 26 – JURY DUTY **24**
ARTICLE 27 – ABSENCE WITHOUT DULY AUTHORIZED LEAVE **24**
ARTICLE 28 – DISBURSEMENTS FROM SALARIES **24**

ARTICLE 29 – NEGOTIATIONS **24**
ARTICLE 30 – UNION ACTIVITY **25**
ARTICLE 31 – CONSIDERATION **26**
ARTICLE 32 – POLITICAL ACTIVITY **26**
ARTICLE 33 – UNIFORM AND EQUIPMENT **26**

PREAMBLE

This Agreement entered into by and between BENTON-FRANKLIN COUNTIES SUPERIOR COURT, BENTON COUNTY AND FRANKLIN COUNTY, hereinafter referred to as Employer, and TEAMSTERS LOCAL UNION NO. 839, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the Union, has as its purpose the promotion of harmonious relations between the Employer and the Union, the establishment of an equitable and peaceful procedure for the resolution of differences and grievances, and the establishment of rates of pay, hours of work and other conditions of employment.

Pursuant to RCW 41.56.030(12), the Employer for wage and benefit related matters are the respective county legislative authorities, or person or body acting on behalf of the legislative authorities, and the Employer for non-wage and non-benefit related matters, is the judges or judges' designee. Therefore, the judges or their designee have no duty or obligation to bargain, discuss, adjust grievances or participate in collective bargaining agreement negotiations, or grievances concerning wage and benefit related matters. Furthermore, county legislative authorities, or person or body acting on behalf of the legislative authorities, have no duty or obligation to bargain, discuss, adjust grievances or participate in collective bargaining agreement negotiations or grievances, concerning non-wage and non-benefit related matters. The Judges will neither conduct, nor issue written findings, conclusions, summaries or decisions for, grievance proceedings.

ARTICLE 1 – TIME TABLE

The parties agree that a target schedule for conferences and negotiations to be carried on by the parties with respect to extension to this Agreement, is as follows.

1.1 Negotiations are to begin as is mutually convenient for both parties, but no later than October 1st.

1.2 Submission of Union's initial proposal in writing to the Employer one (1) month prior to the first scheduled session.

1.3 Submission of Employer's response submitted in writing one (1) week prior to the first scheduled session.

1.4 The parties may agree in writing to extend or shorten this timetable.

ARTICLE 2 – RECOGNITION

2.1 Employer recognizes the Union as the certified bargaining agent for the purposes of negotiating and establishing salaries, wages, hours and working conditions of employment for certain employees of the Benton-Franklin Counties Superior Court, as certified by the Public Employment Relations Commission, Case No. 24801-E-3716. The Employer and the Union agree that the bargaining unit shall be defined as follows:

INCLUDED: regular, full time Bailiffs in the Benton-Franklin Counties Superior Court.

EXCLUDED: Superior Court Administrator, Supervisors, confidential employees, on call relief bailiffs and all other employees of the Benton-Franklin Counties Superior Court.

2.2 Definitions:

Regular Full-Time Employee: An employee hired in a position normally scheduled to be forty (40) hours per week, with an actual or expected duration of more than six (6) months.

On Call Relief Employee: An employee hired to provide on call relief for Regular Full-Time Employees on an as needed basis, without regular hours assigned, or a representation of working any hours in a given pay period. On call employees are not entitled to any of the benefits provided under this contract except for the applicable hourly rate.

Probationary Employee: An employee will be on probation during the first six (6) months of regular, full-time employment (or one thousand and forty (1,040) hours). If further observance of the employee is required, the employee may either be terminated without cause and without recourse, or the probationary period may be extended for up to an additional six (6) month period (or one thousand and forty (1,040) hours.

The probationary employee may be terminated without cause and without recourse during the probationary period. If the employee is on unpaid leave during the probationary period, the anniversary date and probationary period will be adjusted for the leave period.

ARTICLE 3 – SUBORDINATE TO STATUTES, ETC.

3.1 This Agreement shall be subject and subordinate to statutes, the ordinances of Benton County, unless such ordinances are enacted *ex post facto* addressing the same issue that has already been negotiated by the parties and incorporated into this Agreement.

3.2 Upon written request by the Union, the Employer will negotiate effects on wages, hours, and/or working conditions of Union members that result from ordinances that are enacted after the execution of this Agreement, in accordance with the PECBA

ARTICLE 4 – EMPLOYEE RIGHTS

4.1 An employee or the Union Secretary-Treasurer or designee shall have the right upon request to inspect a Union-represented employees' personnel file in the presence of an office/department representative at a reasonable time during the work day and said request shall be granted not later than two (2) days after the request. No material referring to the employee's performance shall be placed in the file without the employee's signature acknowledging receipt and the opportunity to attach their comments. A copy of any entry to their file will be given to the employee.

A. When a Union represented employee has not given written authorization for the Union to access their personnel file, the Union shall be provided access to such file to the extent provided by law.

4.2 No employee shall accept or engage in any activity, affiliation, business, or employment,

either during or after working hours, that would conflict with the integrity and independence of the courts, the court's interests, create the appearance of impropriety or diminish the ability of employee to render to Benton-Franklin Counties Superior Court the full, loyal and undivided service which is contemplated in their employment by Benton-Franklin Counties Superior Court.

Permission to engage in any activity, affiliation, business, or employment hold any outside employment, which may conflict with the independence or integrity of the courts, must be secured in writing from the Superior Court Administrator. Failure to secure advance permission may result in discipline up to and including termination.

4.3 Bulletin Boards: The Employer agrees to furnish reasonable bulletin board space to be used by the Union. The Union agrees to maintain said bulletin board in a presentable condition. If the bulletin board fails to be maintained appropriately and becomes an eyesore, the Employer shall have the right to discontinue the availability of said Union bulletin board.

4.4 Employees may report what they believe to be an unsafe or unhealthy working condition to Management for investigation.

4.5 Work Rules: Work rules and policies shall be uniformly applied. When existing work rules or policy procedures are changed or new rules or procedures established, the Union and employees whose work assignment is affected shall be notified, in writing, by circulating memorandum, and the new rule or procedure shall be posted prominently on appropriate bulletin boards prior to the effective date. Employees shall comply with all existing reasonable rules that are not in conflict with the express terms of this Agreement, PROVIDED: the rules are uniformly applied and uniformly enforced.

ARTICLE 5 – MANAGEMENT RIGHTS

5.1 The Union recognizes the prerogative of the Employer to operate and manage its affairs in all respects in accordance with its responsibilities, lawful powers and legal authority except as limited by the terms of this Agreement. The judicial branch has the power to maintain control over the inherent functions of its operation, including bargaining over the working conditions of its employees assigned to perform court functions (chapter 41.56 RCW). All matters not expressly or clearly covered by the language of this Agreement or by state law shall be administered for the duration of this Agreement by the Employer as the Employer from time-to-time may determine. The affairs and prerogatives of the Employer which the Employer shall decide and implement include, but are not limited to, the following matters:

A. The right to operate and manage all staff, facilities, and equipment, including without limitation, the right to specify equipment and/or weapons Bailiffs shall or shall not carry or otherwise use.

B. The right to establish the mission, strategic direction, service levels, and resource requirements for all operations and services.

C. The right to establish and institute any and all lawful work rules, policies, and procedures, upon reasonable written notice to bargaining unit members and the Union. The Employer has the right to develop, adopt, amend, administer, and enforce work rules, policies, and procedures that cover matters not specifically described in this Agreement, so long as such rules and policies have been bargained with the Union to the extent required by the Public Employees' Collective Bargaining Act (PECBA). The Employer has the right to make changes to personnel rules and policies. All employees shall abide by said changes. Written personnel rules, policies, and procedures will be posted and provided to affected employees and to the Union.

D. The right to schedule work and overtime work, and the methods and processes by which said work is to be performed in a manner most advantageous to the Employer and consistent with the requirements of the public interest.

E. The right to hire, transfer, discipline and discharge for just cause, lay off, recall, or promote employees as provided by this Agreement and state law.

F. The right to determine the need for additional training of employees (*e.g.*, educational courses, training programs, on-the-job training, and/or class training) and to assign employees to such training for periods to be determined by the Employer.

G. The right to determine the size and composition of the work force and to assign employees to work locations.

H. The right to determine what duties shall be performed by various Bailiffs.

I. The parties understand that incidental duties connected with operations, not enumerated in job descriptions, shall nevertheless be performed by the employee when requested by a superior officer.

J. The right to take any and all types of actions as may be determined by Management to be necessary in the event of emergencies. The Employer shall determine whether or not an emergency exists. An emergency shall be a sudden or unexpected happening or situation that calls for action without delay.

K. The right to close, relocate, reorganize, combine, or eliminate an office, branch, operation, or facility.

L. The right to determine utilization of technology.

5.2 Nothing in this Agreement shall be interpreted to detract or circumscribe the trust placed in the elected officials, in this case, the Boards of Benton and Franklin County Commissioners and the Superior Court Judges, and the rights and obligations owed thereby to the electorate.

5.3 With respect to the Management Rights set forth in this Article 5, the Employer's failure to exercise any right, prerogative, or function shall not be considered a waiver of the Employer's right to exercise such right, prerogative, or function provided that doing so is not in conflict with the express provisions of this Agreement.

5.4 Benton-Franklin Counties Superior Court receives Federal funding, and remains a drug-free work place, with zero tolerance for marijuana use. Marijuana is an intoxicant and an illegal drug pursuant to Federal law, including use or possession. Benton-Franklin Counties Superior Court reserves the right to conduct "reasonable suspicion" testing of employees in the safety sensitive position of bailiffs. Anyone testing positive is subject to discipline up to and including termination from employment. Employees who report to work under the influence of marijuana and who subsequently test positive for any amount of marijuana in their system, or who use or sell/transfer/deliver marijuana, shall be subject to disciplinary action up to and including termination from employment.

ARTICLE 6 – NO STRIKE AND NO LOCKOUT

6.1 Neither the Union nor the employees shall cause, condone or participate in any strike or work stoppage, slow-down or other interference with Employer functions by employees under this Agreement, and should same occur, the Union agrees to take appropriate steps to end such interference. The Employer's employees who engage in any of the above-referenced activities shall not be entitled to any pay and/or benefits during the period in which the employee is engaged in such activity. Employees covered by this Agreement who engaged in any of the foregoing actions shall be subject to disciplinary action as may be determined by the Employer.

6.2 The Employer agrees there will be no lockouts during the term of this Agreement.

6.3 The Employer or the Union may seek relief in Superior Court inclusive of injunctive relief and/or damages.

ARTICLE 7 – HOURS OF WORK, OVERTIME

7.1 The normal work day shall consist of eight (8) consecutive hours out of the calendar day (excluding lunch) except in the event of an emergency.

7.2 The normal work schedule shall consist of five (5) consecutive normal work days except in the event of an emergency.

7.3 Employees will receive a one (1) hour meal period, which may on occur on an intermittent, interrupted, basis.

7.4 Employees will receive two (2) fifteen (15) minute break periods; the first break will occur during the morning hours, as the court's schedule permits, and the second break will occur during the afternoon hours after the scheduled meal period, as the court's schedule permits. Due to the nature of court business, the rest breaks may on occasion occur on an intermittent basis, and need not be uninterrupted. Non-work activities are restricted to meal periods and rest breaks.

7.5 The normal work month shall consist of whatever total of normal work days results from a regular scheduling of five (5) consecutive days per week except in the event of an emergency.

7.6 The Employer may change hours and days; Employer must provide five (5) working days' notice of said change to the affected employee except in the event of an emergency.

7.7 In the event of an emergency as determined by the Employer, the Employer may change work day hours, work week days and/or the work month in accordance with the service demands required by an emergency.

7.8 Overtime: Overtime maybe required from time to time by the Employer. All compensated time, in excess of forty (40) hours in a seven (7) day work period will count towards the overtime threshold. Overtime will be compensated at the rate of time and one half (1.5x).

Compensatory Time: The employee may request to receive compensatory time off at the overtime rate; provided, however, if said compensatory time off would interfere with normal work requirements or the providing of public services as determined by the Employer, then the overtime shall be paid. No employee shall accumulate more than forty (40) hours of compensatory time at any time during the year. Compensatory time shall be taken at times mutually agreeable to the Employer and the employee. Compensatory time shall not be carried over from one calendar year to the next. If there is compensatory time left over at the end of a calendar year, it shall be paid to the employee. The Superior Court Administrator or designee may determine, at their discretion, that certain additional work opportunities (for example, evening public meetings) will be compensated only through compensatory time off (at the overtime rate) rather than overtime pay. Accumulated compensatory time shall be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

Any remaining compensatory time balances will be paid upon transfer to a new office/department, position, or at termination of employment, at the employee's then regular rate of pay.

7.9 Alternative/Extra Time: In the event that an employee is assigned to work beyond regular daily business hours, the Superior Court Administrator or designee has the option to determine whether the Employer will provide the employee with an opportunity for alternative time (flex time) or extra time off on a case-by-case basis, without regard to prior practices.
Alternative time is when the Employer permits the employee to take straight time off later in the same seven (7) day work period, to make up for time worked beyond normal work hours on any given day.

7.10 Training: All Employer required time for training, and mandatory training and testing to maintain the special commission issued by the Sheriff or court authorization, required for the bailiff position, including without limitation, firearm proficiency and self-defense, will be compensated by the Employer. Time expended for proficiency practice to pass the requisite tests for issuance of the special commission by the Sheriff will not be

compensated by the Employer.

ARTICLE 8 – WAGE RATES AND OTHER COMPENSATIONS

8.1 2022: Effective January 1, 2022, the 2021 Salary Schedule will be increased by three percent (3.0%). This calculation and process shall be determined and established by the Benton County Commissioners' Office.

The parties agree to meet and discuss findings and implementation of the salary survey results on or before July 1, 2022.

2023: For 2023, this agreement will be open for limited negotiations to determine any wage adjustments for the Salary Schedule.

2024: For 2024, this agreement will be open for limited negotiations to determine any wage adjustments for the Salary Schedule.

8.2 Pay increases, whether by percentage cost of living provisions or by pay plan progression, are applicable only to employees who are employed by the Employer on the date of signature by the parties' representatives as to Tentative Agreement on this Article.

ARTICLE 9 – INSURANCE BENEFITS

9.1 The Employer provides employees the opportunity to participate in health, dental and vision insurance, and group life insurance plans that have been approved and accepted by the Board of Benton County Commissioners. Each employee must select one of each type plan, and the Employer will contribute the amounts stated in Article 9.2 toward the employee's premium costs for the coverages selected. Employees may change their plan options annually during the Employer's open enrollment period. All employees are required to participate in the Employer's designated life insurance plan. The Union has elected to have Twenty-Four Thousand Dollars ($24,000) face value life insurance coverage.

The Employer contributions indicated in Article 9.2 will be applied first toward employee life, vision, dental, and medical insurance. Any remaining balance will be applied toward any dependent coverage or to the employee's VEBA account. Any additional amounts above the Employer's contribution necessary to pay medical, dental and vision insurance premiums shall be the sole responsibility of the employee and accomplished by payroll deduction.

9.2 The Employer will provide the United Employees Benefit Trust (UEBT) Plan A6 Composite and Kaiser Options as the plans for medical and hospital coverage available to all full time, benefit eligible employees.

2022: The Employer agrees to maintain the benefit contribution of One Thousand one Hundred Forty and 60/100 Dollars ($1,140.60) per month towards medical, dental, vision, and life insurance.

2023: For 2023, this agreement will be open for limited negotiations to determine any health and welfare adjustments.

2024: For 2024, this agreement will be open for limited negotiations to determine any health and welfare adjustments.

9.3 For UEBT coverage, the employee is eligible on the first of the month, if they are a regular full-time employee and had forty (40) or more compensable hours (worked, vacation, sick leave, holiday pay) in the previous calendar month. If the employee is a regular full-time employee and elects Kaiser (Washington Counties Insurance Fund or "WCIF") and is hired on the 1st of the month, coverage begins on the 1st of that month; if hired on the second through the thirty-first, coverage begins the first of the following month. If the first falls on a weekend or holiday, and the employee reports to work on the first business day following, coverage is retroactive to the first of the month.

The eligibility of an employee for insurance benefits terminates at the end of any month that the employee fails to meet the above eligibility and enrollment requirements. If the employee has benefits with UEBT and had at least forty (40) or more compensable hours during the last calendar month of employment, coverage extends through the end of the month following termination. If the employee has WCIF benefits, coverage ends the last day of the month in which employment terminated.

9.4 If the insurance company or companies or applicable brokers/agents notifies the Employer of changes in the benefits structure, benefit level and/or premium level, the Employer will notify Union of said changes. If the changes are mandated on the Employer, then the Employer will so notify the Union and the parties will meet for informational purposes. Thereafter, the Employer shall implement the mandated changes. If the changes are not mandated and if there are options for changes, then the Employer will communicate with the Union to discuss these options and thereafter will implement the changes taking into consideration the interests of the Employer and the employees.

9.5 Union and/or the employees will indemnify and hold the Employer harmless from any and all claims made and against any and all suits instituted, against an insurance carrier regarding a disagreement with said carrier relating to a claim and/or coverage. Any and all disputes or disagreements and/or claims regarding insurance claims and/or coverage are not grievable by the Union and the employees.

9.6 Any amounts which are in excess of the dollar amount contribution by the Employer, as set forth in Article 9.2 above, which are necessary to pay the premiums for the coverage will be the responsibility of the employees and will be carried out by payroll deduction.

ARTICLE 10 – HOLIDAYS

10.1 The following are recognized holidays with pay:

New Year's Day	January 1st
Martin Luther	3rd Monday in January

President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19th
Independence Day	July 4th
Labor Day	1st Monday in September
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Day immediately following Thanksgiving	
Christmas Eve	December 24th
Christmas Day	December 25th
One (1) Floating Holiday	Requires supervisor's approval

An employee will not receive holiday pay if the employee is absent on their last scheduled work day prior to or the first scheduled work day, following the holiday if the absence is without pay due to insufficient accrued paid leave, or if the employee is on a leave of absence without pay.

10.2 Each employee is entitled to one (1) floating holiday per calendar year after six (6) months of employment. In order for the employee to use the one (1) floating holiday, they must give the Employer sufficient notice so that the Employer can properly plan for continuity of service. The floating holiday may be taken only in full.

10.3 If a holiday falls on a Saturday, it shall be observed on the preceding Friday. If a holiday falls on a Sunday, it shall be observed on the following Monday.

10.4 All work performed on a holiday (or, when the holiday falls on a Saturday or Sunday, on the observed day) shall be compensated at a rate of one and one-half (1.5) times the employee's hourly rate in addition to eight (8) hours holiday pay. There is no pyramiding of overtime and one and one-half (1.5) times holiday pay.

ARTICLE 11 – VACATION LEAVE

11.1 Effective with the first payroll cycle following full execution of this Agreement, vacation leave with pay is earned at the following monthly rates depending on the employee's length of service with the Employer:

Years of Service	Hours per Month	Vacation Leave Hours
1 through 05	10.00	120
6 through 10	12.00	144
11 through 15	15.00	180
16 through 19	16.50	198

20 and over	18.00	216

11.2 Vacation leave credit may be accumulated during the first six (6) months of regular full time service with the Employer; however, said vacation leave credit may not be used. During the seventh month, or any subsequent month, vacation leave may be allowed up to the limits of the amount earned. Vacation leave credited for any month of service beyond the first six (6) months of service may be allowed during the month earned or any subsequent month. The employee must request to use said accrued vacation leave, which request is subject to prior approval from the Employer. Vacation leave may be accumulated during the first one thousand and forty (1,040) hours of regular service with the Employer; however, said vacation leave credit may not be used. After one thousand and forty (1,040) hours, vacation leave may be allowed up to the limits of the amount earned. Vacation leave credit for any month of service beyond the first one thousand and forty (1,040) hours of service may be allowed during the month earned or any subsequent month. The employee must request to use said accrued vacation leave, which request is subject to prior approval by the Employer.

Monthly accrual of vacation leave shall commence at the completion of a major portion of a month of continuous service.

11.3 Only regular full-time employees who have successfully completed six (6) months of service or one thousand and forty (1,040) hours, shall, upon separation from employment from the Employer for any reason, be compensated for accumulated vacation leave. Regular full-time hired prior to October 1, 1995, shall be compensated up to a maximum of two hundred and forty (240) hours of vacation leave; employees hired on or after October 1, 1995, shall not be entitled to accrue more than two hundred (200) hours of vacation leave at any time and shall, upon separation, be compensated up to a maximum of two hundred (200) hours of vacation leave.

11.4 The Employer shall arrange vacation time for employees on such schedules which will least interfere with the functions of the court.

Cash out: An employee is eligible to cash out (40) hours of vacation leave if the employee has used a minimum of eighty (80) hours of vacation leave since January 1st of the current calendar year, through November of that year. This cash out will be paid in December, with the November payroll.

ARTICLE 12 – SICK LEAVE

12.1 Eligibility for sick leave use shall commence at the completion of a major portion of a month of continuous service.

12.2 Employees shall earn credit at the rate of eight (8) hours sick leave per month of continuous service (ninety-six (96) hours per year).

Per the application of RCW 49.46 and authority interpreting same, every January 1st, all employees maximum accrual will be up to one thousand and forty (1,040) working hours

of sick leave.

12.3 Earned sick leave with pay may be taken for the following reasons, where the facts are established by the employee to the satisfaction of the Employer:

A. Per the application of RCW 49.46 and authority interpreting same, or

B. Bereavement Leave: Death in the immediate family (defined in Article 12.4): five (5) days maximum per death, regardless of whether the deceased resided in the employee's household (for purposes of this section only, immediate family includes a child of any age); or

C. Death of a friend or relative, not immediate family (defined in Article 12.4): one (1) day maximum per death.

12.4 Immediate family is defined per the application of RCW 49.46 and authority interpreting same.

12.5 Sickness shall be reported to the department at the beginning of any period of sick leave prior to the beginning work hour. Any employee who is off work due to illness in excess of five (5) work days, may be required to provide a qualified health care provider's verification of the illness as well as the qualified health care provider's approval to return to work.

Employees on sick leave in excess of five (5) work days are required to call the Superior Court Administrator designee weekly (every Monday between the hours of 8:00 a.m. and 10:00 a.m.) and are required to furnish progress reports of their health or illness condition.

Prior to being eligible to return to work, the employee will be required to provide satisfactory evidence and if determined to be necessary by the Employer, may be required to provide a qualified health care provider's statement explaining that the employee is capable of performing those duties at normal levels of efficiency.

12.6 The Employer will allow employees to participate in an HRA VEBA Medical Reimbursement Plan for Public Employees in the Northwest ("VEBA"), subject to the provisions of this Agreement.

A. Employees who voluntarily terminate their employment with the Employer or regularly retire from employment with the Employer under the Employer's retirement program, or upon death their estate, shall receive payment, into the employee's VEBA account, for twenty-five percent (25%) of their unused sick leave capped at two hundred (200) hours paid out. For voluntary termination or death, such payment shall be limited to employees with ten (10) or more years' service. Payment at voluntary termination, retirement, or death shall not exceed Three Thousand Dollars ($3,000.00).

B. For employees with PERS I, the Employer will exclude from the VEBA the sum of

unused sick leave accruals used by the Department of Retirement Systems in calculating the employee's average final compensation.

12.7 Family and Medical Leave. The Employer provides Family and Medical Leave to employees to the extent provided by and in accordance with the Family and Medical Leave Act (FMLA), other applicable laws and regulations, and the Benton County Family and Medical Leave Policy (Benton County Resolution 09-503, or subsequent replacement resolutions and policies). In addition, the Employer provides Washington Family Care Leave, Washington Family Leave Act, Pregnancy Disability Leave, Domestic Violence Leave and Military Spouse Leave, in accordance with State law.

ARTICLE 13 – LEAVE SHARING

13.1 The purpose of the program is to allow an employee to transfer any portion of their vacation leave to another employee in need of such leave due to a family or medical emergency, or a lengthy illness or injuries. Leave sharing shall be implemented as provided in this Article and the Benton County policy on Voluntary Transfer of Vacation Leave.

13.2 Policy: Leave sharing shall be implemented as follows:

A. The recipient employee shall exhaust all accrued paid leave, or shall be able to demonstrate that all accrued paid leave will soon be exhausted, before becoming eligible to receive any transferred vacation leave.

B. The transferring party must either:

1. Have used at least forty (40) hours of vacation leave in the previous twelve (12) months; or
2. Have no less than forty (40) hours of accrued paid leave after the transfer is completed.

C. All requests for transfer of vacation leave shall be submitted on a Voluntary Transfer of Vacation Leave form to the Superior Court Administrator or designee. Each request shall include:

1. The amount of vacation leave to be transferred;
2. The names, signatures, and departments (if applicable) of the employees requesting and receiving the transfer;
3. A statement that the receiving party has exhausted or will exhaust all accrued paid leave.

D. Approval of the transfer is at the discretion of the Superior Court Administrator or designee. If the transfer is approved, the Superior Court Administrator or designee shall sign the request and the request shall be submitted to the Auditor's Office for processing, with a copy to the Benton County Human Resources Department.

E. The Employer shall be responsible for monitoring the use of the transferred leave and for keeping the appropriate records. This includes keeping a copy of the Voluntary Transfer of Vacation Leave Request form on file, monitoring and approving the amount of leave transferred and used, monitoring when transferred leave is exhausted, and monitoring when the transferee's need for leave ceases. To the extent possible, the Employer will deduct the time used evenly among the donors (*e.g.,* if eight (8) people donate ten (10) hours of leave each and the recipient takes one (1) day off, one (1) hour will be deducted from each donor.

F. In the event the transferred leave is no longer needed, or upon cessation of employment with the Employer by the receiving employee, any and all remaining transferred leave shall be returned, in equal portions if applicable, to the employee(s) who donated the leave, in one-quarter (1/4) hour increments, with uneven amounts "rounded up or down" to the most appropriate hour.

G. Leave sharing shall not apply to probationary employees.

H. Donation and return of vacation leave is based solely on the number of hours and not on the donating and/or receiving employee's wages.

ARTICLE 14 – LEAVE OF ABSENCE WITHOUT PAY

14.1 An employee may be granted a leave of absence without pay up to twelve (12) months subject to the Superior Court Administrator's or designee's approval. An employee must request such leave of the Superior Court Administrator or designee, in writing. The Superior Court Administrator or designee may approve or disapprove said leave. Such leave requests shall be made thirty (30) days prior to the anticipated start of leave when applicable. Prior to approval of such leave, the employee and the Superior Court Administrator or designee shall reach a mutually acceptable agreement, in writing, with regard to the date of return and work position to which the employee will return. Leave of absence without pay shall not be authorized in any case where such leave shall operate to the detriment of the Employer's service.

14.2 In order to be approved for a leave of absence without pay, an employee must first exhaust all banked vacation time. Employees may not use leave without pay for vacation or other short-term absences resulting from not having sufficient leave banked. If the reason for a leave of absence without pay is a qualified sick leave usage, an employee must also exhaust their sick leave prior to being on a leave of absence without pay unless the law provides otherwise. A disciplinary suspension without pay may be granted prior to the utilization of an employee's leave bank(s).

While on a leave of absence without pay that benefit continuation is not pursuant to applicable statues, the Employer's insurance contribution ceases, the employee is eligible for COBRA benefits, and the employee's anniversary date will be adjusted. If the employee is on unpaid leave for a major portion of a month, vacation and sick leave do not accrue, and the employee's anniversary date will be adjusted accordingly.

If the Employer determines that there is a need for such information, the employee shall present satisfactory evidence of capability of resuming job duties at proper levels of efficiency before returning to work.

14.3 If the Employer determines that there is a need for such information, the employee shall present satisfactory evidence of their capability of resuming job duties at proper levels of efficiency before returning to work.

ARTICLE 15 – PENSIONS AND RETIREMENT

Employees shall participate in the State employees retirement plan (PERS) as set forth in applicable statutes.

ARTICLE 16 – COMPENSABLE (ON-THE-JOB) INJURIES

An employee who suffers a compensable on-the-job injury resulting in their absence from work for fourteen (14) calendar days or more will be paid their regular Employer salary for the first three (3) work days of such absence less any State compensation which may be applicable. An employee suffering a compensable on-the-job injury of less than fourteen (14) calendar days shall use their paid leave for the first three (3) work days of such absence less any state compensation which may be applicable. If the employee qualifies for time loss payments, the employee shall use their accumulated paid leave ("paid leave" under this Article is sick leave, vacation leave, and compensatory time) toward the regular wage difference between the time loss payments received and the employee's regular wage. The total of the two (2) payments shall not exceed the employee's regular wage for a normal work month. During the absence of such employee, said employee will be considered as being "on leave of absence-compensable injury" and as such the Employer will continue to pay its portion of the insurance premium contributions while the employee is supplementing their time loss payments with accumulated leave or while on an FMLA leave. Time loss payments are not considered compensation like sick leave and/or vacation leave. The Employer will continue to pay its portion of the insurance premium contribution for the employee for three (3) months beyond exhaustion of paid leave. If the employee runs out of paid leave then the employee will be responsible for paying the premiums as determined by the Employer. While on workers compensation, an employee's time loss pay will be administered through the Benton County Human Resources Department; however, employees must on a weekly basis keep their supervisor informed about their status and prognosis for return to work.

ARTICLE 17 – DISCIPLINE AND DISCIPLINARY PROCEDURES

17.1 Purpose. Disciplinary procedures are intended to assist the Superior Court Administrator (Employer) and employees in the sensitive area of disciplinary action by defining the limits of acceptable conduct and providing for consistency in actions taken when those limits are exceeded. The parties believe that progressive discipline is a most beneficial format since it provides the employee with an opportunity to correct deficiencies and to improve their job related conduct. However, there are circumstances where progressive discipline is not warranted and could result in not having a verbal reprimand but rather going directly to written reprimand, suspension without pay, disciplinary probation or discharge. Management personnel may carry out disciplinary action based on the following just causes, but not limited thereto:

a) Neglect of duty;
b) Inefficiency;
c) Insubordination;
d) Incompetence;
e) Insolence;
f) Conviction of any crime;
g) Malfeasance or misfeasance;
h) Gross misconduct;
i) Violation of Employer ordinances, directives, administrative/management rules and regulations inclusive of personnel policies where applicable;
j) Conflict of interest between off-duty activities and official duties, or the appearance of impropriety with respect thereto;
k) Tardiness and/or absenteeism;
l) Discrimination or harassment;
m) Violation of the Drug & Alcohol Policy and Procedures - Fit for Work Program;
n) Suspension and/or revocation of licenses, certifications and any other credentials necessary to carry out the work/job;
o) Conduct which could be reasonably considered as undermining public confidence in the Court;
p) Such other causes which normally serve as a basis for discipline in labor and personnel relations.

17.2 Degree of Disciplinary Action. The degree of disciplinary action administered by the Superior Court Administrator or designee, depends on the severity of the infraction. It is the responsibility of the Employer taking the action to objectively evaluate the circumstances and facts involved before beginning disciplinary action. The following provides a guideline for non-mandatory, progressive disciplinary action:

A. Verbal Reprimand. Verbal reprimands are used for minor offenses. The supervisor will immediately discuss the offense and warn the employee not to repeat the behavior, and will document the occurrence by making a note to the employee's official personnel file, concerning the infraction. Repeated violations of verbal reprimands will result in a formal written reprimand.

B. Written Reprimand. Written reprimands are used initially for more serious problems or offenses, or for repeated incidents where verbal reprimand has failed to correct behavior. The employee will receive a signed letter from the supervisor listing the violations or failures of the employee, and clearly stating what corrective action must be taken by the employee to avoid further discipline. Copies of such warnings shall be kept in the employee's official personnel file.

C. Disciplinary Probation. Disciplinary probation may be used as a further step for multiples of written reprimands. The Employer shall notify the employee that they are on disciplinary probation for a specified length of time. This disciplinary probation is in lieu of suspension without pay or discharge, however, an employee on disciplinary probation is on notice that further disciplinary actions against them

could result in immediate termination of employment. Disciplinary probation does not constitute a break in service but the period of time on this status will not be credited toward monthly accrual for the purpose of step increases on employee's evaluation date.

D. Suspension With Pay. At the discretion of the Employer, an employee of the Employer may be suspended, with pay and benefits pending investigation of allegations of misconduct, when the nature of the allegation compromises the ability of the employee to perform their duties, and when a substantial period of time will be required to complete an investigation or legal action. Such suspension is not a disciplinary action and may not be appealed. If the charges are substantiated, disciplinary action will be taken in accordance with the nature of the offense, and may include the Employer's recovery of salary and benefits paid during the suspension. If the charges are unfounded, the employee will be restored to duty and a letter of exoneration will be placed in the employee's official personnel file.

E. Suspension Without Pay. An employee will be suspended without pay when the offense is of a serious enough nature usually sufficient for discharge but when circumstances related to an employee's overall performance would not warrant immediate discharge. The length of suspensions should not normally exceed thirty (30) working days.

Investigatory suspensions may be used in cases where it is necessary to investigate a situation to determine what further disciplinary action may be justified. This suspension gives the supervisor the opportunity to discuss the problem with their superior to determine an appropriate course of action when the situation is serious enough for the employee to be removed from the work environment. If after investigation, it is determined that the employee was not guilty of any violation, they will be returned to their position, paid for any lost time, and a letter exonerating the employee will be placed in their official personnel file. If, however, the employee is found in violation, then the determined disciplinary action will take effect on the date that the investigatory suspension began.

F. Discharge. When a discharge is involved, the Employer shall proceed with a pre-discharge conference or meeting whereby the affected employee is provided with written notice of the charges against them, an explanation of the Employer's evidence and an opportunity to present their side of the story. The purpose of this pre-discharge hearing is for the Employer to have the benefit of the employee's perspective regarding the charges before the Employer takes disciplinary action. Immediate removal of an employee from the work site may be warranted in instances involving serious insubordination, theft, serious illegal or destructive acts while on the job, or other substantial reasons deemed appropriate by the Employer. An employee may also be discharged after repeated offenses of a less serious nature if the offenses have been documented by the supervisor and appropriate behavioral changes have not resulted from previous progressive disciplinary action.

17.3 Any disciplinary action of a regular employee taken by the Employer may be appealed by

the employee utilizing the grievance procedure provided in this Agreement.

17.4 All disciplinary action, including verbal reprimands, will be documented in written form, signed by the supervisor and employee and placed in personnel file. Such disciplinary action notices will be removed from an employee's personnel file one year after the last date that disciplinary action was imposed for whatever reason. Employee's signature denotes acknowledgment and receipt of the reprimand. If employee refuses to sign this document, this will be noted and signed by a management witness and included in personnel file.

17.5 The Employer may immediately warn, reprimand, suspend without pay, demote and/or discharge or terminate an employee for cause as referenced in this Article. The specified charges shall be given to the employee in writing at the Employer's office not later than three (3) working days after the action became effective. The Union shall also be notified of these charges.

17.6 Probationary employees may be warned, reprimanded, suspended without pay, demoted and/or discharged or terminated without just cause by the Employer at any time during the probationary period. Probationary employees have no recourse.

17.7 Coaching and counseling communications are not disciplinary in nature. Verbal reprimands are not subject to grievance beyond Step 2 (Article 18).

ARTICLE 18 – GRIEVANCE PROCEDURES

18.1 The parties hereto recognize the need for fairness and justice in the adjudication of employee and/or Employer grievances and adopt this procedure in a cooperative spirit to adjust such actions promptly and fairly at the lowest level possible. If, however, a grievance cannot be solved through normal means, the grievance will be settled as hereinafter provided.

As used in Article 18, the Employer for wage and benefit related matters are the respective county legislative authorities, or person or body acting on behalf of the legislative authorities, and the Employer for non-wage and non-benefit related matters is the judges or judges' designee. The judges or their designee have no duty or obligation to discuss or adjust grievances or participate in grievances concerning wage and benefit related matters. Furthermore, county legislative authorities, or person or body acting on behalf of the legislative authorities, have no duty or obligation to discuss or adjust grievances or participate in grievances concerning non-wage or non-benefit related matters. Provided, however, the respective county legislative authorities, or person or body acting on behalf of the legislative authorities, and the judges or their designee, may attend all grievance proceedings, regardless of subject matter. The Judges will neither conduct, nor issue written findings, conclusions, summaries or decisions for, grievance proceedings.

18.2 A grievance is defined as a question involving the interpretation, application or alleged violation of any provision of this Agreement between the Employer, the Union and the employee, and shall be resolved exclusively through the procedures set forth in Article 18.

All grievances shall outline the facts and alleged violation(s) of contract articles, when filed.

18.3 Through the procedures set forth in this Article, a grievance may be presented by the Union on behalf of an employee, or the employee in their individual capacity (or accompanied by a representative), if desired. A grievance brought by the Employer or the Union must be initiated at Step 2 of this Article.

18.4 Grievances may be heard at any time where practical and feasible.

18.5 The parties agree that the time limitations provided herein are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations, unless an extension of time is mutually agreed to in writing. The Superior Court Administrator or designee and the Union representative or employee proceeding in their individual capacity, may extend the time limits by mutual agreement in writing.

18.6 No grievance shall be valid unless it is submitted at Step 1 within ten (10) working days after the occurrence of the grievance, except as specified in Section 18.3 of this Article. If a grievance is not presented within the time limitations referenced herein, said grievance shall be considered forever waived. If there is a failure to meet the time limits or extended time limits in the grievance procedure, then and in that event, the final resolution of the grievance shall be in accordance with the last responding party.

18.7 The grievance procedure shall be as follows:

STEP 1:

A grievance shall be presented in written form to the Superior Court Administrator, or designee, within ten (10) working days from its occurrence. The Employer shall respond in writing within ten (10) working days after receiving said grievance, to include the identity of the Employer's "point of contact" for processing the balance of the grievance pursuant to the provisions of Article 18 herein.

STEP 2:

If the grievance is not resolved to the satisfaction of the concerned parties at Step 1, then within ten (10) working days of the response in Step 1, the written grievance shall be served on individual "point of contact" identified in the Employer's written Step 1 response. The parties shall arrange a meeting between the aggrieved employee (unless the Employer agrees to waive the employee's presence), employee representative and management representatives, within ten (10) working days for resolution of the issue. The Employer shall issue findings in writing within ten (10) working days of the meeting referenced hereinabove.

STEP 3:

A. Final and Binding Arbitration: If the grievance has not been resolved at Step 2, the

aggrieved employee or the Employer shall refer the dispute to final and binding arbitration.

B. Notice - Time Limitation: The employee or the Employer shall notify the other in writing by certified mail of submission of arbitration within ten (10) working days after receipt of the Step 2 response.

C. Arbitrator Selection: After timely notice, the parties will pick an arbitrator in the following manner:

1. The Employer and the Union shall attempt to select the neutral arbitrator within twenty (20) calendar days after receipt of the written grievance at Step 3. Thereafter, the hearing of the matter shall be at the earliest possible date. If the parties cannot agree upon a neutral arbitrator, the neutral arbitrator will be selected through the procedure as provided for in Section 2, below.

2. In the event either party does not agree on a neutral arbitrator, then and in that event, the party advancing the grievance to arbitration shall request a panel of eleven (11) arbitrators from the Federal Mediation and Conciliation Service, "copying" the other party with the written request. If the parties cannot mutually agree on a neutral arbitrator from the list of eleven (11) names, then the parties shall meet or confer by telephone, and the non-grieving party shall elect to exercise the first strike of one (1) name from the list (or defer the first selection to the other party) and communicate that party's choice to the other party.

   The party not selecting first will then strike one (1) name from the list and so on, proceeding in an alternative order until each party has struck five (5) names from the list. The remaining name shall be neutral arbitrator, and shall be so advised by the party advancing the grievance to arbitration, "copying" the other party with notice.

D. Decision - Time Limit: The arbitrator will meet and hear the matter at the earliest possible date after the selection of the neutral arbitrator. After completion of the hearing, a decision shall be entered within thirty (30) calendar days, unless an extension of time is agreed upon as provided for herein.

E. Limitations, Scope and Power of Arbitrator:

1. The arbitrator shall not have the authority to add to, subtract from, alter, change or modify the provisions of the personnel rules and regulations or the contract.

2. The power of the arbitrator shall be limited to interpretation of or application of the terms of the personnel rules and regulations and the contract, or to determine whether there has been a violation of the terms of

these rules and regulations or the contract by either the Employer or the employee.

3. The arbitrator shall consider and decide only the question or issue raised at Step 1 or Step 2, as determined by the step where the grievance was first initiated, and said arbitrator shall not have the authority to consider additions, variations and/or subsequent grievances beyond the grievance submitted at Step 1 or Step 2.

4. In conducting the hearing, the arbitrator shall have the power to administer oaths, issue subpoenas, receive relevant evidence, compel the production of books and papers relevant to the hearing, and question witnesses.

F. Arbitration Award - Damages - Expenses:

1. Arbitration awards shall not be made beyond the date of the occurrence beyond which the grievance is based, that date being five (5) working days or less prior to the initial filing of the grievance.

2. The arbitrator will retain jurisdiction of the grievance until such time as the award has been complied with in full, except in the event Article 18.7 (F.4) below is activated.

3. The arbitrator shall not have authority to award punitive damages.

4. The award of the arbitrator is final and binding on all parties; provided, however, a party may appeal the decision within thirty (30) calendar days to Superior Court for a review of the record and not a *de novo* proceeding. The standard of review is that of arbitrary and capricious or clearly erroneous.

5. Each party hereto shall pay their own representatives, witnesses, and other costs associated with the presentation of their case, and the expenses of their respective representatives, including without limitation, attorney fees, as well as one-half (1/2) the expense of the neutral arbitrator.

6. Either party may request that a stenographic record of the hearing be made. The party requesting such record shall bear the cost thereof, provided, however, if the other party requests a copy, such cost to prepare the stenographic record, including without limitation, hearing costs, shall be shared equally.

ARTICLE 19 – LAYOFF AND RECALL

19.1 The Employer shall be the sole determiner of when layoffs are necessary. The Employer may lay off employees when such action is made necessary by reason of lack of work, lack of funds and/or reorganization.

19.2 The Employer shall give as much notice as practicably possible to designated employees.

19.3 The Superior Court Administrator or designee will determine which classification will be affected by the layoff in their respective department. The last employee hired within a classification within a department shall be the first employee laid off; provided, however, employees who remain within the department must be able to fulfill job requirements. The determination as to whether or not the remaining employees are capable of fulfilling job requirements shall be within the discretion of the Employer. Seniority is defined as the time in service within the classification within the department in which the employee is working.

19.4 No new employees shall be hired by the Employer until available employees placed on layoff within the classification have been offered re-employment, provided the layoff period does not exceed one (1) year and that the employee keep the Employer advised of their current address. An offer of re-employment shall be in writing and sent by mail and email to the employee. The employee shall be deemed to have received notice within three (3) days after the Employer mailed said notice. An employee so notified must indicate their acceptance of said re-employment within ten (10) days of receipt of notice and shall be back on the job within thirty (30) days of acceptance of said offer or forfeit all call-back rights under this Article.

19.5 Employees recalled from layoff shall not lose previously accumulated seniority or time in service, accrued vacation or sick leave, provided all other provisions of this Article are complied with, including that the employee must be re-employed within one (1) year to retain these call-back rights and that the employee has successfully completed their one hundred and eighty (180) day (unless extended pursuant to the collective bargaining agreement) probationary period. However, employees shall not have vacation time or sick leave time reinstated where the employee has been compensated for said time by the Employer as a result of the layoff.

ARTICLE 20 – CONDITIONS AND DURATION OF AGREEMENT

This Agreement shall be in full force and effect for the period commencing on January 1, 2019, except as otherwise provided, and terminating on December 31, 2021. It is further understood and agreed that all expenditures or compensation to be paid employees in accordance with this Agreement must first meet the requirements and procedures required by law.

ARTICLE 21 – ENTIRE AGREEMENT

The terms of this Agreement, including all Appendices, constitute the entire Agreement between the parties and no verbal statements shall supersede any of its provisions. Therefore, the parties waive the right to bargain collectively with respect to any subject or matter, unless by mutual consent, for the life of this Agreement.

ARTICLE 22 – SAVINGS CLAUSE

If any Article or Section of this Agreement or any addendum thereto should be held invalid by operation of law or by any court of competent jurisdiction, or if compliance with or enforcement

of any Article or Section should be restrained by such court, the remainder of this Agreement and Addendum shall not be affected thereby.

ARTICLE 23 – UNION MATTERS AND DUES

23.1 Dues and Fees. Upon the written authorization of an employee within the bargaining unit, the Employer shall deduct from the payments to the employee the monthly amount of dues or fees as certified by the Secretary-Treasurer of the Union and shall transmit the amounts deducted to the Union by the 15th day of the month. The Union shall indemnify and hold the Employer harmless against any suit instituted against the Employer on account of any dues or fees deductions for the Union except for errors or omissions by the Employer.

An employee may revoke their authorization for payroll deduction of payments to the Union by written notice to the Secretary-Treasurer of the Union with a copy to the Employer. Every effort will be made to end the deduction effective on the first payroll, but not later than the second payroll, after the Employer's receipt of the employee's written notice.

23.2 New Employees and Orientation Meeting. Upon employment of a new employee covered by this Agreement, the Employer shall notify the Union, in writing, of the hiring of a new employee. The Union will provide the new employees with the necessary forms regarding dues, initiation fees and voluntary deductions. The County shall allow a Union representative 30 minutes of a newly hired employee's paid working time for purposes of presenting information about the Union and bargaining representation. This shall generally occur within the first two (2) weeks of hiring the new employee, but in no instance later than ninety (90) calendar days. Newly hired employees have the option to attend or not attend Union orientation.

ARTICLE 24 - DRUG FREE WORKPLACE

The parties agree that the safety and security of the Benton-Franklin Counties Superior Court's employees, court participants and visitors, is of utmost importance. To further that goal, those entrusted with the safety and security of those working in, and utilizing, Benton-Franklin Counties Superior Courts, must be free of the influences of alcohol and/or drugs. To that end, the Employer has adopted a Drug Free Workplace policy and procedure, which includes mandatory "reasonable suspicion" drug testing.

ARTICLE 25 - MILITARY LEAVE

Employees who are members of the Military Reserve or National Guard shall be granted leave for a period not to exceed twenty-one (21) days during each year beginning October 1st and ending the following September 30th. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as they may be ordered to active duty or active training duty. During the period of military leave, the employee shall receive their normal pay. This provision shall be subject to applicable State and Federal laws.

ARTICLE 26 – JURY DUTY

An employee receiving a summons to report for jury duty shall notify the Superior Court Administrator or designee within three (3) working days of receiving the summons. An employee shall be granted paid leave for attendance at jury duty. Each employee who performs jury duty shall be paid their regular Employer salary for each day the employee performs jury duty. If the employee receives compensation from the court for jury duty, the employee shall sign over to the Employer the compensation received from the court, except for mileage for the use of the employee's personal vehicle. This provision of turning over compensation received from the court does not apply to employees called to jury duty on their scheduled days off.

ARTICLE 27 – ABSENCE WITHOUT DULY AUTHORIZED LEAVE

No leave of absence, whether with or without pay, shall be allowed unless authorized in advance. Absence not on duly authorized leave shall be treated as leave without pay and shall constitute grounds for disciplinary action inclusive of discharge. Unauthorized absences from duty for three (3) consecutively scheduled work days will constitute a voluntary quit. The leave request form shall be used in applying for any leave.

ARTICLE 28 – DISBURSEMENTS FROM SALARIES

Pay Day. The salaries and wages of employees shall be paid monthly, not later than the fifth (5^{th}) day of the month via direct deposit. Draw-pay provisions exist which permit partial payment at mid-month on request. Implementation of a different payroll date will be preceded by a thirty (30) day written notice to the Union and the employees.

The Employer shall have the right to implement a different payroll framework based on the implementation of a new payroll system when it becomes administratively possible for the Employer to do so. The Employer will provide thirty (30) days written notice to the Union and affected employees of the date when the new payroll system will begin.

ARTICLE 29 – NEGOTIATIONS

29.1 Either party to this Agreement may select for itself such negotiator or negotiators for purposes of carrying on conferences and negotiations under the provisions of law, as such party may determine. No consent from either party shall be required in order to name such negotiator or negotiators.

29.2 Attendance at Bargaining.
No more than one (1) employee shall be permitted to attend negotiating sessions with the Employer without loss of pay for the purpose of securing Collective Bargaining Agreement renewal. Notice shall be given to the Employer at least twenty-four (24) hours in advance of the anticipated absence and, if the employee is scheduled to be on-duty at the time of the negotiating session, the employee shall obtain prior approval from their immediate supervisor for the absence. The parties agree that the absence will not be approved if it will result in back-filling with another employee. The dates, times and places for these negotiating sessions shall be established by mutual consent between the parties.

ARTICLE 30 – UNION ACTIVITY

30.1 No Union meeting shall be held on the Employer's time unless the Employer has given express, prior approval.

30.2 E-mail use. Use of the Employer's E-mail System:

A. The parties recognize that the Employer's E-mail system is the sole property of the Employer and that use of that system is currently governed by the current Benton County Electronic Mail Policy and as revised. The Employer will not purchase additional equipment, software, etc., to accommodate the Union's use of the Employer's E-Mail system pursuant to Article 28.

B. Union Stewards and/or Representatives may use the Employer's E-mail system to conduct Union business for the limited purposes of:

i. Notifying Union members of meetings and scheduling meetings (date, time, place and agenda); and

ii. Filing official correspondence with the Employer (*i.e.,* grievance documents, demand to bargain notices), which in the E-mail "subject" line will clearly be identified as such.

C. E-mail from the Union to its members under this section may be read while on duty provided it does not interfere with the business of the court.

D. The parties recognize that misuse of the Employer's E-mail system is considered a violation of policy and the parties agree that any violation of this limited exception for the use of the Employer's E-mail system may result in discipline, up to and including termination.

30.3 From time-to-time, the Union will provide written notice to the Benton County Human Resources Manager or designee and the Superior Court Administrator or designee, an up-to-date written list of Union Stewards and/or the Bargaining Team.

30.4 Union Stewards and/or the Bargaining Team may use Employer telephones, voice mail, fax machines, computers, printers, copiers and mail boxes for creating and/or disseminating to Union Stewards and/or the Bargaining Team communications by the Employer to the Union or by the Union to the Employer.

30.5 Non-employee Union personnel/representatives shall not be permitted to enter the "secure badge only access" areas of the Benton-Franklin Counties Superior Courts. Specific arrangements may be made with the Superior Court Administrator or designee, for pre-approved access to inspect the grievance site at a time convenient to the Employer and the operations of the courts. The Employer will not unreasonably delay an investigation.

ARTICLE 31 – CONSIDERATION

The consideration for this binding Agreement is the covenants mutually bargained and agreed to by the parties as expressed herein.

ARTICLE 32 – POLITICAL ACTIVITY

Employees of the Benton-Franklin Counties Superior Court subject to this Agreement shall be governed by the Revised Code of Washington and Benton County policies and procedures.

ARTICLE 33 – UNIFORM AND EQUIPMENT

33.1 The Employer will provide the required equipment as determined by the Court Administrator or designee.

33.2 UNIFORM ALLOWANCE PROVISIONS: Uniforms will be of a style determined by the Court Administrator or designee. The Court Administrator or designee may set required standards for uniform style, make-up, components, condition, and appearance. Upon receipt of uniform purchase, the employee will be reimbursed up to Two Hundred Dollars ($200), every year following Benton County's reimbursement requirements.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

BENTON-FRANKLIN COUNTIES SUPERIOR COURT

_____
Presiding Superior Court Judge

Date: _____

_____
Tiffany Runge, Administrator

Date: _____

TEAMSTERS LOCAL NO. 839

_____
Russell Shjerven, Secretary-Treasurer

Date: _____

BOARD OF BENTON COUNTY COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Constituting the Board of
Benton County Commissioners

Attest:

_____
Clerk to the Board

Date: _____

Approved as to form:

_____
Stephen Hallstrom
Deputy Prosecuting Attorney

BOARD OF FRANKLIN COUNTY COMMISSIONERS

_____
Chair

_____
Member

_____
Member

Constituting the Board of
Franklin County Commissioners

Attest:

_____
Clerk to the Board

Date: _____

2022 SALARY SCHEDULE

2022 - 2024
Agreement by and between
Board of Benton and Franklin County Commissioners
and
Benton-Franklin
Superior Court Teamsters #839

COVERING BAILIFF TEAMSTERS

	STEPS in $…..								
GRADE	A	B	C	D	E	F	G	H	I
6	3223	3287	3402	3521	3644	3772	3904	4041	4182

cc: Superior Court, Payroll, Human Resources, Teamsters #839, BC/FC Administration

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Appraisers 2022 CBA
Presenter:	
Prepared By:	L. Wingfield
Reviewed By:	

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

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

Summary / Background Information

The Benton County negotiating team has successfully negotiated the 2022 Agreement Between Benton County and the Appraisers Union.

Fiscal Impact

No supplement required

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution and the 2022 Agreement between Benton County and Council 2, Local 2658B, representing Appraisers.

Suggested Motion

On consent agenda

cc: HR, Auditor, Hallstrom, Assessor

Prepared by: L. Wingfield

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE 2022 AGREEMENT BETWEEN BENTON COUNTY AND COUNCIL 2, LOCAL 2658B, WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, REPRESENTING APPRAISERS.

WHEREAS, negotiators for Benton County have negotiated and reached an agreement with Council 2, Local 2658B, representing Appraisers, for the 2022 Collective Bargaining Agreement; **THEREFORE**,

BE IT RESOLVED, the Benton County Commissioners approve the 2022 Collective Bargaining Agreement between Benton County and Council 2, Local 2658B, Washington State Council of County and City Employees, representing Appraisers as negotiated and are authorized to sign the same; and

BE IT FURTHER RESOLVED, that the amendment is effective January 1, 2022, except as otherwise provided, and shall remain in effect until December 31, 2022.

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

cc: HR, Auditor, Hallstrom, Assessor

Prepared by: L. Wingfield

2022 AGREEMENT

Between

BENTON COUNTY

And

COUNCIL 2, LOCAL 2658B

Washington State Council of County and City Employees,
AFSCME, AFL-CIO

Representing APPRAISERS

Original: Council 2, Local 2658B
Board of County Commissioners
Prosecuting Attorney's Office
Assessor
Payroll
Human Resources Department

TABLE OF CONTENTS

PREAMBLE 1
ARTICLE 1 – TIMETABLE 1
ARTICLE 2 – RECOGNITION 1
ARTICLE 3 – SUBORDINATE TO STATUTES 1
ARTICLE 4 – EMPLOYEE RIGHTS 2
ARTICLE 5 – MANAGEMENT RIGHTS 3
ARTICLE 6 – NO STRIKE AND NO LOCKOUT 4
ARTICLE 7 – HOURS OF WORK – OVERTIME 4
ARTICLE 8 – PAY PLAN PROCEDURES AND SALARY SCHEDULE 6
ARTICLE 9 – INSURANCE BENEFITS 8
ARTICLE 10 – HOLIDAYS 9
ARTICLE 11 – VACATION LEAVE 10
ARTICLE 12 – SICK LEAVE 11
ARTICLE 13 – LEAVE SHARING 13
ARTICLE 14 – LEAVE OF ABSENCE WITHOUT PAY 15
ARTICLE 15 – RETIREMENT 15
ARTICLE 16 – COMPENSABLE-ON-THE-JOB INJURIES 16
ARTICLE 17 – DISCIPLINE 16
ARTICLE 18 – GRIEVANCE PROCEDURE 17
ARTICLE 19 – LAYOFF AND RECALL 21
ARTICLE 20 – TERM OF AGREEMENT 22
ARTICLE 21 – ENTIRE AGREEMENT 23
ARTICLE 22 – SAVINGS CLAUSE 23
ARTICLE 23 – SENIORITY 23
ARTICLE 24 – DUES AND SECURITY 23
ARTICLE 25 – TYPES OF EMPLOYMENT 24
ARTICLE 26 – NON-DISCRIMINATION 25
ARTICLE 27 – NEPOTISM RESTRICTIONS 25
ARTICLE 28 – JURY DUTY - MILITARY LEAVE 26

ARTICLE 29 – PAYROLL PROVISIONS 26
ARTICLE 30 – EDUCATION ASSISTANCE 27
ARTICLE 31 – UNION/EMPLOYER RELATIONS 28
ARTICLE 32 – LABOR MANAGEMENT RELATIONS 28
ARTICLE 33 – VACANCIES/JOB POSTING 29
ARTICLE 34 – POSITION CLASSIFICATION DESCRIPTIONS 29

PREAMBLE

This Agreement (contract, Collective Bargaining Agreement or CBA), entered into by the County of Benton, hereinafter referred to as the Employer or the County, and Local 2658, affiliated with Council 2, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Union, has as its purpose the promotion of harmonious relations between the Employer and the Union, the establishment of an equitable and peaceful procedure for the resolution of differences, and the establishment of rates of pay, hours of work and other conditions of employment.

ARTICLE 1 – TIMETABLE

1.1 The parties agree that this Collective Bargaining Agreement will cover the period from January 1, 2022, until December 31, 2022.

1.2 The parties agree that a target schedule for negotiations between the parties with respect to a successor Collective Bargaining Agreement is as follows:

(a) Negotiations, if required, begin scheduling by September 1st, or as soon thereafter as the parties agree.
(b) Submission of the Union proposal, if required, to the Employer one (1) month prior to the first scheduled session.
(c) Submission of Employer's counter proposal, if required, to the Union one (1) week prior to the first scheduled session.
(d) The parties may agree in writing to extend or shorten this timetable.

ARTICLE 2 – RECOGNITION

The Employer recognizes the Union as the exclusive bargaining agent for certain Benton County Employees as previously certified by the Public Employment Relations Commission. The Employer and the Union agree that the bargaining unit shall be defined as follows:

INCLUDED: All full time appraisers in the Benton County Assessor's Office.

EXCLUDED: Elected Officials, Administrative Assistant in the office, Chief Deputy Assessor, Residential Appraiser Supervisor, Commercial Appraiser Supervisor, and Agricultural Appraiser Supervisor, and all other employees of Benton County.

ARTICLE 3 – SUBORDINATE TO STATUTES

This Agreement shall in all respects, whenever the same may be applicable herein, be subject and subordinate to the ordinances or resolutions of the Employer and shall further be subject and subordinate to the statutes/codes of the State of Washington and the United States.

It is understood and agreed by the parties that there shall be no ordinance or resolution adopted which will modify or amend specific provisions of this contract.

ARTICLE 4 – EMPLOYEE RIGHTS

4.1 The official files are kept and maintained by the Human Resources Manager. An employee shall have the right upon request to inspect their personnel file in the presence of the County Assessor or designee at a reasonable time during the work day and said request will be granted not later than one (1) day after the request. No material referring to the employee's competence shall be placed in the file without the employee's signature and the opportunity to attach their comments. A copy of any entry to the employee's file will be given to the employee.

4.2 An employee will have the right, subject to grievance time limitations, to challenge any material included in their personnel file through the grievance procedure as provided for in this Agreement.

4.3 The non-criminal off-duty activities of an employee shall not be cause for disciplinary action unless said activity is detrimental to the employee's work performance. Also, if the employee is acting as a fee appraiser and has been determined to violate in part or in whole, the restriction of not performing fee appraisal work in Benton County, will also be subject to discipline.

4.4 Bulletin Boards: The Employer agrees to furnish reasonable bulletin board space to be used by the Union. The Union agrees to maintain said bulletin board in a presentable condition. If the bulletin board fails to be maintained appropriately and becomes an eyesore, the Employer shall have the right to discontinue its availability.

4.5 Employees may report what they believe to be an unsafe or unhealthy working condition to Management for investigation without fear of retaliation.

4.6 An employee has the right to hold Union office, seek Union assistance, file a grievance or use other benefits of this Agreement according to the terms set forth herein without reprisal, prejudice or discrimination.

4.7 Work Rules: Work rules and policies shall be uniformly applied. When existing work rules or policy procedures are changed or new rules or procedures established, an employee whose work assignment is affected will be notified by circulating memorandum, and the new rule or procedure will be posted prominently on appropriate bulletin boards prior to the effective date. Employees shall comply with all existing reasonable rules that are not in conflict with the express terms of this Agreement, provided the rules are uniformly applied and uniformly enforced. Any unresolved complaint as to the reasonableness of any new or existing rule, or any complaint involving discrimination in the application of new or existing rules shall be resolved through the grievance procedure.

4.8 Any employee who feels aggrieved by an unfair or discriminatory application of Management rights may seek resolution through the grievance procedure.

ARTICLE 5 – MANAGEMENT RIGHTS

5.1 The Union recognizes and agrees the Employer has core management rights which the Employer has the unilateral right to decide and implement without negotiations about the decision(s) and the implementation thereof. The Employer will notify the Union of any such decision(s) if the decision(s) involve a change in working conditions. Following notification, the Union shall have thirty (30) days to notify the Employer in writing if the Union chooses to negotiate the impact of the decision(s). The Employer has the right to operate and manage its affairs in all respects in accordance with its responsibilities, lawful powers and legal authority except as limited by the terms of this Agreement. All matters not expressly or clearly covered by the language of this Agreement or other addenda to this Agreement and/or Memorandums of Agreement, shall be administered for the duration of this Agreement by the Employer as the Employer may determine. The Union agrees the Employer's core management rights include, but are not limited to, the following matters:

(a) The right to establish lawful work rules and procedures.

(b) The right to schedule any and all work and overtime work, and the methods and processes by which said work is to be performed in a manner most advantageous to the Employer and consistent with the requirements of the public interest.

(c) The right to hire, transfer, lay off and promote employees as deemed necessary by the Employer in accordance with the terms of this Agreement.

(d) The right to discipline, suspend or discharge an employee for just cause as indicated in Article 17.

(e) The right to make any and all determinations as to the size and composition of the work force and the right to make any and all assignments of employees to work locations and shifts.

(f) The parties understand that incidental related duties connected with operations, not enumerated in job descriptions, shall nevertheless be performed by the employee when requested by the Employer.

(g) The right to implement new and/or different work procedures to provide efficient and productive services to the public. Prior notice will be provided to affected employees.

(h) The right to take any and all types of actions as may be determined by management to be necessary in the event of emergencies. The Employer will determine whether

or not an emergency exists. An emergency is a sudden or unexpected happening or situation that calls for action without delay.

(i) The unilateral right to determine the budget at all times.

(j) The right to close or liquidate an office, branch, operation, facility or combination of facilities, or to relocate, reorganize or combine the work of divisions, offices, branches, operations, or facilities.

(k) Past Practice: The Employer has the right to change past practices as the Employer deems necessary. If the Employer wishes to change such practices, the Employer shall provide notice to the Union. The Union will be provided an opportunity to discuss and make recommendations during a thirty (30) day time frame, prior to the Employer implementing a change.

5.2 Nothing in this Agreement shall be interpreted to detract or circumscribe the trust placed in the officials, in this case, the Board of Benton County Commissioners and the Elected Official and the rights and obligations owed thereby to the electorate.

ARTICLE 6 – NO STRIKE AND NO LOCKOUT

6.1 The Employer and the Union agree that the public interest requires the efficient and uninterrupted performance of all Employer services, and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. Neither the Union nor the employees shall cause, condone or participate in any strike or work stoppage, slow-down or other interference with Employer functions by employees under this Agreement, and should same occur, the Union agrees to take appropriate steps to end such interference. Employer employees who engage in any of the above-referenced activities shall not be entitled to any pay and/or benefits during the period in which the employee is engaged in such activity. Employees covered by this Agreement who engage in any of the foregoing actions shall be subject to disciplinary action as may be determined by the Employer. The determination as to whether disciplinary action will be taken is left to the sole discretion of the Employer.

6.2 The Employer agrees there will be no lockouts during the term of this Agreement.

ARTICLE 7 – HOURS OF WORK – OVERTIME

7.1 The normal work day is from 8:00 a.m. to 5:00 p.m. with a one (1) hour lunch except in the event of an emergency.

7.2 The seven (7) day work period begins on Monday. The normal work week is comprised of five (5) consecutive work days, Monday through Friday, except in the event of an emergency. The Assessor may offer flex-time schedules.

7.3 The normal work month will comprise whatever total number of normal work days result from a regular scheduling of five (5) consecutive days per week, except in the event of an emergency. The Assessor may offer flex-time schedules.

7.4 In the event of an emergency as determined by the Employer, the Employer may change work hours, work days, work weeks and/or the work month if necessary to meet the public's service demands.

7.5 The Employer reserves the right to change the work day and work week to either four (4) ten (10) hour days or five (5) eight (8) hour days if the Employer determines it necessary or expedient to do so. Employer will notify the Union in writing no less than ten (10) business days before implementing the change. If the Employer elects to implement ten (10) hour shifts, this Agreement remains based on an eight (8) hour day, including sick leave accrual, holiday pay, bereavement leave, and disciplinary suspensions.

7.6 Overtime: An employee will be entitled to overtime if the employee has actually worked more than forty (40) hours. Hours of actual work in excess of forty (40) hours per week will be compensated at the rate of time and one half. The employee may request to receive compensatory time off at the overtime rate. Compensatory time shall be taken at times mutually agreeable to the Employer and the employee. If Management determines the requested compensatory time off would interfere with work requirements or providing public services, the overtime will be paid. No employee shall accumulate more than forty (40) hours of compensatory time at any time during the year. Compensatory time will not be carried over from one calendar year to the next. If there is compensatory time left over at the end of a calendar year, it will be paid to the employee.

Any remaining compensatory time balances will be paid upon transfer to a new office/department, position, or at termination of employment, at the employee's then regular rate of pay.

7.7 Time Not Worked: Vacations, sick leave, holidays, jury duty, military leave, medical leave, maternity leaves, travel time and/or leaves of absence shall not constitute time worked.

7.8 Mileage: The Employer provides transportation to employees for the conduct of only official Employer business. Appraisers assigned to work in the field away from the office will be furnished an Employer car or shall be reimbursed for the use of their personal automobiles at the rate determined by Resolution of the Board of County Commissioners for all work related vehicle usage. Transportation is not provided to the employee to commute to/from the employee's home and their assigned work station.

ARTICLE 8 – PAY PLAN PROCEDURES AND SALARY SCHEDULE

8.1 A new employee is defined as a first time employee of Benton County or a prior county employee with one (1) or more year's separation from service with the Employer.

8.2 2022: Effective January 1, the 2022 Salary Schedule will be increased by three percent (3%). The Salary Schedule is attached as Appendix A. This calculation and process shall be determined and established by the Benton County Commissioner's Office.

8.3 The pay plan shall be administered in accordance with the following provisions:

(a) The pay plan consists of nine (9) steps to be referenced as Steps "A", "B", "C", "D", "E", "F", "G", "H", and "I". New pay steps will be implemented on the first day of the month following either successful completion of the probationary period, or successful completion of the performance review period. Eligibility for each step increase will be subject to a written performance appraisal documenting successful performance during the probationary period, or during a normal step period.

(b) Entrance Pay Rate - Persons hired to fill vacant positions may be hired at pay step A or B of the pay grade for the classification in which they are hired. Persons hired may be paid at a pay step higher than Step B, based on related experience, education and qualifications relating to the position subject to prior written approval by the Board of County Commissioners.

(i) If an employee begins at Step A the employee shall remain in that step for a minimum of six (6) consecutive months, or longer depending on whether the Employer determines that probation should be extended before becoming eligible to move to the next step, with said movement being subject to successful completion of the probationary period as documented by a performance appraisal. Regular part time employees must remain in Step A for a minimum of one thousand, forty (1,040) hours or more before they may move to the next step; subject to successfully completing their probationary period.

(ii) If an employee begins at Step B or above, the employee shall remain in that step for a minimum of twelve (12) consecutive months before becoming eligible to move to the next step, subject to successfully completing their six (6) month probationary period documented in a performance appraisal, and six (6) additional months of successful service similarly documented. Regular part time employees must remain in Step B for a minimum of two thousand, eighty (2,080) hours or more before becoming eligible to move to the next step; and subject to successfully completing their probationary period of one thousand, forty (1,040) hours and one thousand, forty (1,040) hours of additional service.

(c) Subsequent Pay Steps - To be eligible for subsequent steps from Step B (except if Step B is the probationary Step) to Step I, an employee shall serve a minimum of twelve (12) consecutive months within a step before becoming eligible to move to the next step; and eligibility for movement shall be subject to successful job performance documented in a performance appraisal. If an employee begins at Step B or higher, the employee shall serve a six (6) month probationary period. Once reaching Step I, an employee will be subject to annual written performance appraisals that establish satisfactory service in order to continue in Step I. If an employee fails to maintain a satisfactory performance level the employee will be returned to Step H for the next consecutive twelve (12) month period.

(d) These provisions only apply to the horizontal progression throughout the pay plan (*i.e.*, movement from Steps A to Step B to Step C etc., of a single grade) and does not imply or impact vertical progression through the pay plan, for example from Grade 1 to 2 to 3, etc. There is no vertical progression through the pay plan.

(e) An employee denied a step increase due to unsatisfactory performance will be given a written performance appraisal explaining the reasons the step increase was denied. The employee will not be eligible for further consideration for a step increase for a period of at least twelve (12) consecutive months from the date of denial. Denials are subject to the grievance procedure up to Step 3.

(f) Promotion. Promotions are subject to the determination of the Assessor. A promotion is defined as an incumbent employee being hired into a classification two (2) or more grades higher than the employee's current classification. When promoted, the employee will be placed at the step that gives the employee no less than a five percent (5%) salary increase (best fit to five percent (5%)) or will be placed at the "A" step of the new classification, whichever is greater. The employee is given a new anniversary date commensurate with the date of the promotion. If an employee is hired into a classification one (1) grade higher than the employee's current position, the employee is placed in the same step of the new position's grade, and the employee is given a new anniversary date commensurate with the date of the new assignment. An employee placed at an A step is eligible for a step increase in six (6) months if the current anniversary date falls after that six (6) month period.

(g) Trainee Appraisers - An employee will be a Grade 8 trainee until becoming an accredited appraiser, at which time the employee will be placed at the appropriate grade for the position for which they were hired. If the trainee does not attain accreditation within one (1) year from their date of employment, then the employee shall be terminated without recourse. However, due to possible scheduling problems, the County Assessor has the sole authority to extend employment on a case-by-case basis. Promotion is subject to the Assessor's determination as to whether there is a *bona fide* need for an employee in any of those classifications exists and the existence of a vacancy.

8.4 Lateral Transfer - moving from one position to another within the same pay grade (*i.e.*, Grade 4 to Grade 4). Any employee laterally transferred will maintain the same pay step within the grade (*i.e.*, if Step C, employee stays at Step C).

8.5 Demotion. The movement of a bargaining unit employee from one grade to a lower grade (*e.g.*, Grade 5 to Grade 4). Demotion may be voluntary or involuntary. Employees so demoted shall move to the step in the lower pay grade that results in the smallest decrease in pay, except when demotion is associated with disciplinary action. If the resulting pay decrease is less than two percent (2%) per month, then the current anniversary date will remain unchanged; otherwise, the employee will be given a new anniversary date.

ARTICLE 9 – INSURANCE BENEFITS

9.1 The Employer gives employees the opportunity to participate in health, dental and vision insurance, and group life insurance plans that have been approved and accepted by the Board of Benton County Commissioners. Each employee must elect to receive any one of the coverages, and the Employer will contribute to the employee's premium costs for the coverage up to the amount reflected below. Employees may change their plan options annually during the Employer's open enrollment period. All employees are required to participate in the Employer's designated life insurance plan. The Appraisers' Union has elected to have Twenty-Four Thousand Dollars ($24,000) face value life insurance coverage.

The Employer contribution indicated below will be applied first towards employee life, vision, dental, and medical insurance. Any remaining balance will be applied toward any dependent coverage or to the employee's VEBA account. Any additional amounts above the Employer's contribution necessary to pay medical, dental, vision, and life insurance premiums shall be the sole responsibility of the employee and will be accomplished by payroll deduction.

9.2 The Employer will provide United Employees Benefit Trust (UEBT) Plan A6 (Composite) and Kaiser Options as the medical and hospital plans for medical insurance coverage available to all employees.

2022: Effective with the first payroll cycle following the date of the last signature affixed to the CBA, the Employer agrees to pay up to a maximum of One Thousand, One Hundred, Nineteen and 60/100 Dollars ($1,119.60) per month, as follows:

1. Employer agrees to divert Twenty-Five and 00/100 ($25.00) per month of its total monthly health and welfare contribution into the employees' VEBA account. This VEBA contribution is in exchange for a reduction in the Employer's monthling insurance contribution by Twenty-Five and 00/100 Dollars ($25.00) per month.
2. Employer agrees to pay the remaining contribution after the diverted amount first towards basic life insurance, dental, vision, and then medical coverage.

9.3 For UEBT coverage, the employee is eligible if the employee is a regular full-time employee and had forty (40) or more compensable hours (worked, vacation, sick leave, holiday pay) in the previous calendar month. If the employee is a regular full-time employee and elects Kaiser (Washington Counties Insurance Fund or "WCIF") and is hired on the 1st of the month, coverage begins on the 1st of that month; if hired on the 2nd through the 31st, coverage begins the 1st of the following month. If the first day of the month falls on a weekend or holiday and the employee reports to work on the first business day following, coverage is retroactive to the first day of that month.

The eligibility of an employee for insurance benefits terminates at the end of any month that the employee fails to meet the above eligibility and enrollment requirements. If the employee has benefits with UEBT and worked at least forty (40) or more compensable hours during the last calendar month of employment, coverage extends through the end of the month following termination. If the employee has WCIF benefits, coverage ends the last day of the month in which employment terminated.

9.4 If the insurance company or companies providing the benefits described above notifies the Employer of changes in benefit levels, Employer will notify the Union and employees of the changes prior to their implementation.

9.5 The Union and/or the employees will indemnify and hold the Employer harmless from any and all claims made and against any and all suits instituted, against an insurance carrier regarding a disagreement with said carrier relating to a claim and/or coverage. Any and all disputes or disagreements and/or claims regarding insurance claims and/or coverage are not grievable by the Union and/or the employee.

ARTICLE 10 – HOLIDAYS

10.1 The following are paid holidays:

New Year's Day	January 1st
Martin Luther King Jr.'s Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19th
Independence Day	July 4th
Labor Day	1st Monday in September
Veteran's Day	November 11th
Thanksgiving Day	4th Thursday in November
Friday after Thanksgiving	
Christmas Eve Day	December 24th
Christmas Day	December 25th

Employees will be paid eight (8) hours for each Holiday listed, and may only be taken in full An employee will not receive holiday pay if the employee is absent on their last

scheduled work day prior to or the first scheduled work day following the holiday if the absence is without pay due to insufficient accrued paid leave or if the employee is on a leave of absence without pay.

10.2 In addition, each employee shall be entitled to one (1) eight (8) hour floating holiday per year after six (6) months of employment. In order for an employee to use the floating holiday, the employee must give the Employer sufficient notice so that the Employer can properly plan for continuity of service. The floating holiday may be taken only in full.

10.3 If a holiday falls on a Saturday, it will be observed on the preceding Friday. If a holiday falls on a Sunday, it will be observed on the following Monday.

10.4 All work performed on a holiday (or, when the holiday falls on a Saturday or Sunday, on the observed day) shall be compensated at the rate of one and one-half (1.5) times the employee's hourly rate, in addition to eight (8) hours of holiday pay. There is not pyramiding of overtime and time and one-half (1.5x) holiday pay.

10.5 Whenever a holiday falls within a vacation period, or during a period when an employee is on sick leave or vacation will not be charged for such holiday.

10.6 In the event the Employer implements a four (4) day work week of ten (10) hour work days, a week during which a holiday falls will revert to a five (5) day work week of eight (8) hour days or as a unit, the Employee's can elect to stay on the four (4) day work week and supplement vacation leave for that days holiday. If the employee does not have sufficient vacation leave available, or is a probationary employee, the employee will be required to supplement with leave without pay.

ARTICLE 11 – VACATION LEAVE

11.1 Vacation leave with pay (vacation) is earned at the following monthly rates depending on the employee's length of service with Benton County:

Years of Service	Working Hours Leave Per Month or Major Portion Thereof
1 through 5	10.0
6 through 10	12.0
11 through 15	15.0
16 through 19	16.5
20 and over	18

11.2 Vacation Leave credit will be accumulated during the first six (6) months of regular full-time employment with the County; however, it may not be used in the first six (6) months. During the seventh month, or any subsequent month, vacation leave may be allowed up to the limit of the amount earned. Vacation leave credited for any month of service beyond the first six (6) months of service may be allowed during the month earned or any

subsequent month. To use vacation, an employee must request and the Employer approve the vacation in advance.

NOTE: Monthly accrual shall credit after completing a major portion of a month of continuous service, including employees on paid leave status.

11.3 Vacation leave may be accumulated during the first one thousand, forty (1,040) hours of regular part-time service with the Employer; however it may not be used in the first six (6) months. After one thousand, forty (1,040) hours, vacation may be allowed up to the limits of the amount earned. Vacation leave credited in any month of service after the first one thousand, forty (1,040) hours worked, may be taken during the month earned or any subsequent month. To use vacation, an employee must request and the Employer approve the vacation in advance.

11.4 An employee is eligible to cash out twenty (20) or forty (40) hours of vacation leave (at the employee's option) if the employee has used a minimum of eighty (80) hours of vacation leave since December 1st of the previous calendar year, through November of the current calendar year. Employees with twenty (20) or more years of service with the Employer may cash out twenty (20), forty (40), or eighty (80) hours. This cash out will be paid in December, with the November payroll. Vacation donated under leave sharing will be included in the eighty (80) hours used to qualify for a cash out.

11.5 Total accumulated vacation leave will not exceed two hundred, forty (240) hours at any time. However, an employee hired after January 1, 2002, will not be entitled to accrue more than two hundred (200) hours of vacation leave.

11.6 Only regular full-time employees who have completed six (6) months of service or regular part-time employees who have completed one thousand, forty (1,040) hours of service will upon separation from Benton County for any reason be allowed to cash in up to a maximum accumulation of two hundred forty (240) hours of vacation leave, or two hundred (200) hours, depending upon the date of hire, at the rate of basic monthly salary divided by one hundred, seventy-three and one-third (173.33) hours.

11.7 Management shall schedule employee vacation time in a manner that will least interfere with the functions of the office.

ARTICLE 12 – SICK LEAVE

12.1 Eligibility for sick leave use shall commence at the completion of a major portion of a month of continuous service, including employees on paid leave status.

Paid sick leave is provided to employees as a prevention against loss of income from absence from work for medical reasons, including extended absence due to illness or injury. Employees are encouraged to accumulate sick leave pursuant to the application of RCW 49.46 and authority interpreting same.

12.2 Employees shall earn paid sick leave credit at the rate of eight (8) hours per month of continuous service (ninety-six (96) hours per year) with a maximum accumulation of one thousand, forty (1,040) hours.

12.3 Paid sick leave may be taken for the following reasons:

(a) Pursuant to the application of RCW 49.46 and authority interpreting same. Because of and during illness or injury incapacitating the employee to perform their duties, or

(b) Bereavement Leave: Death in the immediate family (defined below) - (five (5) days maximum per death), regardless of whether the deceased resided in the employee's household (for purposes of this section only, immediate family includes a child of any age), or

(c) Death of a friend or relative not meeting the definition of immediate family in Section 12.4 below, one (1) day maximum per death.

12.4 "Immediate family" is defined pursuant to the application of RCW 49.46 and authority interpreting same.

12.5 Sickness shall be reported to the office at the beginning of any period of sick leave prior to the beginning work hour. Upon return to work, if requested by the Assessor, or designee, the employee shall submit a sick leave request for the leave so taken. Any employee who is off work due to illness in excess of five (5) work days, or less if sick leave abuse is an issue as determined by the Employer, may be required to provide a qualified health care provider's verification of the illness as well as the qualified health care provider's approval to return to work.

12.6 Employees on sick leave in excess of five (5) work days are required to call their supervisor or designee weekly (every Monday between the hours of 8:00 a.m. and 10:00 a.m.) and furnish progress reports of their health or illness condition.

Before being eligible to return to work, the employee will be required to provide satisfactory evidence, and if determined necessary by the Employer, will be required to provide a qualified health care provider's statement explaining that the employee is capable of performing all job duties contained in the job description and that the employee is capable of performing those duties at normal levels of efficiency.

12.7 Family and Medical Leave: The Employer provides Family and Medical Leave to employees to the extent provided by and in accordance with the Family and Medical Leave Act (FMLA), other applicable state and federal laws and regulations, and the Benton County Family and Medical Leave Policy (Benton County Resolution No. 09-503, or subsequent replacement resolutions and policies).

12.8 The Employer allows employees to participate in an HRA VEBA Medical Reimbursement Plan for Public Employees in the Northwest ("VEBA") subject to the provisions of this Agreement.

(a) Employees hired before August 1, 1992, will be paid for fifty percent (50%) of unused sick leave on voluntary termination or retirement from Benton County. For retirement, Employer makes this payment into the employee's VEBA account.

(b) Employees hired on or after November 2, 1992, who voluntarily terminate their employment with Benton County or regularly retire from employment with Benton County under the Employer's retirement program, or upon death their estate, shall receive payment, into the employee's VEBA account, for twenty-five percent (25%) of their unused sick leave. For voluntary termination or death, such payment shall be limited to employees with ten (10) or more years service. Payment at voluntary termination, retirement, or death shall not exceed Three Thousand Dollars ($3,000.00).

(c) An employee terminated for cause will not receive payment for unused sick leave. For employees with PERS I, the Employer will exclude from the VEBA the sum of unused sick leave accruals used by the Department of Retirement Systems in calculating the employee's average final compensation.

ARTICLE 13 – LEAVE SHARING

13.1 The purpose of the program is to allow an employee to transfer any portion of his or her vacation leave to another employee in need of such leave due to family or medical emergency, a lengthy illness, or injuries, or a qualifying event/condition under the Family and Medical Leave Act. The transfer of vacation leave shall be implemented as provided in this article, provided current Employer policies control in the event of a conflict with Employer policy(ies) on Voluntary Transfer of Vacation Leave.

13.2 Policy: Leave sharing shall be implemented as follows:

(a) The recipient employee shall exhaust all accrued paid leave or be able to demonstrate that all accrued paid leave will soon be exhausted before being eligible to receive any transferred vacation leave.

(b) The transferring party must either:

(1) Have taken at least forty (40) hours of vacation leave in the previous twelve (12) months, or

(2) Have no less than forty (40) hours of accrued paid leave after the transfer is completed.

(c) All requests for transfer of vacation leave shall be submitted on a Voluntary Transfer of Vacation Leave Request form to the Elected Official(s) or Department Manager(s) for each party. Each request shall include:

(1) The amount of leave to be transferred;

(2) The names, signatures, and departments/offices of the employees donating and receiving the transfer; and

(3) A statement that the receiving party has exhausted, or the date by which the employee will exhaust, all accrued paid leave.

(d) Approval of the transfer is at the discretion of the applicable Elected Official(s) or Department Manager(s). If the transfer is approved, the applicable Elected Official(s) or Department Manager(s) shall sign the request and submit it to the Benton County Auditor's Office for processing, with a copy to the Benton County Human Resources Department.

(e) Each Elected Official or Department Manager shall be responsible for monitoring the use of the transferred leave and for keeping the appropriate records. This includes keeping a copy of the Voluntary Transfer of Vacation Leave Request form on file, monitoring and approving the amount of leave transferred and used, monitoring when transferred leave is exhausted, and monitoring when the receiving party's need for leave ceases. To the extent possible, the Elected Official or Department Manager will deduct the time used evenly among the donors (*e.g.*, if eight (8) people donate ten (10) hours of leave apiece and the recipient takes one (1) day off, one (1) hour will be deducted from each donor).

(f) An employee may accumulate no more than two hundred (200) hours of transferred leave at one time. An employee may remain eligible to receive transferred leave if necessary once the accumulated balance of transferred leave is less than two hundred (200) hours. In the event the transferred leave is no longer needed, or upon cessation of employment with the County by the receiving employee, any and all remaining transferred leave shall be returned, in equal portions if possible, to the employee(s) who donated the leave. The return of unused leave share will be in one quarter (1/4) hour increments only, with uneven amounts "rounded up or down" to the most appropriate hour. Determinations regarding the distribution of unused returned leave shall be at the discretion of the applicable Department Manager or Elected Official.

(g) Leave sharing shall not apply to probationary employees.

(h) Donation and return of vacation leave is based solely on the number of hours, not on the donating and/or receiving employee's wages. The names of employees donating leave will be kept confidential and not be disclosed.

ARTICLE 14 – LEAVE OF ABSENCE WITHOUT PAY

14.1 An employee may be granted leave of absence without pay not to exceed three (3) months. An employee must request such leave of the Elected Official or designee. Said Elected Official or designee may approve or disapprove said leave. Such leave requests shall be made thirty (30) days prior to the anticipated start of leave except in the event of sickness. Prior to approval of such leave, the employee and Elected Official or designee shall reach a mutually acceptable agreement with regard to the date of return and work position to which the employee will return.

14.2 In order to be approved for a leave of absence without pay, an employee must first exhaust all banked vacation time. Employees may not use leave without pay for vacation or other short-term absences resulting from not having sufficient leave banked. If the reason for a leave of absence without pay is a qualified sick leave usage, an employee must also exhaust their sick leave prior to being on a leave of absence without pay unless the law provides otherwise. A disciplinary suspension without pay may be granted prior to the utilization of an employee's leave bank(s).

14.3 While on a leave of absence without pay that is not FMLA leave, the Employer's insurance contribution ceases, and the employee is eligible for COBRA benefits. If the employee is on unpaid leave for a major portion of a month, vacation and sick leave do not accrue, and the employee's anniversary date will be adjusted accordingly. An anniversary date will not be adjusted if the leave of absence without pay is covered by FMLA or PFML.

14.4 If the Employer determines that there is a need for such information, the employee shall present satisfactory evidence of capability of resuming job duties at proper levels of efficiency before returning to work.

14.5 If the Employer determines that there is a need for such information, the employee shall present satisfactory evidence of capability of resuming job duties at proper levels of efficiency before returning to work.

14.6 No leave of absence, whether with or without pay, shall be allowed unless authorized in advance. Absence not on duly authorized leave shall be treated as leave without pay and may be cause for disciplinary action. Unauthorized absences from duty for two (2) consecutive days shall constitute separation or termination from employment.

ARTICLE 15 – RETIREMENT

15.1 All employees will be covered by the Public Employees Retirement System in accordance with State statute.

15.2 The Employer shall maintain Social Security for the employees covered by this Agreement.

ARTICLE 16 – COMPENSABLE-ON-THE-JOB INJURIES

An employee who suffers a compensable on-the-job injury resulting in the employees absence from work will be permitted to apply accumulated sick leave to the first three (3) workdays of the absence, less any state compensation that may be applicable. If the employee qualifies for time loss payments, their accumulated leave will apply toward the base wage difference between the time loss payment and their normal base wage. The total of the two payments will not exceed the employee's normal wage for a normal workday. During the employee's absence, the employee will be listed as being "on leave of absence - compensable injury." If the employee is receiving workers compensation pay for the majority of the month, the employee will not accrue vacation or sick leave, and the employee's anniversary date will be adjusted accordingly. While the employee is supplementing their time loss payments with accumulated leave or while covered under the Family Medical Leave Act (FMLA), the Employer will continue to pay the Employer's contribution towards the employee's insurance premiums. Time loss payments are not considered compensation like sick leave and/or vacation leave. If, however, the employee runs out of compensated leave and FMLA leave, the employee will be eligible for COBRA benefits and the Employer's insurance contribution will cease. While on workers compensation, the employee's time loss pay will be administered by the Human Resources Department; however, the employee must keep their supervisor informed of their status and prognosis for return to work on a weekly basis.

ARTICLE 17 – DISCIPLINE

17.1 The Employer may verbally warn, reprimand, suspend without pay, demote or discharge an employee for just cause inclusive of but not limited to neglect of duty, inefficiency, insubordination, incompetence, insolence, tardiness, absenteeism, conviction of a crime which may affect work performance, malfeasance or misfeasance of job requirements, misconduct, violation of Employer and/or office/departmental rules and/or regulations, violation of no strike clause, conflict of interest (off-duty activities v. job duties), abuse of sick leave and such other causes which normally serve as a basis for discipline in labor and personnel relations.

17.2 In order of increasing severity, the disciplinary actions which the Employer may take against an employee are as follows:

(a) Verbal warning

(b) Written reprimand

(c) Suspension without pay

(d) Demotion

(e) Discharge or Termination

17.3 The Employer may take any of the stated disciplinary actions. The Employer is not restricted to taking disciplinary action by way of progression from Step (a) through Step (e) referenced in Section 17.2 hereinabove, but rather the Employer may choose any one (1) and/or combination of said disciplinary actions depending on the nature and severity of the incident giving rise to the disciplinary action.

17.4 The Employer may immediately warn, reprimand, suspend without pay, demote and/or discharge or terminate an employee for cause as referenced in this Article. The specific charges shall be given to the employee in writing during a meeting with their management. The Union shall also be notified of these charges.

17.5 Probationary employees may be warned, reprimanded, suspended without pay, demoted and/or discharged or terminated by the Employer without cause and without recourse at any time during the probationary period. The Employer may suspend an employee with pay or place an employee on paid administrative leave pending an investigation into allegations of misconduct. Such a suspension is not a disciplinary action and may not be grieved. If Employer determines the charges are valid, appropriate disciplinary action may be taken. If the Employer determines the charges are not valid, the employee will be restored to duty. If no disciplinary action results, documentation regarding the suspension with pay will only be kept in the personnel file for payroll and bookkeeping purposes. Suspension with pay in any week that the employee performed any work for the Employer will not count as time worked for overtime purposes.

(a) In the event the Employer preliminarily believes that an employee may be suspended without pay or discharged/terminated, the Employer will notify the employee and the Union representative of the charges and/or alleged misconduct(s) and potential discipline in writing. At the conclusion of the Employer's investigation, the Employer will hold a pre-disciplinary meeting to provide the employee and the Union representative an opportunity to respond to the allegations. The employee's attendance at the pre-disciplinary meeting is mandatory, unless the employee's absence from the meeting is approved by the Employer. The Employer will consider the employees comments at the pre-disciplinary meeting in determining whether to proceed with disciplinary action.

(b) The Employer will make a reasonable effort to ensure that the investigation and notice of a pre-disciplinary meeting occur within a reasonable amount of time. However, this process is dependent upon the complexity of the misconduct and the availability of witnesses and/or evidence. No pre-disciplinary meeting with the employee and Union is necessary for an oral and/or written reprimand.

ARTICLE 18 – GRIEVANCE PROCEDURE

18.1 The parties recognize the need for fairness and justice in the adjudication of employee and/or Employer grievances and enter into this Agreement in a cooperative spirit to adjust such actions promptly and fairly at the lowest level possible. If, however, a grievance

cannot be solved through normal means, the grievance will be settled as hereinafter provided.

18.2 A grievance is defined as a question or challenge raised by an employee or group of employees or the Union or the Employer as to the correct interpretation and/or application of the terms and conditions of this Agreement. All grievances shall outline the facts and alleged violation(s) of the contract Articles, when filed.

18.3 Through the procedures set forth in this Article, a grievance may be presented by an employee or the Employer accompanied by a representative, if desired.

18.4 Grievances shall be heard at reasonable times.

18.5 The parties agree that the stated time limits are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations, unless an extension of time is agreed to in writing.

18.6 No grievance shall be valid unless it is submitted at Step 1 within twenty (20) working days after the occurrence of the event giving rise to the grievance or knowledge of its occurrence. If a grievance is not presented as specified, said grievance shall be considered forever waived. If, subsequent to filing the grievance, either party fails to meet these time limits or agreed time limit extension, the final resolution of the grievance shall be as stated by the last responding party.

18.7 The grievance procedure shall be as follows:

Step 1:

A grievance shall be presented in writing by the aggrieved employee to the Chief Deputy Assessor or designee within twenty (20) working days following the occurrence of the event giving rise to the grievance or knowledge of its occurrence. The Chief Deputy Assessor or designee shall respond to the grievance within twenty (20) working days.

If the grievance is not settled at the first step, the Chief Deputy Assessor or the aggrieved employee may submit the matter to Step 2.

Step 2:

If the grievance has not been resolved at Step 1, the aggrieved employee and/or their representative and/or the Chief Deputy Assessor or designee may refer the dispute to Step 2, within twenty (20) working days of the response in Step 1. The grievance, in written form, shall be presented to the Elected Official or designee. Thereafter, the Elected Official or designee shall respond in writing to the aggrieved employee and/or their representative, within twenty (20) working days after receipt of the grievance. If the Employer files a grievance against an employee, or the Union, it shall be presented to the Local Union President or Area Representative, within twenty (20) working days per Section above. The

Local Union President or Area Representative shall respond in writing to the Elected Official or designee, within twenty (20) working days after receipt of the grievance.

Step 3:

(a) Final and Binding Arbitration

If the grievance has not been resolved at Step 1 or Step 2, the aggrieved employee, the Union or the Assessor or designee may refer the dispute to final and binding arbitration.

(b) Notice - Time Limitations

The submitting party shall notify the other party in writing within twenty (20) working days after the receipt of the Step 1 or Step 2 response.

(c) Arbitrator – Selection

After timely notice, the arbitrator will be selected as follows:

i. The parties will attempt to select an arbitrator within twenty (20) working days after receipt of the written notice of submission to arbitration. Thereafter, a hearing of the matter shall be conducted at the earliest possible date. If the parties cannot agree on an arbitrator, the following procedure will be applicable.

ii. In the event either party does not agree on an arbitrator, the party advancing the grievance to arbitration shall request a panel of eleven (11) arbitrators from the Federal Mediation and Conciliation Service, "copying" the other party with the written request. The list shall be limited to arbitrators who are members of the National Academy of Arbitrators from the nearest sub-region. If the parties cannot mutually agree on an arbitrator from the panel, then the two (2) parties will meet or confer by telephone, and the non-grieving party shall elect or defer to the grieving party, to exercise the first strike of one (1) name from the panel and communicate that party's choice to the other party. The non-striking party will then strike one (1) name from said panel and so forth, proceeding in an alternating order until each party has struck five (5) names from the list. The remaining name will be the arbitrator and will be notified of their selection as the arbitrator by the party advancing the grievance to arbitration, copying the other party on the notice.

(d) Decision - Time Limit: The arbitrator will hear the matter as soon as the parties and the arbitrator can agree. After the hearing is completed, the arbitrator will enter a decision within thirty (30) calendar days, unless an extension of time is agreed to at the end of the hearing.

(e) Limitations, Scope and Power of Arbitration Panel

i. The arbitrator shall not have the authority to add to, subtract from, alter, change or modify the terms and/or provisions of this Agreement.

ii. The power of the arbitrator shall be limited to interpretation of or application of the terms of this Agreement or to determine whether there has been a violation of the terms of this Agreement.

iii. The arbitrator shall consider and decide only the question or issue raised at Step 1 or Step 2, as determined by the Step where the grievance was first initiated, and will not have the authority to consider additions, variations, and/or subsequent grievances beyond the grievance submitted at Step 1 or Step 2.

iv. In conducting the hearing, the arbitrator will have the power to administer oaths, issue subpoenas, receive relevant evidence, compel the production of books and papers relevant to the hearing, and question witnesses.

v. Summary Judgment. The arbitrator will have the power to hear summary judgment motions as set forth herein. For grievance arbitration matters not involving discipline of an employee, a party may submit a summary judgment motion to the arbitrator, who will issue a briefing schedule. The arbitrator may decide the matter and issue an order based upon the summary judgment written record, if the written record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law, in which case the arbitrator will issue a detailed, written decision, order and award.

(f) Arbitration Award - Damages – Expenses

i. Arbitration awards shall not be beyond the date of the occurrence upon which the grievance is based; that date being twenty (20) working days or less prior to the initial filing of the grievance.

ii. The arbitrator shall not have the authority to award punitive damages.

iii. The expenses of the arbitrator will be split equally between the parties. Each party shall bear their own costs and expenses of presentation of their respective cases, including without limitation, attorney fees and witness fees/costs.

iv. The arbitrator will retain jurisdiction of the grievance until such time as the award has be complied with in full.

v. In the event that either party evaluates the arbitrator's decision, opinion and/or award, and determines that the arbitration award was beyond the jurisdiction of the arbitrator, the award may be appealed to Superior Court.

vi. Either party may request that a stenographic record of the hearing be made. The party requesting such record shall bear the cost thereof, provided, however, if the other party requests a copy, such cost to prepare the stenographic record, including without limitation, hearing costs, shall be shared equally.

ARTICLE 19 – LAYOFF AND RECALL

19.1 The Union recognizes that Employer is solely responsible for determining when layoffs are necessary. The Employer may lay off employees when such action is determined necessary due to a lack of work, lack of funds and/or reorganization.

19.2 Employer shall give as much notice as practicable to designated employees and the Union.

19.3 The Employer will lay off in accordance to Seniority, within the affected job classification. Employees who remain within the unit must be able to fulfill job requirements. The determination as to whether or not remaining employees are capable of fulfilling job requirements shall be at the discretion of the Employer and shall not be grievable.

A. In the event of a layoff, extra help/temporary employees in the affected classification shall be laid off before bargaining unit employees. This will not apply to interns or positions that are subject to other collective bargaining agreements.

B. If extra help/temporary employees are being utilized in a classification in the Office which is not affected by the layoff, the extra/help temporary work shall be offered to qualified bargaining unit employees who are affected by the layoff. The bargaining unit employees to whom the position is offered shall be determined by the Employer, and such determination shall not be grievable. This shall not apply to positions that are subject to other collective bargaining agreements.

19.4 The Employer will offer the following options, if available, to employees in positions covered by the Collective Bargaining Agreement, to an employee who receives a reduction-in-force notice:

a. The right to bump the least senior occupant in a classification for a position covered by the Collective Bargaining Agreement for whose position the employee meets the required qualifications at the same pay grade as the reduction-targeted classification. To qualify for this option, the employee shall have greater seniority with the Employer than the occupant being bumped, shall meet the minimum qualifications for the position with minimal additional training as solely

determined by the Employer, and shall either have previously held the position or have demonstrable familiarity with the position and/or job functions as determined by the Employer. If the employee is offered and accepts the option, the employee shall receive the corresponding reduction in salary, if any.

b. The right to bump the least senior occupant in a classification for a position covered by the Collective Bargaining Agreement for whose position the employee meets the required qualifications at a lower pay grade as the reduction-targeted classification. To qualify for this option, the employee shall have greater seniority with the Employer than the occupant being bumped, shall meet the minimum qualifications for the position with no additional training, and shall either have previously held the position or have demonstrable familiarity with the position and/or job functions as determined by the Employer. If the employee is offered and accepts the option, the employee shall receive the corresponding reduction in salary, if any.

c. If an employee is permitted to bump an occupant as outlined above, the employee shall be required to complete the six (6) month probation in compliance with other sections of this Agreement.

19.5 No new employees within the laid off job classification shall be hired by the Employer until available employees placed on layoff have been offered re-employment, provided the layoff period does not exceed one (1) year and that the employees keep the Employer advised of their current address. An offer of re-employment shall be in writing and sent by registered or certified mail to the employee. The employee shall be deemed to have received notice within three (3) days after the Employer mailed said notice. An employee so notified must indicate their acceptance of said re-employment within ten (10) days of receipt of notice and shall be back on the job within thirty (30) days of acceptance of said offer or forfeit all call back rights under this Article.

19.6 Employees recalled from layoff shall not lose previously accumulated seniority or time in service, accrued vacation or sick leave provided all other provision of this Article are complied with, including that the employee must be re-employed within one (1) year to retain these call-back rights and that the employee has successfully completed their six (6) months probationary period. However, employees shall not have vacation time or sick leave time reinstated where the employee has been compensated for said time by the employer as a result of the layoff.

ARTICLE 20 – TERM OF AGREEMENT

20.1 This Agreement is effective January 1, 2022, except as otherwise provided, and shall remain in effect until the 31st day of December, 2022. Any and all salary or pay increases and/or benefit increases shall not be applicable to those employees who were not employed by Benton County in a position covered by the Collective Bargaining Agreement on the date last signed below.

20.2 If the parties have not reached agreement pursuant to provisions of the Article pertaining to timetable, then either party may request a mediator from the Public Employment Relations Commission. The determination of the mediator from the Public Employment Relations Commission shall be advisory only and not binding on either party.

ARTICLE 21 – ENTIRE AGREEMENT

This document constitutes the complete agreement by and between the parties and no other agreements and/or understandings, written or otherwise, prior to or simultaneous with the signing of this Agreement will be binding on the parties. Therefore, the parties waive the right to bargain collectively with respect to any subject or matter, unless by mutual consent, for the life of this Agreement.

ARTICLE 22 – SAVINGS CLAUSE

If an article or section of this Agreement or any addendum thereto is held invalid by operation of law or by any court of competent jurisdiction, or if compliance with or enforcement of any article or section is restrained by such tribunal, the remainder of this Agreement and addendum will not be affected thereby.

ARTICLE 23 – SENIORITY

Seniority is defined as the employee's length of time in a position covered by the Collective Bargaining Agreement in a full time, benefitted position.

The Employer acknowledges that seniority within the office is one of the factors to be considered during employee advancement or layoffs within the unit. In matters of promotions, the filling of new positions, out of class pay opportunities, or layoffs, the Employer agrees to consider seniority in a position covered by the Collective Bargaining Agreement as one of the factors in reaching the Employer's decision. The Union, however, agrees that ability, attitude and dependability are the primary factors to be considered in these matters.

ARTICLE 24 – DUES AND SECURITY

24.1 Dues/Fees Processing. Upon the written authorization of an employee within the bargaining unit, the Employer will deduct from the payments to the employee the monthly amounts of dues or fees as certified by the Secretary-Treasurer of the Union in writing, and shall transmit the amounts deducted to the Union. Every effort will be made to commence the deduction on the first payroll, but no later than the second payroll, after the Employer's receipt from the Union of written confirmation.

The Union agrees to notify the Employer in writing at least thirty (30) days in advance of any increase in Union dues or fees.

An employee's request to revoke their authorization for payroll deduction of payments to the Union must be in writing and submitted to Council 2. After the Employer receives written confirmation from the Union that the employee has revoked authorization for deductions, the Employer will make every effort to end the deduction effective on the first payroll, but no later than the second payroll, after the Employer's receipt from the Union of written confirmation.

24.2 Indemnification. Th Union shall defend, indemnify, and hold the Employer harmless against any liability, claims, action, or suit instituted against the Employer on account of any dues or fees deductions for the Union, except for error or omissions by the Employer.

If any improper deduction is made, the Union shall refund any over-deduction directly to the employee.

ARTICLE 25 – TYPES OF EMPLOYMENT

25.1 Regular Employee: All employees in positions covered by the Collective Bargaining Agreement working full-time or part-time, other than temporary employees.

25.2 Full-Time Employee: An employee working forty (40) hours per work week.

25.3 Part-Time Employee: An employee hired in a regular position working less than forty (40) hours per work week but at least ninety (90) hours per calendar month. A part time employee is only entitled to prorated sick leave, vacation leave and paid holidays, and no other benefits unless required by law.

25.4 Probationary Employee: An employee shall be on probation during the first six (6) months of full-time employment in each job classification and/or department. If further observance of the employee is required, the employee may either be terminated without cause and without recourse or the probationary period may be extended for up to another six (6) month period as determined by the Employer. All part-time employees shall serve a probationary period of one thousand, forty (1,040) hours. If an employee is granted a leave of absence during the probationary period, the time equal to the total time on such leave of absence shall be added to the probationary period.

Promotional Probation: During the first six (6) weeks of the probationary period, the employee may revert to their previously held position, if available, subject to the approval of the Elected Official. The Elected shall be the sole determiner as to whether or not an employee fails to meet job standards within the trial service period. An employee at any time during the trial service period may be reverted if the Elected Official determines that said employee is not capable of meeting the job standards. After the first six (6) weeks of the trial service period, the employee may not revert to their position.

25.5 Temporary Employee: An employee hired to fill a position either full-time, or part-time (up to 867 hours in any twelve (12) month period, which is the equivalent number of hours for a full-time Temporary Employee per the CBA for five (5) months), not to exceed five (5) consecutive calendar months or five (5) calendar months in a calendar year, (or any rolling twelve (12) month period for a part-time Temporary Employee per the CBA). Temporary employees are not entitled to fringe benefits described in this Agreement; *i.e.*, paid holidays, paid vacation, paid sick leave (unless required by law), insurance, etc. This five (5) consecutive calendar month period, if properly fulfilled, will count towards completion of the probationary period if the work performed by the temporary employee is similar to the work to be performed as a regular employee and the employee is hired as a regular employee within one (1) month of the temporary employment.

ARTICLE 26 – NON-DISCRIMINATION

The Employer and the Union agree that they will not discriminate against any employee by reason of age, sex (including pregnancy), marital status, sexual orientation, race, color, creed, religion, national origin, honorably discharged veteran or military status, disability, political affiliation, or any other protected status, as provided by law, unless based on a bona fide occupational qualification reasonably necessary to the normal operation of the Employer or the Union.

ARTICLE 27 – NEPOTISM RESTRICTIONS

27.1 No more than one (1) member of a family or one (1) close relative shall be eligible for employment by Benton County at the same time if:

(a) One member of the family or one close relative would be responsible for supervising another family member or close relative, or

(b) One member of such family or close relative would be responsible for auditing or monitoring the work of the other family member or close relative, or

(c) Circumstances exist which would place a family member or close relative in a situation of actual or reasonable foreseeable conflict between the interest of the Employer and the interest of the employee in family harmony and/or in their common interests of the family or as close relatives.

27.2 Persons affected by the terms of the preceding sections will be permitted to decide which spouse or relative shall get or keep employment, provided, however, if they do not decide within a reasonable time the Employer shall decide using a gender neutral standard in making such a decision.

27.3 The foregoing restrictions will not have any effect on persons employed by Benton County at the time of the adoption of this section.

27.4 Definitions:

(a) "Family member" means the husband or wife or a person living as husband or wife of a job applicant or employee, or a job applicant or employee's children, whether natural, adoptive or step.

(b) "Close relative" means the natural, adoptive or step brother, sister, mother, or father of a job applicant or employee.

ARTICLE 28 – JURY DUTY - MILITARY LEAVE

28.1 Employees who are members of the Military Reserve or National Guard will be granted leave for a period not exceeding twenty-one days during each year beginning October 1st and ending the following September 30th. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as the employee may be ordered to active duty or active training duty. During the period of military leave, the employee shall receive their normal pay. This provision is subject to applicable State and Federal laws.

28.2 Employees called to jury duty will provide a copy of their jury notification to their supervisor the first working day following receipt. Employees residing in Benton County who serve on jury duty in Benton County will not receive jury pay, but will receive their regular pay for each day served. Employees who reside outside Benton County will receive their regular pay minus the jury pay. It will be the employee's responsibility to present satisfactory evidence of serving on jury duty, and the amount of jury pay received. An employee shall report to work during all hours the employee is released from jury duty. If less than one (1) hour remains from the time of such release to the end of the employee's regular shift, the employee shall call their supervisor.

ARTICLE 29 – PAYROLL PROVISIONS

Employees will be paid for any earned time off taken during the month in accordance with the provisions of this Agreement and additional time off during the month will be considered as leave without pay. Compensation for any month in which leave without pay is taken by an employee will be determined for that month by dividing the monthly salary by one hundred, seventy-three and one-third (173.33) to obtain an hourly rate of pay. All time taken in a month as leave without pay will be multiplied by the employee's hourly rate to obtain the amount which will be deducted from the employee's monthly salary. Employees will be paid monthly, not later than the fifth day of the following calendar month. Draw-pay provisions exist which permit partial payment at mid-month on request, provided the employee has worked the majority of the month. Employer will provide employees and the Union at least thirty (30) days advance notice of a change in the Pay Day.

ARTICLE 30 – EDUCATION ASSISTANCE

30.1 The Employer may reimburse a portion of an employee's tuition for pre-approved "off-duty" classes and/or course subject to the following provisions:

(a) The class and/or course requires prior written approval.

(b) Any class and/or course shall be directly related and/or contribute to the employee's current position or next logical professional progression in the Benton County Assessor's Office. The Assessor will determine which class and/or courses are considered directly related and/or contribute to the employee's position.

(c) All costs associated with the class and/or course must be prepaid by the employee. The employee will obtain an official receipt for the tuition at the time of payment and retain it for reimbursement at the successful completion of the class and/or course.

(d) At the successful completion of the class and/or course if the employee has received a passing final grade and/or score (equivalent to a "C" or higher) and can present such documentation to the County Assessor, the Employer will reimburse the employee the appropriate percentage of their tuition.

30.2 Classes and/or course designated by the Assessor as directly related shall be reimbursed at eighty percent (80%) of the tuition paid. Those designated as only contributory shall be reimbursed at forty percent (40%) of tuition paid.

30.3 The Assessor's decisions under the provisions of this Article will be final and binding on all parties. Education assistance is subject to the budgetary constraints on education assistance funding.

30.4 Special Licenses and Certifications:

(a) For employees who obtain or renew the license and/or certification of a state certified general real estate appraiser, a state certified residential real estate appraiser, or a state certified licensed real estate appraiser, the Employer agrees to reimburse up to three (3) employees per calendar year for the licensing fee or renewal fee, on an annual or bi-annual basis (whichever is applicable).

(b) As a condition of receiving this reimbursement, the employee must certify in writing that if the employee leaves employment with the Assessor's Office within five (5) years after the reimbursement, the employee will reimburse the monies back to the Employer through payroll deduction from their paycheck, including the final paycheck if the employee is leaving employment with the Employer.

(c) Request for reimbursement must be submitted to the Assessor and must include documentation that the employee holds the license or certification and documentation of the amount the employee has paid for the license or certification.

(d) To qualify for this reimbursement, the employee must have been employed by the Assessor's Office for two (2) consecutive years prior to the request for reimbursement. For employees meeting this two (2) year requirement, eligibility for the reimbursement will be at the sole discretion of the Assessor. If local, state, or federal law mandates such licensing of all the mass appraisers, then all the mass appraisers in the Assessor's Office will receive reimbursement from the Employer for the licensing/renewal fee.

ARTICLE 31 – UNION/EMPLOYER RELATIONS

31.1 All collective bargaining with respect to wages, hours and general working conditions shall be conducted by authorized representatives of the Union and authorized representatives of the Employer.

31.2 Agreements reached between the parties shall become effective only when signed by designated representatives of the Union and the Employer.

31.3 The Employer agrees to allow two (2) shop stewards (one (1) from the Kennewick office and one (1) from the Prosser office) representing the Union. The Employer agrees to allow two (2) representatives, to be granted leave without loss of pay for collective bargaining sessions and/or labor-management meetings between the Employer and the Union. The Employer agrees that two (2) members of the bargaining unit may participate in the collective bargaining process and/or labor-management meetings without loss of pay.

ARTICLE 32 – LABOR MANAGEMENT RELATIONS

32.1 The purpose of this article is to promote harmonious relations, ensure collective bargaining, cooperation and understanding between the Employer and its employees. A Labor Management committee will be established consisting of up to one (1) Union member from each office chosen by the Union and one (1) Management member chosen by the County Assessor.

32.2 The Labor Management Committee will schedule meetings at mutually agreeable times, but not later than fifteen (15) working days from the date of a request for a meeting by either party. Requests will be in writing and contain the item(s) or topic(s) to be discussed.

32.3 Disposition of matters covered in the Labor-Management Committee meeting shall not contradict, add to, or otherwise modify the terms and conditions of this Agreement but, will approach the matter(s) at issue with a commitment to problem-solving.

ARTICLE 33 – VACANCIES/JOB POSTING

33.1 Filling and posting vacant Appraiser positions covered by the contract shall be subject to the following provisions:

(a) The Assessor, or designee shall first determine whether or not a job vacancy or new position exists. The Assessor shall post a departmental notice of such opening will be posted on departmental bulletin board and the employer's website for a minimum of three (3) working days prior to the position being advertised to the public.

(b) Upon mutual agreement, the Assessor, or designee, may advertise a vacant position to the public without posting the position internally. In that instance, any employee may submit an application in accordance with the following provisions: Notice of the opening will be published on the Employer's website and circulated by such means deemed appropriate by the Assessor, all of which shall provide a minimum of seven (7) days' notice prior to the closing date for applications.

33.2 A vacancy announcement will contain the position title and a brief description of the job duties, salary, and requirements.

33.3 If a vacancy occurs within nine (9) months of a previous vacancy of the same or similar position, the Assessor or designee may proceed to interview any available applicant whose name appears on the list of qualified applicants for the previous vacancy.

ARTICLE 34 – POSITION CLASSIFICATION DESCRIPTIONS

The Human Resources Department maintains the classification descriptions, utilizing the established format, including writing new classification descriptions and updates for existing classification descriptions in consultation with the appropriate the Assessor, subject to the approval of the Benton County Administrator, and final approval by the Board of County Commissioners. Copies of all approved changes or new position classification descriptions, including assigned grades and title, are kept on file within the Human Resources Department.

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

BENTON COUNTY ASSESSOR

William Spencer

Date: _____

WSCCCE, AFSCME, AFL/CIO
Local 2658, COUNCIL 2

Steve Pinkerton, Area Representative

Date: _____

BOARD OF BENTON COUNTY COMMISSIONERS

Chair

Member

Member

Attest:

Clerk to the Board

Date: _____

Approved as to form:

Stephen Hallstrom
Deputy Prosecuting Attorney

2022 SALARY SCHEDULE

2022
Agreement by and between
Board of Benton County Commissioners
and
Local 2658, Council 2
American Federation of State, County and
Municipal Employees, AFL-CIO

COVERING APPRAISERS

GRADE	STEPS in $….. A	B	C	D	E	F	G	H	I
12	4324	4410	4564	4724	4889	5060	5237	5420	5610
11	4118	4200	4347	4499	4656	4819	4988	5163	5344
10	3921	3999	4139	4284	4434	4589	4750	4916	5088
8	3557	3628	3755	3886	4022	4163	4309	4460	4616

Appraiser /Auditor	12
Commercial Appraiser	12
Farm Appraiser	11
Residential Appraiser	10
Residential Appraiser Trainee	8

cc: Assessor's Office, Payroll, Human Resources, AFL-CIO #2658 and Stephen Hallstrom

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Washington State Department of Commerce Treasury Rent Assistance Program 2.0
Presenter:	
Prepared By:	Tammy McKeirnan
Reviewed By:	Kyle Sullivan

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

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

Summary / Background Information

The Treasury Rent Assistance Program is intended to prevent evictions by paying past due rent and past due utilities for households that are unable to pay, due to the COVID-19 pandemic.

Fiscal Impact

This is no Fiscal impact for we are amending Agreement 21-4616C102 to extend the contract from December 31, 2021 to September 30,2022.

Fund: There is no impact on the current expense budget. All revenues and expenditures are from the Fund 0108-101

Recommendation

- Sign the Resolution Executing the First Amended Agreement 21-4618C-102 rental assistance through the Commerce Treasury Rent Assistance Program.
- Approve the Contract 21-4618C-102

Suggested Motion

Approve on the consent agenda.

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTING THE FIRST AMENDED AGREEMENT #21-4616C-102 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND WASHINGTON STATE DEPARTMENT OF COMMERCE COMMUNITY SERVICES AND HOUSING ASSISTANCE UNIT TREASURY RENT ASSISTANCE PROGRAM.

WHEREAS, the purpose of this Agreement is intended to prevent evictions by paying past due and future rent and past due utilities while targeting limited resources to those with the greatest needs while working to distribute funds equitably; and

WHEREAS, agreement #21-4616C-102 needs to extend the date of the agreement from December 31, 2021 to September 30, 2022 via Resolution number 2021-377; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby approves amending agreement #21-4616C-102, between Washington State Department of Commerce Community Services and Housing Assistance Unit Treasury Rent Assistance Program and Benton County Department of Human Services for a grant amount of $11,768,422.00 from the Treasury Rent Assistance Program (T-RAP) Grant as executed by the Benton County Administrator on March 25, 2021; and

BE IT FURTHER RESOLVED, that Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments, necessary for the disbursement of the Washington State Department of Commerce Treasury Rent Assistance Program (T-RAP); and

BE IT FURTHER RESOLVED, the term of the attached agreement commences on March 1, 2021 and ends on September 30,2022.

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

_____
Chair

_____
Member

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

Attest: _____
Clerk of the Board

CC:Commissioners Office, BC DHS TMcKeirnan

Amendment

Contract Number: 21-4616C-102
Amendment Number: A

Washington State Department of Commerce
Community Services and Housing Division
Housing Assistance Unit
Treasury Rent Assistance Program

1. Contractor Benton County Department of Human Services 7102 E. Okanogan Place Suite 201 Kennewick, Washington 99336		**2. Contractor Doing Business As (optional)**	
3. Contractor Representative Mari Clark 509-737-3902 mari.clark@co.benton.wa.us		**4. COMMERCE Representative** Mary Baldwin Grant Coordinator 360-763-2503 Mary.baldwin@commerce.wa.gov	PO Box 42525 1011 Plum St SE Olympia, WA 98504-2525
5. Original Contract Amount (and any previous amendments) $11,768,422	**6. Amendment Amount** 0	**7. New Contract Amount** $11,768,422	
8. Amendment Funding Source **Federal:** X **State:** **Other:** **N/A:**		**9. Amendment Start Date** 12/1/2021	**10. Amendment End Date** 09/30/2022
11. Federal Funds (as applicable): $11,768,422	**Federal Agency:** US Dept. of the Treasury	**CFDA Number:** 21.023	
12. Amendment Purpose: To extend the contract.			

COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract As Amended and attachments and have executed this Contract Amendment on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract As Amended are governed by this Contract Amendment and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "B" – Budget. A copy of this Contract Amendment shall be attached to and made a part of the original Contract between COMMERCE and the Contractor. Any reference in the original Contract to the "Contract" shall mean the "Contract as Amended".

FOR CONTRACTOR	**FOR COMMERCE**
Kyle Sullivan, Manager	Diane Klontz, Assistant Director Community Services and Housing Division
12/29/21 Date	Date
	APPROVED AS TO FORM ONLY Sandra Adix Assistant Attorney General 3/20/2014 Date

Amendment

This Contract is **amended** as follows:

Contract end date extended to 09/30/2022

Attachment A – Scope of Work

Added following section:

Payments

If Grantee requires funds to facilitate payments to eligible recipients on behalf of eligible households and Grantee has committed internal resources needed to make payments directly, Commerce will pay funds to Grantee up to a quarterly amount upon receipt of evidence satisfactory to Commerce.

ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT.

Grant Number: Agreement #21-4616C-102

WA State Dept of Commerce Community Services and Housing Assistance Unit US Department of the Treasury for the Emergency Rental Assistance Program

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

For Benton County:	**Attest:**
Chair Date	Clerk of the Board
Approved as to content:	**Approved as to form:**
Dept. of Human Services	Benton Co Prosecutor's Office

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	PSC-2022-TCHCC-00 with Tri-Cities Hispanic Chamber of Commerce
Presenter:	
Prepared By:	Deena Horton
Reviewed By:	Kyle Sullivan

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

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

Summary / Background Information

This agreement is to provide outreach services to our community and deem eligible, individuals/families for the Treasury Rental Assistance Program to those in need due to the COVID-19 outbreak.

Fiscal Impact

Amount: $403,368.00

Fund: There is no impact on the current expense budget. All revenues and expenditures are from the Fund 0108-101 Human Services Budget

Recommendation

- Sign the Resolution Agreement PSC-2022-TCHCC-00 with Tri-Cities Hispanic Chamber of Commerce.

Suggested Motion

Approve on consent agenda.

RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

RE: IN THE MATTER OF EXECUTING THE AGREEMENT #PSC-2022-TCHCC-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND TRI-CITIES HISPANIC CHAMBER OF COMMERCE

WHEREAS, the purpose of this Agreement is to provide outreach services to our community and deem eligible, individuals/families for the Treasury Rental Assistance Program (T-RAP) to those in need due to the COVID-19 outbreak; and

BE IT RESOLVED, that the Board of County Commissioners hereby approves #PSC-2022-TCHCC-00 agreement, between Tri-Cities Hispanic Chamber of Commerce and Benton County Department of Human Services for a grant in the maximum total amount of $403,368.00; and

BE IT FURTHER RESOLVED, that Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments to Tri-Cities Hispanic Chamber of Commerce, necessary for the disbursement of funds; and

BE IT FURTHER RESOLVED, the term of the attached agreement commences on January 1, 2022 and ends on June 30, 2023.

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

_____
Chair

_____
Member

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

Attest: _____
Clerk of the Board

DHorton

BENTON COUNTY
PERSONAL SERVICES CONTRACT
PSC-2022-TCHCC-00

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 **TRI-CITIES HISPANIC CHAMBER OF COMMERCE**, a corporation organized under the laws of the State of Washington with its principal offices at 1600 N. 20th Ave., #D, 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 - Statement of Work and;
b. Exhibit B - Budget

2. DURATION OF CONTRACT

The term of this Contract shall begin on January 1, 2022 and shall expire on June 30, 2023. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide outreach services to the community to educate and qualify individuals/families who are in need of rental and utilities assistance due to COVID-19. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Statement of Work", which is attached hereto and incorporated herein by reference.

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

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

d. The CONTRACTOR shall complete its work in a timely manner.

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Martin Valadez
Address:	1600 N. 20th Ave, #D Pasco, WA 99301
Phone:	509-542-0933
Email:	valadez_torres@yahoo.com

b. For COUNTY:

Name:	Kyle Sullivan
Address:	7102 W Okanogan Pl., Ste. 201 Kennewick, WA 99336
Phone:	509-737-3909
Email:	kyle.sullivan@co.benton.wa.us

5. COMPENSATION

a. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed two hundred eighty-two thousand three hundred fifty-eight dollars and no cents ($282,358.00) for **Benton County** and shall not exceed one hundred twenty-one thousand ten dollars and no cents ($121,010.00) for **Franklin County**, including W.S.S.T per Exhibit A "Budget".

b. No payment shall be made for any work performed by the

CONTRACTOR, except for work identified and set forth in this Contract.

c. The CONTRACTOR may, in accordance with Exhibit B, 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.

i. Invoice will be provided by the County
ii. Supporting documentation will accompany the invoice
iii. TRAP Monthly Report will accompany the invoice

d. 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.

e. 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.

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

6. AMENDMENTS AND CHANGES IN WORK

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

the COUNTY.

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

a. **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 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

c. **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.

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 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. 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 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 thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

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

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

reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. DEBARMENT

The CONTRACTOR certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from covered transactions by any Federal department or agency.

b. Have not within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and

d. Have not within a three-year period preceding the signing of this Agreement had one or more public transactions (Federal, State, or local) terminated for cause of default.

12. 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.

13. 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.

14. COMPLIANCE WITH LAWS

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

15. 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.

16. 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.

17. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTY.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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 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.

24. 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.

25. 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.

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: indemnification provisions (Sections 7 and 17); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

27. 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.

28. PUBLIC RECORDS ACT

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

- This section left blank intentionally -

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

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: _____

FOR: TRI-CITIES HISPANIC CHAMBER OF COMMERCE

_____
Signature

_____
Title:

_____
Print Name

Approved as to Content

_____
Dept. of Human Services Manager

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 01/04/22 BC 01/25/22
Subject:	Public Works Contract with Johnson Controls Fire Protection, LP
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 Benton-Franklin Counties Juvenile Justice Center solicited quotes to provide annual fire alarm inspection, fire extinguisher testing, sprinkler inspection and repair, if necessary, for the January 1, 2022 through December 31, 2023.

Juvenile Administrative Financial Services Manager reviewed quotes for completeness, and recommends awarding the contract to Johnson Controls Fire Protection, LP.

Fiscal Impact

Amount not to exceed $40,000.00 to be paid out of Current Expense Dept. 172 Facilities Budget. No supplemental required.

Recommendation

The Juvenile Administrative Financial Services Manager recommends approving the contract between Johnson Controls Fire Protection, LP and Benton-Franklin Counties Juvenile Justice Center.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING THE PUBLIC WORKS CONTRACT FOR FIRE ALARM INSPECTION, FIRE EXTINGUISHER TESTING, SPRINKLER INSPECTION AND REPAIR, IF NECESSARY, TO JOHNSON CONTROLS FIRE PROTECTION, LP

WHEREAS, per resolution 2021 233, Section 4.3 for limited public works projects (those estimated to cost less than $50,000) awarded under this alternative process, written invitations for bids will be solicited from a minimum of three contractors from the appropriate small public works roster"; and

WHEREAS, the following quotes were solicited from contractors on the Benton County MRSC Small Works Roster:

- Johnson Controls Fire Protection, LP, Spokane, WA – UBI 602-113-334 - $4,225.00 for annual fire alarm, wet sprinkler, back flow, extinguisher inspection, and semi-annual kitchen hood inspection
- Fire Control Sprinkler Systems Co., Inc. – Spokane, WA – UBI 600-160-259 - $1,932.85 does not include fire extinguisher inspection, back flow inspection, or kitchen hood inspection
- Alexander Gow Fire Equipment Company, Seattle, WA – UBI 601-291-837 - $5,777.00

WHEREAS, the Administrative Services Manager reviewed the quotes for completeness and recommends awarding the Public Works Contract to Johnson Controls Fire Protection, LP; **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 Administrative Financial Services Manager's recommendation and hereby award Johnson Controls Fire Protection, LP the Public Works Contract for annual fire alarm inspection, fire extinguisher inspection, sprinkler inspection, kitchen hood and repair, if necessary, in an amount not to exceed $40,000.00 including W.S.S.T; and

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners and the Board of Franklin County Commissioners hereby award the Public Works Contract to Johnson Controls Fire Protection, LP; and

BE IT FURTHER RESOLVED, the term of the attached contract shall commence January 1, 2022 and shall expire on December 31, 2023.

DATED this ____ day of _____ 2022

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this ____ day of _____ 2022

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-Johnson Controls 1-BFJJC

R. Garcia

BENTON-FRANKLIN COUNTIES
PUBLIC WORKS CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between Benton County, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Johnson Controls Fire Protection, LP**, a corporation organized under the laws of the State of Washington with its principal offices at 10010 E. Knox Avenue, Spokane, WA 99206 (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 - Vendor Quote Form dated November 15, 2021;
b. Exhibit B - Washington State Prevailing Wage Rates for Public Works Contracts

2. DURATION OF CONTRACT

The term of this Contract shall begin on **January 1, 2022** and shall expire on **December 31, 2023.** The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

1. Fire Alarm Test & Inspection (Annual)

2. Sprinkler Tet & Inspection - Wet Sprinkler & Backflow Systems (Annual)

3. Extinguisher Test & Inspection (Annual)

4. Kitchen Hood Test & Inspection (Semi-Annual)

5. Enter all inspection reports and communication equipment test results into the Tegris Fire reporting system.

6. As needed repair, if necessary

a. The CONTRACTOR agrees to provide the above services for the Benton-Franklin Counties Juvenile Justice Center location in accordance with Exhibit A.

b. In the event that requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTIES of that fact and shall coordinate with COUNTIES to complete the work in conjunction with the other contractor. In the event that the requested work requires, under State or local law, the issuance of a building permit or other permit, CONTRACTOR shall be responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTIES for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.

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

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

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

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

g. The CONTRACTOR shall complete its work in a timely manner and

in accordance with the schedule agreed by the parties.

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Tami Irene Wais
Address:	10010 East Knox Avenue, Ste. 100 Spokane, WA 99206-4156
Phone:	(509) 534-6055
Email:	tami.wais@jci.com

b. For COUNTIES:

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

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid in accordance with the attached documents hereto as Exhibits A. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

b. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed Forty Thousand Dollars ($40,000.00), including W.S.S.T.

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

or more years and exempt from required training in RCW 39.04.350.

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

e. The CONTRACTOR may invoice the COUNTIES for filing fees paid to the Washington State Department of Labor and Industries for filing one Statement of Intent to Pay Prevailing Wages per year and one Affidavit of Wages Paid per site visit when billable work is performed.

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

6. INVOICING

a. The CONTRACTOR may submit invoices to the COUNTIES for services that have been performed as they are performed, but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTIES as required in Section 3.c. of this Contract.

b. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov and then forward a copy of the statement to the COUNTIES' Contract Representative.

c. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties have executed and submitted a Statement of Intent to Pay Prevailing Wages in

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

d. For each invoiced and approved payment due to the CONTRACTOR under this section, the COUNTIES 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 COUNTIES stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTIES. If such written election is not received by the COUNTIES, then the COUNTIES 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 COUNTIES.

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

8. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTIES and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys'

fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTIES. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTIES or its officers, officials, employees, or agents. In the event of the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTIES or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.

b. In any and all claims against the COUNTIES or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 8 shall survive termination and expiration of this Contract.**

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

compensation, and have been mutually negotiated by the parties.

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

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

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

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

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

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

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

d. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance

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

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

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

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

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

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

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

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this

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

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

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

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

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

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

3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' Contract Representative referenced in Section 4.

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

10. PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish Benton and Franklin COUNTIES with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton and Franklin Counties, in an amount equal to one hundred percent (100%) of the contract sum as security for the performance by the contractor of this Contract and payment of all the persons performing labor and supplying materials pursuant to this Contract. PROVIDED that the CONTRACTOR may elect, in lieu of the bonds, to allow the COUNTIES to retain ten percent (5%) 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 must be received by COUNTIES within ten (10) days following the execution of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTIES. The CONTRACTOR

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

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

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

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

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

13. INSPECTION OF BOOKS AND RECORDS

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

14. CHOICE OF LAW AND JURISDICTION

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

15. SUCCESSORS AND ASSIGNS

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

16. TERMINATION

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

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

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B, which is attached hereto and incorporated herein by reference, shall be paid to all employees, agents, subcontractors, and sub-subcontractors who do any work for the CONTRACTOR on this project. The CONTRACTOR shall ensure that all subcontractors or sub-subcontractors sign an agreement to pay these same wages and that the signed agreement is submitted to the COUNTIES prior to subcontractor commencing any work on the project. This schedule of

prevailing wages is duplicated from the Washington State Department of Labor and Industries website, it is provided for informational purposes only, and the COUNTIES takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies, then the CONTRACTOR is responsible for contacting the Washington State Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. NONDISCRIMINATION

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

19. DISPUTES

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

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

21. ENTIRE AGREEMENT

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

22. NOTICES

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

23. SEVERABILITY

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

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

24. LITIGATION HOLD NOTICE

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

25. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTIES is a

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

26. SURVIVABILITY

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

27. CONFIDENTIALITY

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

- This section was intentionally left blank -

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

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

JOHNSON CONTROLS FIRE PROTECTION, LP	**Benton-Franklin Counties Juvenile Justice Center**
12/16/2021	12-17-21
Cindy Macdonald Date	**Darryl Banks** Date **Juvenile Court Administrator**
BENTON COUNTY APPROVAL	**FRANKLIN COUNTY APPROVAL**
Approved as to Form:	Approved as to Form:
Stephen Hallstrom, Deputy Prosecuting Attorney Date	12/16/21 Jennifer Johnson, Civil Deputy Prosecuting Attorney Date
By: _____ Name: _____ Title: _____ Date: _____	By: _____ Name: _____ Title: _____ Date: _____
Attest: Clerk of the Board: _____	Attest: Clerk of the Board: _____

Exhibit A

BENTON-FRANKLIN COUNTIES
JUVENILE DEPARTMENT

Vendor Quote Form

Date:	11/15/21
Vendor Name:	Johnson Controls Fire Protection LP
Vendor Address:	Dept. CH 10320 Palatine IL 6005-0320
Vendor Phone Number:	509-842-1270
Price Including WSST:	annual cost $4225.00
Expiration Date:	DEC 31 2023
Notes:	Cost includes required tegris reporting and related fees
Are you on the MRSC (Municipal Research and Services Center) list?	☒ Yes ☐ No
UBI#	602-113-334
Item(s) being purchased:	Annual Fire Alarm, Wet Sprinkler, back flow, Extinguisher Inspection to be done in March, and Semi-annual kitchen hood inspection to be done in MAY/NOV

Vendor Contact Agent Name: Tami Wais

Signature: Tami Wais

Title: CCR

Exhibit B

State of Washington
Department of Labor & Industries

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

Washington State Prevailing Wage

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

Journey Level Prevailing Wage Rates for the Effective Date: 11/29/2021

County	Trade	Job Classification	Wage	Holiday	Overtime	Note	*Risk Class
Benton	Electricians - Inside	Cable Splicer	$76.01	5A	1E		View
Benton	Electricians - Inside	Journey Level	$73.42	5A	1E		View
Benton	Electricians - Inside	Welder	$78.60	5A	1E		View
Benton	Sprinkler Fitters (Fire Protection)	Journey Level	$60.86	7J	1R		View

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 01/11/2022 BC 01/25/2022
Subject:	Termination of Personal Services Contract with Jennifer M. Azure
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 (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

Attached for board review and approval is the Notice of Termination of Personal Services Contract between Jennifer M. Azure and Benton-Franklin Counties Juvenile Justice Center.

In accordance with Section 8(a) of the Contract the Benton-Franklin Counties Juvenile Justice Center has elected to terminate the Contract on January 31, 2022 due to Jennifer M. Azure being awarded the Benton County District Court Judge position. Her new position would result in a conflict of interest, therefore we can no longer receive services from Jennifer M. Azure.

Fiscal Impact

The Contract is being terminated in which no fiscal impact is present.

Recommendation

We recommend that the Boards of Commissioners of Benton County and Franklin County approve and sign the Notice of Termination of Personal Services Contract between Jennifer M. Azure and Benton-Franklin Counties Juvenile Justice Center as written.

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 AUTHORIZING THE CHAIR OF THE BOARD OF BENTON AND FRANKLIN COUNTY COMMISSIONERS TO SIGN THE ATTACHED TERMINATION LETTER FOR THE PERSONAL SERVICES CONTRACT WITH JENNIFER M. AZURE

WHEREAS, by Benton County Resolution 2021 668 and by Franklin County Resolution 2021 200 signed on September 14, 2021 and August 31, 2021 respectively, Benton Franklin Counties Juvenile Justice Center entered into a Contract with Jennifer M. Azure for Attorney Representation of persons in all BECCA dockets; and

WHEREAS, per Section 8(a) of the contract, Benton Franklin Counties Juvenile Justice Center at its sole discretion may terminate any time when it is in the best interest of Benton Franklin Counties Juvenile Justice Center; and

WHEREAS, the Administrator recommends the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners sign the attached letter to terminate the contract between Benton Franklin Counties Juvenile Justice Center and Jennifer M. Azure; **NOW, THEREFORE**

BE IT RESOLVED, that the Chairs are hereby authorized to sign the attached letter to Jennifer M. Azure to terminate the Personal Services Contract between Benton Franklin Counties Juvenile Justice Center and Jennifer M. Azure; and

BE IT FURTHER RESOLVED, said contract shall terminate on January 31, 2022.

DATED this _____ day of _____ 2022

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this _____ day of _____ 2022

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

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

R. Garcia

Benton County Commissioners

Shon Small, Chair
Will McKay, Chair Pro-Tem
Jerome Delvin, Member
(509) 786-5600
(509) 736-3080 (toll free from Tri-Cities)

BENTON AND FRANKLIN COUNTIES

Franklin County Commissioners

Clint Didier, Chair
Rocky Mullen, Chair Pro Tem
Brad Peck, Member
(509) 545-3535

December 22, 2021

Azure Law Office, PLLC
Attn: Jennifer M. Azure
7135 West Hood Place
Kennewick, WA 99336

Re: Notice of termination of Personal Services Contract between Jennifer M. Azure and Benton-Franklin Counties Juvenile Justice Center

Dear Jennifer M. Azure:

The Boards of County Commissioners for Benton County and Franklin County have determined it to be in the best interest of both Counties to terminate the above referenced Personal Services Contract. This is a notice by Benton County and Franklin County of the termination of the Personal Services Contract signed by you on August 17, 2021 and by the Board of Benton County Commissioners, Resolution No. 2021-668, and the Board of Franklin County Commissioners, Resolution No. 2021-200, on September 14, 2021 and August 31, 2021 respectively. The above referenced Personal Services Contract is hereby terminated effective on January 31, 2022, pursuant to Section 8(a) of the Personal Services Contract.

Dated this ____ day of _____, 2022

Benton County Board of Commissioners

_____
Chair of the Board

Attest:

_____
Clerk of the Board

Dated this ____ day of _____, 2022

Franklin County Board of Commissioners

_____
Chair of the Board

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 JUVENILE CENTER FUND NUMBER 0115101 DEPARTMENT NUMBER 171

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Crystal Garcia

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Juvenile - Operations Dept Nbr: 171

Fund Name: Juvenile Center Fund Nbr: 0115101

TRANSFER FROM: **Dept.** TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
527.100	3111	Publications	$6,000	527.100	1925	Overtime	$24,800
527.100	4906	Print/bindery	$8,000	527.100	3503	Computer Software	$200
527.100	4202	Telephone	$11,000				
TOTAL			$25,000	TOTAL			$25,000

Explanation:

This LIT is necessary to cover overtime costs due to employee's being out on leave and coverage for vacant positions due to lack of applicants. An additional Adobe pro annual license is necessary for processing A/R electronically.

Prepared by: Crystal Garcia Date: 1/12/22

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Amendment of public defense agreement with Shelley Ajax
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

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

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

Summary / Background Information

Benton County currently contracts with attorney Shelley Ajax ("Attorney") for public defense services in Benton County Superior Court (executed through Resolution #2020-825 and previously amended by and through Resolution 2021-602 (the "Agreement").

Because of Attorney's desire to increase her caseload capacity back up to 140 cases per year, it has become necessary to amend the Agreement to provide for the requested caseload increase and commensurate increase in compensation.

The proposed amendment accomplishes this.

Fiscal Impact

None

Recommendation

Recommend approving the proposed amendment to the professional services agreement with Shelley Ajax to provide for increasing her annual caseload cap back up to 140 cases.

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING SUPERIOR COURT PUBLIC DEFENSE AGREEMENT WITH ATTORNEY SHELLEY AJAX TO PROVIDE FOR INCREASING HER ANNUAL CASELOAD CAP BACK TO 140 CASES

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

WHEREAS, County has been contracting with attorney Shelley Ajax ("Attorney") to provide Services by and through an Agreement that was amended in 2021 to reduce the annual caseload cap from the initial amount of 140 down to 96 cases to account for Attorney's obligations to cases on another contract; and

WHEREAS, Attorney has advised that she has withdrawn from the other contract and desires to increase her annual caseload cap back up to 140; and

WHEREAS, given Benton County's high demand for attorney capacity it is therefore appropriate to amend the public defense agreement with Attorney to provide for increasing her annual caseload cap back up to 140, with a commensurate increase in monthly compensation; **NOW, THEREFORE**

BE IT RESOLVED that the public defense agreement with attorney Shelley Ajax previously executed by and through Resolution #2020-825 and previously amended by Resolution 2021-602, is hereby amended as proposed, to provide for increasing the annual caseload cap back up to 140 cases.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Shelley Ajax
Copy – Auditor, S Godinez

E. Hsu

DocuSign Envelope ID: AC473AE2-6670-4C71-84E7-A90E19E17A45

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

BCSC2122SAA001

CONTRACT SUMMARY			
Contract Type	Full Caseload Monthly		
Contract Number	BCSC2122SAA001	**Contract Holder**	Shelley A. Ajax
WSBA #	36227	**Effective Dates**	Jan 1, 2021 – Dec 31, 2022
Caseload Cap	**140**	**Compensation**	**$700 per case Homicide: $85/hr**
Assigned Court	**Superior Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Contract Slot Identifier SCF-8			

THIS AGREEMENT previously entered into by and between **Shelley A. Ajax,** attorney at law, Washington State Bar Association #36227 ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court, executed by and through Resolution #2020-825 and previously amended by and through Resolution 2021-602,

IS HEREBY FURTHER AMENDED AS FOLLOWS, EFFECTIVE JANUARY 1, 2022:

7. **NUMBER OF APPOINTMENTS.** The maximum number of cases that can appointed to Attorney is increased back up to 140 per year.

12. **COMPENSATION.**

a. The monthly compensation shall be $8,166, based on Attorney's selected caseload. *Attorney shall be compensated with these equal monthly payments even if Attorney's caseload, in any given year, doesn't reach the selected caseload cap.*

All remaining provisions remain in full effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

DocuSign Envelope ID: AC473AE2-6670-4C71-84E7-A90E19E17A45

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
F88F80847780478...

Eric Hsu
Public Defense Manager

ATTORNEY

Date 1/11/2022

DocuSigned by:
Shelley Ajax
6DFB0A46FA6E4A5...

Shelley A. Ajax, WSBA 36227

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01 February 2022
Subject:	Benton County Park Board – Appointments of Funk & McBurney
Presenters:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	AJF

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

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

Summary

Today's action concerns the appointment of two new members to the Benton County Park Board.

Background

The Benton County Park & Recreation Board was first convened in 1950. The seven member all volunteer board meets monthly and advises staff and commissioners on matters of projects, programs, and policy directly related to Benton County's 10-unit park system, and indirectly on parks and recreation topics that affect the community more generally. Park Board terms are six years.

There have been two recent resignations from the Board – Diana Ruff, who was appointed as a Superior Court commissioner and wanted to avoid any possible conflicts of interest in the future; and Richard Nordness, who had served multiple terms in the position.

Human Resources facilitated a search to fill the two vacancies. Three applications were received, and the three candidates were interviewed by the remaining Board in January. The Board recommends the appointment of the following two candidates to commissioners for appointment:

- **Sarah Funk** of Benton City
- **Kit McBurney** of Richland

Each of the vacated terms expires in 2024. The two new members would serve-out the remainder of their respective terms, then be eligible to apply for reappointment to a new six-year term.

Fiscal Impact

None.

Recommendation

Staff and the Park Board recommend the appointments of both new Park Board members.

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPOINTMENT OF SARAH FUNK TO THE BENTON COUNTY PARK BOARD

WHEREAS, the Benton County Park Board advises the Board of County Commissioners and the Parks Department on matters of projects, programs, and policies related to the County's park system; and,

WHEREAS, there are seven Park Board members whose service is voluntary and without compensation; and,

WHEREAS, Sarah Funk of Benton City has expressed her interest and desire to serve on the Park Board; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of County Commissioners hereby appoints Sarah Funk of Benton City to serve the remainder of the six-year term vacated by Richard Nordness, expiring 30 June 2024; after which time Ms. Funk will be eligible to re-apply for another six-year full term of service.

Dated this 1st day of February 2022.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County Washington.

Attest.....
Clerk of the Board

cc: Parks, file
Benton County Park Board

Prepared by: A.J. Fyall

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01 February 2022
Subject:	Benton County Park Board – Appointments of Funk & McBurney
Presenters:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	AJF

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

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

Summary

Today's action concerns the appointment of two new members to the Benton County Park Board.

Background

The Benton County Park & Recreation Board was first convened in 1950. The seven member all volunteer board meets monthly and advises staff and commissioners on matters of projects, programs, and policy directly related to Benton County's 10-unit park system, and indirectly on parks and recreation topics that affect the community more generally. Park Board terms are six years.

There have been two recent resignations from the Board – Diana Ruff, who was appointed as a Superior Court commissioner and wanted to avoid any possible conflicts of interest in the future; and Richard Nordness, who had served multiple terms in the position.

Human Resources facilitated a search to fill the two vacancies. Three applications were received, and the three candidates were interviewed by the remaining Board in January. The Board recommends the appointment of the following two candidates to commissioners for appointment:

- **Sarah Funk** of Benton City
- **Kit McBurney** of Richland

Each of the vacated terms expires in 2024. The two new members would serve-out the remainder of their respective terms, then be eligible to apply for reappointment to a new six-year term.

Fiscal Impact

None.

Recommendation

Staff and the Park Board recommend the appointments of both new Park Board members.

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPOINTMENT OF KIT MCBURNEY TO THE BENTON COUNTY PARK BOARD

WHEREAS, the Benton County Park Board advises the Board of County Commissioners and the Parks Department on matters of projects, programs, and policies related to the County's park system; and,

WHEREAS, there are seven Park Board members whose service is voluntary and without compensation; and,

WHEREAS, Kit McBurney of Richland has expressed her interest and desire to serve on the Park Board; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of County Commissioners hereby appoints Kit McBurney of Richland to serve the remainder of the six-year term vacated by Diana Ruff, expiring 30 June 2024; after which time Ms. McBurney will be eligible to re-apply for another six-year full term of service.

Dated this 1st day of February 2022.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County Washington.

Attest.....
Clerk of the Board

cc: Parks, file
Benton County Park Board

Prepared by: A.J. Fyall

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

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

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Ginny Baddley

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Prosecuting Attorney Dept Nbr: 117

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: **Dept.** TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
515.300	1357	Legal Secretary V	$3,000	515.300	1925	Overtime	$3,000
TOTAL			$3,000	TOTAL			$3,000

Explanation:

The adjustment is needed for overtime work after a lead support staff member in one of our busiest divisions unexpectedly resigned. The overtime will help ensure the work in this division is completed during this transition period.

Prepared by: Ginny Baddley Date: 1/6/22

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Authorization to sign the Digital Submittal Certification of the 2022 Road Levy Certification and Estimated Revenue
Presenter:	N/A
Prepared By:	Shela Berry
Reviewed By:	Douglas D'Hondt

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

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

Summary / Background Information

The Roads Department is required annually to digitally submit the annual road levy certifications and estimated revenues produced per WAC 136-150-021.

This resolution authorized the Road Department to sign the 2022 digital certification and submit to CRAB as required.

Fiscal Impact

No fiscal impact.

Recommendation

Recommend the Board of Benton County Commissioners sign the digital submittal certification for the 2022 Road Levy Certification and estimated revenues.

Suggested Motion

To be approved under consent agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF BENTON COUNTY ROADS RE: AUTHORIZATION TO SIGN THE DIGITAL SUBMITTAL CERTIFICATION OF THE 2022 ROAD LEVY CERTIFICATION AND ESTIMATED REVENUE PRODUCED PER WAC 136-150-021

WHEREAS, the Board of County Commissioners has reviewed the Certification of the 2022 Road Levy and finds the Certification to be complete; **NOW, THEREFORE,**

BE IT RESOLVED, by the Board of Benton County Commissioners that the attached Certification of the 2022 Road Levy and Estimated Revenue Produced from is approved, and that the Chairman is authorized to sign the Digital Submittal Certification form for said Road Levy Certification.

Dated this ____ day of _____ 2022.

Attest: _____
Clerk of the Board

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Constituting the Board of County
Commissioners of Benton County, Washington

Orig.: Public Works S. Berry

Benton County
Certification of the 2022 Road Levy and Estimated Revenue Produced
WAC 136-150-021

Total County Valuation:	$25,648,055,502
Road District Valuation:	$5,546,785,825
Highest Lawful Road Levy: Line I, Highest Lawful Levy Calculation form, DOR form REV 64-0007 (7/30/2019)	$8,286,886
County Road Levy Shifted to Current Expense (per RCW 84.52.043)**:**	$0
Adjusted Highest Lawful Road Levy:	$8,286,886
Actual Adopted/Established Road Levy: (Levy Fixed in Accordance with RCW 36.40.090) Do not include any refund levy amounts	$7,227,716
Banked Capacity to Carryover to 2023: (Road District Only)	$1,059,169

County Road Property Tax Revenues Diverted For Other Unincorporated Purposes in Accordance with RCW 36.33.220, RCW 39.89, or RCW 84.55.050:

Service to be Provided	Diverted $/Thousand	Diverted Levy Amount
Traffic Law Enforcement RCW 36.33.220	0.119812	$664,574
Total Diverted Road Levy:	**$0.119812**	**$664,574**
Road Levy Revenue Remaining for Roads (RCW 36.82.040)	**$1.183233**	**$6,563,142**

Road Funds Budgeted to be used for Traffic Law Enforcement

Traffic Law Enforcement Funded Through Operating Transfer (per agreement):

Traffic Law Enforcement Funded Through Direct Payment (cost reimbursement):

Total Budgeted Road Fund Expenditures for Traffic Enforcement: $0

Reporting of Diverted Road Levy and budgeted Road Fund Expenditures for Traffic Law Enforcement amounts are both required in order to ascertain county eligibility for RATA funds. (see WAC 136-150-030)

Note: WAC 136-150-021 provides that “The CRABoard will request that every county legislative authority submit a certification showing the amount of the road levy fixed and the amount, if any, budgeted in accordance with RCW 36.33.220 for traffic law enforcement and/or any other purpose from diverted road levy no later than February 1st of each year”.

Benton County
Calendar Year 2022

Digital Submittal Certification for Forms Due February 1st

The documents checked below are hereby submitted from Benton County for the review and acceptance of the County Road Administration Board.

Road Levy Certification for 2022

I hereby certify that the above reports are true and accurate and that I have reviewed, approved, and submitted said reports to the County Road Administration Board in accordance with WAC 136-04. By my signature below, I acknowledge that I am signing all the documents indicated by the checked boxes.

Chair / Executive Signature

Date

County Engineer Signature

Date 01/18/22

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	
Subject:	Expenditure coding correction related to vehicle #1135
purchase **Presenter:**	
Prepared By:	Aimee Oropeza
Reviewed By:	

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

Summary / Background Information

Vehicle 1135 was purchased September 2021 and the expense was coded to the ER&R Fund. Per Resolution 2021-403, it should have been paid by the Protective Inspection Services Fund.

Fiscal Impact

Amount: $27,059.94 from ER&R Fund to Protective Inspection Services Fund

Fund: ER&R ($27,059.94)

Protective Inspection Services $27,059.04

Recommendation

Approve expenditure coding correction between ER&R Fund and Protective Inspection Services Fund.

Suggested Motion

Approve as part of consent agenda.

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EQUIPMENT RENTAL AND REVOLVING AND PROTECTIVE INSPECTIONS SERVICES, RE: EXPENDITURE CODING CORRECTION BETWEEN THE EQUIPMENT RENTAL AND REVOLVING FUND 0501-101, DEPARTMENT NUMBER 650, AND PROTECTIVE INSPECTION SERVICES FUND 0149-101, DEPARTMENT NUMBER 000.

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

Dated this ___ day of _____ 2022.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

A Oropeza

BENTON COUNTY
EXPENDITURE CODING CORRECTIONS

FUND NUMBER: 0501101 and 0149101
DEPARTMENT NUMBER: 650 and 000
FUND NAME: ER&R and Protective Inspection Services Fund

TRANSFER FROM:				TRANSFER TO:			
BASE SUB 6 digit	**LINE ITEM** 4digit	**LINE ITEM Name**	**AMOUNT**	**BASE SUB** 6 digit	**LINE ITEM** 4digit	**LINE ITEM** Name	**AMOUNT**
0501101				0149101			
594.480	6400	Equipment	27,059.94	594.240	6401	Capital Outlay	27,059.94
		TOTAL	**$ 27,059.94**			**TOTAL**	**$ 27,059.94**

rev 02.2017

EXPLANATION:
Per resolution 2021-403, vehicle 1135 should have been paid for by the Protective Inspection Services Fund.

RETURN TO: Auditor's Office, Accounting Department

Prepared By: DATE:

Aimee Oropeza 1/5/2022

Approved:

AUDITOR'S USE ONLY:

Keyed:

Date:

Initials:

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25th, 2022
Subject:	Accepting a local solid waste financial assistance grant from the Washington State Department of Ecology
Presenter:	N/A
Prepared By:	C. Woods
Reviewed By:	Doug D'Hondt

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

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

Summary / Background Information

Benton County is the implementing agency for the County-wide Solid and Moderate Risk Waste plans. Solid Waste Management Local Solid Waste Financial Assistance (SWMLSWFA) is available for a two-year period: July 2021 – June 2023 Grant funding cycle. The attached agreement SWMLSWFA-2021-BeCoSW-0092 between the State of Washington Department of Ecology and Benton County Solid Waste is for a maximum of $682,504.00, with a 75% match from State funds ($511,878.00) and a 25% match from County and participating City funds ($170,626.00). City participation is based on population numbers.

This funding will reimburse expenses for the construction, management and operation of the MRW facility located at 1709 South Ely Street and the hosting of Household Hazardous Waste (HHW) mobile events for residents in outlying areas around the county.

In order to receive the funds the County must execute an agreement with the Department of Ecology. The agreement has been reviewed by the prosecuting attorney's office but there is no place on the form for them to indicate their approval.

Fiscal Impact

There is no impact on current expense monies, as the Solid Waste Department collects a waste collection surcharge on garbage collections in unincorporated Benton County to fund its activities. The Solid Waste fund will contribute $30,712.68 over the two-year period, if all grant funds are spent.

Recommendation

We recommend the Board of Commissioners approve and sign the agreement SWMLSWFA-2021-BeCoSW-0092 between the State of Washington Department of Ecology and Benton County Solid Waste

Suggested Motion

Motion to approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ACCEPTING A LOCAL SOLID WASTE FINANCIAL ASSISTANCE GRANT FROM THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

WHEREAS, each year the County applies for a grant from the Washington State Department of Ecology to support its House Hold Hazardous Waste collection program consistent with the County Solid Waste plan; and

WHEREAS, the Department of Ecology has approved a grant to Benton County for the time period beginning July 1, 2021 and ending June 30, 2023 in the amount of $682,504; and

WHEREAS, this grant will reimburse expenses for the construction, management and operation of the MRW facility located at 1709 South Ely Street and the hosting of Household Hazardous Waste (HHW) mobile events for residents in outlying areas around the county; and

WHEREAS, Agreement No. SWMLSWFA-2021-BeCoSW-0092 has been provided for the County to execute in order to receive the funding; and

WHEREAS, the agreement has been reviewed by the Prosecuting Attorney's office and approved as to form, however, there is no signature line for that approval so they have not signed it; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby accepts the grant of $682,504 from the Washington State Department of Ecology as outlined in Agreement No. SWMLSWFA-2021-BeCoSW-0092 to carry out the stated solid waste collection activities in Benton County; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of County Commissioners be, and hereby is, authorized to execute said agreement on behalf of Benton County.

Dated this 25th day of January, 2022.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Public Works C. Woods

Cristina Woods

From: Reid Hay
Sent: Thursday, January 6, 2022 4:23 PM
To: Cristina Woods
Cc: Douglas D'Hondt; Matt Mahoney
Subject: Dept. of Ecology Solid Waste Grant Agreement

Cristina,

I have reviewed the proposed grant agreement with the Dept. of Ecology, Agreement No. SWMLSWFA-2021-BeCoSW-000092, 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.

Agreement No. SWMLSWFA-2021-BeCoSW-00092

SOLID WASTE MANAGEMENT LOCAL SOLID WASTE FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

BENTON COUNTY SOLID WASTE DISTRICT

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and BENTON COUNTY SOLID WASTE DISTRICT, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	IMP Benton Co SW
Total Cost:	$682,504.00
Total Eligible Cost:	$682,504.00
Ecology Share:	$511,878.00
Recipient Share:	$170,626.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	Planning & Implementation

Project Short Description:
Benton County Solid Waste will spend $682,504 to construct, manage and operate a MRW facility and host Household Hazardous Waste (HHW) mobile events for residents in outlying areas around the county.

Project Long Description:
See the Scope of Work section for more detailed information related to individual Tasks.

Overall Goal:
Provide regional solutions and intergovernmental cooperation; prevent or minimize environmental contamination through planning and project implementation; and comply with state and local solid and hazardous waste management plans and laws.

RECIPIENT INFORMATION

Organization Name: BENTON COUNTY SOLID WASTE DISTRICT

Federal Tax ID: 91-6001296
DUNS Number: 000000000

Mailing Address: PO Box 1001
Prosser, WA 99350

Physical Address: 620 Market Street
Prosser, Washington 99350

Organization Email: publicworks@co.benton.wa.us

Contacts

Project Manager	Cristina Rodrigues Woods Engineering Associate II 620 Market Street Prosser, Washington 99350 Email: cristina.woods@co.benton.wa.us Phone: (509) 786-5611
Billing Contact	Shela Berry CFO 620 Market Street Prosser, Washington 99350 Email: shela.berry@co.benton.wa.us Phone: (509) 786-5611
Authorized Signatory	Douglas Paul D'Hondt County Engineer 620 Market Street kennewick, Washington 99338 Email: douglas.dhondt@co.benton.wa.us Phone: (509) 786-5611

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Solid Waste Management
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Solid Waste Management
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Laura Busby 1250 W Alder St. Union Gap, Washington 98903-0009 Email: LBUS461@ecy.wa.gov Phone: (509) 406-3959
Financial Manager	Laura Busby 1250 W Alder St. Union Gap, Washington 98903-0009 Email: LBUS461@ecy.wa.gov Phone: (509) 406-3959

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

By: _____

Laurie Davies Date
Solid Waste Management
Program Manager

Template Approved to Form by
Attorney General's Office

BENTON COUNTY SOLID WASTE DISTRICT

By: _____ 01/07/22

Douglas Paul D'Hondt Date
County Engineer

Shon Small

Chairman of the Board Date

SCOPE OF WORK

Task Number: 1 **Task Cost:** $682,504.00

Task Title: MRW Collection and Management

Task Description:

RECIPIENT will contract for assistance with this task in accordance with Part 10 General Terms and Conditions. RECIPIENT must provide a copy of the signed contract to ECOLOGY prior to ECOLOGY approval for reimbursement of contractor costs. Reimbursement for costs incurred by contractors to implement work identified in this task are subject to the same eligibility and reimbursement requirements as the RECIPIENT, and require ECOLOGY approval. This task includes development and distribution of promotional materials in a variety of formats to encourage program participation. In accordance with provisions 3 and 19 of the General Terms and Conditions of this Agreement, RECIPIENT is encouraged to work with their ECOLOGY grant manager when developing promotional materials.

ACTIVITY–COLLECTION EVENTS

RECIPIENT will provide collection events for recycling and disposal of household hazardous waste (HHW). RECIPIENT collects waste from conditionally exempt small quantity generators (CESQGs). LSWFA does not pay for the management of waste accepted from CESQGs. If shipment/disposal bills for CESQG waste cannot be separated from HHW, then a fee must be charged to each business to cover the costs and those fees must be itemized as a credit to the task. RECIPIENT is not participating in the PaintCare product stewardship program and will be implementing special collection events. ECOLOGY encourages RECIPIENT to contact PaintCare to coordinate their presence at events. PaintCare will take all acceptable products during the event at no charge to the RECIPIENT, resulting in a cost savings to the RECIPIENT. LSWFA will not cover the costs at collection events that are covered by PaintCare.

Work to be performed by RECIPIENT:

- Plan, promote, and host collection events
- Or Contractor will sort, pack, and transport waste for proper management
- Provide education and or outreach

ACTIVITY–MODERATE RISK WASTE FACILITY CONSTRUCTION

RECIPIENT will retrofit an existing building on county property at 1709 South Ely Street, Kennewick.

Work to be performed by RECIPIENT:

- Or contractor will complete facility design documents and complete construction
- Acquire required permits, inspections and approvals for construction and operation

ECOLOGY will reimburse costs related to project work after deliverables are uploaded into EAGL. RECIPIENT expects to complete deliverables as identified in the Work Plan and Reimbursement Schedule in the Task Expected Outcomes.

Costs eligible for reimbursement with supporting documentation include:

- Recipient employee time to implement task scope
- Trainings required for employees to perform the task scope. Travel costs must be pre-approved by Ecology and are reimbursed up to the state rate, including per diem
- Materials and supplies required for building remodel and construction
- Contracted or purchased services
- Costs not listed here but pre-approved in writing by Ecology

Costs not eligible for reimbursement include:
• Overtime compensation (all hours are calculated at the regular rate of pay)
• Costs covered by existing product stewardship organizations (E-Cycle Washington, LightRecycle Washington, Call2Recycle, PaintCare) and costs covered by new product stewardship organizations that are fully implemented during this agreement period are not eligible for reimbursement through this agreement
• Costs not specifically identified in the task's scope of work or pre-approved in writing by Ecology

Task Goal Statement:
To provide opportunities for residents of Benton County to safely and legally dispose of Household Hazardous Waste (HHW).

Task Expected Outcome:
With the Task Cost, Benton County employees will work 1,000 hours to provide MRW facility construction, management and outreach, as well as HHW collection events for outlying communities, in order to collect an estimated 120 tons of HHW and complete construction of the MRW facility before the expiration of this agreement.

ACTIVITY – MODERATE RISK WASTE FACILITY CONSTRUCTION
Work Plan and Reimbursement Schedule:
Q1: Plan approval negotiations; develop and advertise Request for Bids
Q2: Select and hire contractor, contract negotiations, award and execute contract
Q3: Construction Phase 1: Demolition, prepare building for remodel
Q4: Construction Phase 2: Remodel of exterior/interior walls, electricity, plumbing, and HVAC commences
Q5: Construction Phase 3: Finishing work of interior/exterior
Q6-7: Post-Construction Phase: Building Permit Approval, Notice of completion sent, retainer released, facility operation contract initiated with the lowest responsible bidder per required bidding process, operation contract executed, promotion
Q8: Facility operations commences, promotion

Recipient Task Coordinator: Cristina Woods

MRW Collection and Management

Deliverables

Number	Description	Due Date
1.1	Task Expected Outcomes are the deliverables and achieved incrementally throughout the biennium.	

BUDGET

Funding Distribution EG220239

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: IMP Benton County SW
Funding Type: Grant
Funding Effective Date: 07/01/2021
Funding Expiration Date: 06/30/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)

Fund:
Type: State
Funding Source %: 100%
Description: Local Solid Waste Financial Assistance

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%
Recipient Match %: 25%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

IMP Benton County SW	Task Total
MRW Collection and Management	$ 682,504.00
	Total: $ 682,504.00

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
IMP Benton County SW	25.00 %	$ 170,626.00	$ 511,878.00	$ 682,504.00
Total		**$ 170,626.00**	**$ 511,878.00**	**$ 682,504.00**

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

If the scope of this Agreement includes recycling activity managed or performed by the RECIPIENT at a recycling center (such as a transfer station or drop box location) or other locations, Ecology will not reimburse disposal costs for materials collected or advertised as collected for recycling/reuse or marketed for recycling/reuse under this Agreement, unless approved in writing by Ecology. RECIPIENT must immediately notify ECOLOGY when the RECIPIENT becomes aware that disposal of materials occurred or may occur due to the market conditions for recycled/reused materials. ECOLOGY may deny new costs or require repayment of costs already reimbursed or remove the task from the Agreement or terminate the Agreement.

Ecology will conduct a risk assessment of all Local Solid Waste Financial Assistance recipients. The level of risk determines the level of oversight required by Ecology throughout the biennium. If the RECIPIENT's performance or project circumstances change, Ecology may reassess risk and notify the RECIPIENT of any changes to administrative requirements.

RECIPIENT shall update the Spending Plan and Outcomes Data Collection form at least quarterly. The Spending Plan and Outcomes Data Collection form must be completed concurrent with the submittal of each payment Request/Progress Report. RECIPIENT shall report outcomes in a manner consistent with instructions in the Local Solid Waste Financial Assistance guidelines.

RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial (including payment requests), performance, and other reports required by this Agreement. Ecology shall have the right to deny reimbursement of payment requests received after this date.

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements

contained in the certification, they must provide an explanation as to why they cannot.

2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than $25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than $25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsrs.gov <http://www.fsrs.gov/> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov/>.

For more details on FFATA requirements, see www.fsrs.gov <http://www.fsrs.gov/>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE

SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232 <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management (SAM) <https://sam.gov/SAM/> exclusion list.

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS
For DEPARTMENT OF ECOLOGY GRANTS and LOANS
06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html)

b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.

c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.

d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (https://ocio.wa.gov/policy/accessibility) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:

• Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.

* For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

• For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).

b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

• Keep the IDP at the project site.
• Make the IDP readily available to anyone working at the project site.
• Discuss the IDP with staff, volunteers, and contractors working at the project site.
• Implement the IDP when Cultural Resources or human remains are found at the project site.

c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.

• Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.

d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.

• Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.

e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.

b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.

c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.

d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.

e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.

f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.

g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, https://ofm.wa.gov/it-systems/statewide-vendorpayee-services. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.

i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.

c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.

d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

a) RECIPIENT notifies the funding program of an appeal request.

b) Appeal request must be in writing and state the disputed issue(s).

c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.

d) ECOLOGY reviews the RECIPIENT's appeal.

e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.
The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.
Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.
Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.
Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: http://www.ecy.wa.gov/eim.
c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at: https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

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

16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.

d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.

b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.

c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
c) RECIPIENT shall use ECOLOGY's provided progress report format.
d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. 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.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing, https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. 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.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. 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.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.
RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement
ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination
All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.
Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY
RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER
Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Executing a contract with Banlin Construction for the Justice Center Front Entrance Security Upgrade Project
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

Per resolution 2022-021, Banlin Construction was awarded the Justice Center Front Entrance Security Upgrade Project.

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 Banlin Construction, Kennewick, WA

Fiscal Impact

Amount:	$165,000.00	&	$40,000.00
Fund:	Public Safety Tax Fund		Capital Projects Fund

Recommendation

Approve the execution of the contract with Banlin Construction for the Justice Center Front Entrance Security Upgrade Project in an amount not to exceed $205,000.00.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING THE CONTRACT WITH BANLIN CONSTRUCTION, KENNEWICK, WA FOR THE JUSTICE CENTER FRONT ENTRANCE SECURITY UPGRADE PROJECT

WHEREAS, per Resolution 2022-021, Banlin Construction was awarded the Justice Center Front Entrance Security Upgrade Project; 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 Banlin Construction, Kennewick, WA; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to execute the contract with Banlin Construction for the Justice Center Front Entrance Upgrade Project in a not to exceed amount of $205,000.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, said contract expires 126 calendar days after the Notice to Proceed is given.

Dated this 25th day of January, 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Department P. Schut
c: Auditor, Facilities, Procurement

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the day of in the year 2021
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Benton County
P.O. Box 1001
Prosser, WA 99350
Telephone Number: 509-736-2704

and the Contractor:
(Name, legal status, address and other information)

Banlin Construction
320 W Columbia Drive
Kennewick, WA 99336
509-586-2000

for the following Project:
(Name, location and detailed description)

Benton County Justice Center Main Entry Renovation
7122 W. Okanogan Place; Bldg. A
Kennewick, WA 99336

The Architect:
(Name, legal status, address and other information)

Wave Design Group
418 N. Kellogg St., Suite B
Kennewick, WA 99336
Telephone Number: 509-737-1000

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

TABLE OF ARTICLES

1 THE WORK OF THIS CONTRACT

2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3 CONTRACT SUM

4 PAYMENT

5 DISPUTE RESOLUTION

6 ENUMERATION OF CONTRACT DOCUMENTS

7 GENERAL PROVISIONS

8 OWNER

9 CONTRACTOR

10 ARCHITECT

11 SUBCONTRACTORS

12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

13 CHANGES IN THE WORK

14 TIME

15 PAYMENTS AND COMPLETION

16 PROTECTION OF PERSONS AND PROPERTY

17 INSURANCE AND BONDS

18 CORRECTION OF WORK

19 MISCELLANEOUS PROVISIONS

20 TERMINATION OF THE CONTRACT

21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of this Agreement.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check the appropriate box and complete the necessary information.)

[X] Not later than (126) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[X] Stipulated Sum, in accordance with Section 3.2 below

[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be Two Hundred Five Thousand Dollars and Zero Cents ($ 205,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.2.2 Unit prices, if any:
(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

Item	Units and Limitations	Price per Unit ($0.00)

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price

§ 3.3 Cost of the Work Plus Contractor's Fee – Section Not Needed

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price – Section Not Needed

§

§ 3.5 Liquidated damages, if any:
(Paragraphs deleted)
(Insert terms and conditions for liquidated damages, if any.)

*(Paragraphs deleted)*If the Work is not substantially complete within this period of time, or extension thereof granted by the Owner, the Owner will sustain damage that will be impracticable and extremely difficult to quantify in the event of and by reason of such delays. The Contractor shall pay to the Owner liquidated damages in the sum of $750 for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the thirtieth day of the same month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

%

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

.4 Retainage will only be released in accordance with RCW 60.28 on completion of the work and once all required forms and reports have been filed with the Owner, Architect, Department of Labor and Industries, Department of Revenue and the Employment Securities Department

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 21.6 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications:

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
Division 00 through Division 12	Specifications	10/20/2021	

§ 6.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
G-000	COVER SHEET AND GENERAL NOTES	October 20, 2021
G-001	CODE REVIEW	October 20, 2021
A-011	MAIN LEVEL DEMOLITION PLAN	October 20, 2021
A-111	MAIN LEVEL FLOOR PLANT AND ELEVATIONS	October 20, 2021
A-311	GUARD STATION SECTIONS	October 20, 2021
A-601	DOOR & WINDOW SCHEDULES	October 20, 2021
E-111	MAIN LEVEL POWER PLAN	October 20, 2021
E-601	PANEL SCHEDULE	October 20, 2021

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
Addenda #1	11/22/2021	16 Pages
Addenda #2	12/2/2021	8 Pages
(Row deleted)		
Addenda #3	12/7/2021	10 Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract
(Paragraphs deleted)
Documents – Section not needed.

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails to remedy any failure, defect, or damage within ten days of receiving notice or if the remedy continues to be inadequate or does not cure the defect or damage, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense. Such action by the Owner and amounts charged to the

AIA Document A104™ – 2017 **(formerly A107™** – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

Contractor shall be discussed with and justified to the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on 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.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 After consultation with the owner, the Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- **.1** the documents enumerated in Article 6, including all Modifications thereto;
- **.2** a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- **.3** a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- **.4** a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- **.5** a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

.1 defective Work not remedied;
.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any,

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- **.1** liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

(PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars ($1,000,000) each occurrence, two million dollars ($2,000,000) general aggregate, and two million dollars ($2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- **.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- **.2** personal and advertising injury;
- **.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- **.4** bodily injury or property damage arising out of completed operations; and
- **.5** the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than one million dollars ($1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

(Paragraphs deleted)

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits

§ 17.2 Owner's Insurance
§ 17.2.1 Owner's Liability Insurance
The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance
§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:
(Name, address, email address and other information)

Robert Blain
P.O. Box 1001
620 Market St.
Prosser, WA 99350
Telephone Number: 509-736-2704
Robert.blain@co.benton.wa.us

§ 19.5 The Contractor's representative:
(Name, address, email address and other information)

Jasen Banta
320 W Columbia Drive
Kennewick, WA 99336
509-586-2000
Jasen@banlinconstruction.com

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 owner invokes its right to carry out work in accordance with § 8.2 and § 8.3 of this contract.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:
(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

- This section left blank intentionally -

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

DocuSign Envelope ID: ED8EAFC9-1F75-4CB3-8376-FA1A4EAE2E98

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

Dated:_____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest:_____
Clerk of the Board

Approved as to Form

DocuSigned by:
Eric Andrews
B4F7673BB8A1486...
Civil Deputy Prosecuting Attorney

Dated:_____

FOR: BANLIN CONSTRUCTION

DocuSigned by:
Jasen Banta
99E09947B9674AC...
Signature

Owner
Title:

Jasen Banta
Print Name

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:39:37 ET on 01/10/2022 under Order No.2114277873 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1766935639)

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Authorizing an Additional Payment to Paramount Communications, Inc. for Unforeseen Issues while Pulling Fiber Runs
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

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

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

Summary / Background Information

As per Resolution 2021-655, Benton County authorized an agreement with Paramount Communications, Inc., utilizing the Washington State Contract, for pulling additional fiber runs at the Benton County Justice Center for the upcoming BDA/DAS Radio Project.

During the installation, it was discovered there wasn't enough room in the current conduit run to accommodate the new fiber run. After discussing options with the County, it was determined the most cost-efficient option would be to install an additional conduit run that would accommodate this new run and leave room for future runs.

Fiscal Impact

Amount: $2,730.10 excluding WSST

Fund: Fund # 0305-101– Capital Projects Fund

Recommendation

Approve the additional payment to Paramount Communications, Inc. for the additional conduit run.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING AN ADDITIONAL PAYMENT TO PARAMOUNT COMMUNICATIONS, INC. FOR UNFORESEEN ISSUES WHILE PULLING FIBER RUNS

WHEREAS, per Resolution 2021-655, Benton County authorized an agreement with Paramount Communications, Inc., utilizing the Washington State Contract, for pulling additional fiber runs at the Benton County Justice Center for the upcoming BDA/DAS Radio Project; and

WHEREAS, during the installation, it was discovered there wasn't enough room in the current conduit run to accommodate the new fiber run; and

WHEREAS, after discussing options with the County, it was determined the most cost-efficient option would be to install an additional conduit run that would accommodate this new run and leave room for future runs; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners authorizes the additional payment of $2,730.10 excluding WSST to Paramount Communications, Inc.

Dated this 25th day of January 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing Department
C: Auditors, Procurement

P. Schut

Paramount Communications Inc.

1236 Columbia Park Trail
Richland, WA 99352

Invoice

Date	Invoice #
12/20/2021	36778

Bill To
Benton County Information Technology PO Box 608 Prosser, WA 99350

Ship To
PROJECT:Jail Fiber Install PO: 2021 655 PCI: 206108

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
2021 655	Net 30		12/20/2021			206108-Jail Fiber Install

Quantity	Item Code	Description	Price Each	Amount
		Work completed as per quote. Plus additional cost to have Phase 2 install conduit for fiber pathway. (see attached invoice from Phase 2)		
	RETAIL	Paramount	6,527.00	6,527.00T
	RETAIL	Conduit Installation	2,730.10	2,730.10T
		Sales Tax - 8.6%	8.60%	796.11
			Total	$10,053.21

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Execute contract with Booth and Sons Construction, Inc. for the Moderate Risk Waste Facility project
Presenter:	
Prepared By:	slc
Reviewed By:	D. D'Hondt

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

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

Summary / Background Information

By Resolution 2022-026 dated January 4, 2022, an award was made to Booth and Sons Construction, Inc. for the Moderate Risk Waste Facility project – CB21-07. As directed a contract has been prepared; and reviewed and approved as to form by our departmental assigned Deputy Prosecuting Attorney from the Civil Division; and has been executed by Booth and Sons Construction, Inc.

Fiscal Impact

Amount: $1,059,700.00 excluding WSST

Fund: Solid Waste Fund

Recommendation

It is recommended by the County Engineer that the Board authorize the Chairman to sign the contract with Booth and Sons Construction, Inc. for the Moderate Risk Waste Facility project.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN TO SIGN THE CONTRACT WITH BOOTH AND SONS CONSTRUCTION, INC. FOR THE MODERATE RISK WASTE FACILITY PROJECT – CB21-07

WHEREAS, by Resolution 2022-026 dated January 4, 2022, an award was made to Booth and Sons Construction, Inc., Richland, Washington and as directed, staff has prepared a contract for Board approval; and

WHEREAS, our departmental assigned Deputy Prosecuting Attorney from the Civil Division has reviewed and approved as to form said contract; and

WHEREAS, the contract in the amount of $1,059,700.00 has been executed by Booth and Sons Construction, Inc.; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract awarded January 4, 2022 to Booth and Sons Construction, Inc., in the amount of $1,059,700.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, the County Engineer is hereby authorized to proceed with the Moderate Risk Waste Facility project according to the terms of the contract; and

BE IT FURTHER RESOLVED, the project shall be completed in its entirety within one hundred and fifty (150) calendar days as described in the contract documents.

Dated this 25th day of January, 2022.

_____
Chairman.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Dept. S. Christen
c: Auditor, Procurement

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of _____ in the year two thousand and twenty-two
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Benton County
7122 W. Okanogan Place
Kennewick, WA 99336
509.736.2704

and the Contractor:
(Name, legal status, address and other information)

Booth and Sons Construction, Inc.
P. O. Box 608
Richland, WA 99352
509.308.4338

for the following Project:
(Name, location and detailed description)

Benton County Moderate Risk Waste Facility Retrofit
1709 S. Ely Street
Kennewick, WA 99336

(Paragraph deleted)

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.
/

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, General Conditions of the Contract for Construction, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be upon issuance of the Notice to Proceed by the Owner:
(Check one of the following boxes.)

[ ] The date of this Agreement.

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

[X] Not later than one hundred fifty (150) calendar days after the date established in the Notice to Proceed.

[ ] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be $1,059,700.00 subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
b. Removal of Maintenance/Equipment Storage on the West side of the Shed	$3,000.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

If the Work is not substantially complete within this period of time, or extension thereof granted by the Owner, the Owner will sustain damage that will be impracticable and extremely difficult to quantify in the event of and by reason of such delays. The Contractor shall pay to the Owner liquidated damages in the sum of $750 for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 The form of application for payment shall be AIA Form G702-Application and Certificate for Payment, and supported AIA Form G-703-Application and Certificate for Payment Continuation Sheet pursuant to Article 9 of AIA Document A201–2017. Based upon Applications for Payment submitted to the Owner's Representative by the Contractor and Certificates for Payment issued by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 Provided that an Application for Payment is received by the Owner's Representative not later than the fifth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than thirty (30) days after the Owner's Representative received the Application for Payment. If an Application for Payment is received by the Owner's Representative after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Owner's Representative received the Application for Payment.

§ 5.1.3 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.5 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(Paragraph deleted)

§ 5.1.6.1 The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Owner determines, in the Owner's judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and

.5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

Retainage will only be released in accordance with RCW 60.28 on completion of the work and once all required forms and reports have been filed with the Owner, Department of Labor and Industries, Department of Revenue and the Employment Security Department.

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Owner's Representative.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Owner's Representative's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

One percent (1%) per month per RCW 39.76.011

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Deputy County Administrator will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the
(Paragraphs deleted)

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

Deputy County Administrator.)

§ 6.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION
§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

No termination Fee

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS
§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Robert Blain
7122 W. Okanogan Place
Kennewick, WA 99336
509.736.2704
robert.blain@co.benton.wa.us

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

George Booth, President
P. O. Box 608
Richland, WA 99352
509.308.4338
georgeboothiii@boothandsons.com

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A201™–2017, General Conditions of the Contract for Construction, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds, as set forth in AIA Document A201™–2017, and elsewhere in the Contract Documents as provided by the Owner.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

The parties shall endeavor to establish necessary protocols governing transmission of Instruments of Service or any other information or documentation in digital form.

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A201™–2017, General Conditions of the Contract for Construction

.3 Not used

.4

(Paragraphs deleted)

Not used

.5 Drawings

Number	Title	Date
Refer to the Table of Contents for the Index of Drawings		

.6 Specifications

Section	Title	Date	Pages
Refer to the Table of Contents for the Project Specifications			

.7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	George Booth III **CONTRACTOR** *(Signature)*
Shon Small, Chairman, Board of County Commissioners *(Printed name and title)*	George Booth, President *(Printed name and title)*

Approved as to Form:

Eric Andrews, Deputy Prosecuting Attorney	1/5/22 Date

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 13:18:02 ET on 01/05/2022 under Order No.2114275990 which expires on 01/03/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (2036754253)

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Benton County Moderate Risk Waste Facility
1709 S. Ely Street
Kennewick, WA 99336

THE OWNER:
(Name, legal status and address)

Benton County
7122 W. Okanogan Place
Kennewick, WA 99336

THE OWNER'S REPRESENTATIVE:
(Name, legal status and address)

Robert Blain • Director of Operations and Capital Programs
7122 W. Okanogan Place
Kennewick, WA 99336

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 OWNER'S REPRESENTATIVE

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.
/

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2
Addenda
1.1.1
Additional Costs, Claims for
3.7.4, 3.7.5, 10.3.2, 15.1.5
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, **13.4**
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**
Administration of the Contract
3.1.3, **4.2**, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8
Applications for Payment
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10
Approvals
2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1
Arbitration
8.3.1, 15.3.2, **15.4**
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2
Architect's Additional Services and Expenses
2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.5, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.6.8, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1
Binding Dispute Resolution
8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1
Bonds, Lien
7.3.4.4, 9.6.8, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.6**
Building Information Models Use and Reliance
1.8
Building Permit
3.7.1

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5
Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4
Certificates of Inspection, Testing or Approval
13.4.4
Certificates of Insurance
9.10.2
Change Orders
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5
Claims, Definition of
15.1.1
Claims, Notice of
1.6.2, 15.1.3
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**
Claims for Additional Time
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7
Claims Subject to Arbitration
15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**
Commencement of the Work, Definition of
8.1.2
Communications
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.4
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR
SUSPENSION OF THE
5.4.1.1, 5.4.2, 11.5, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5, 15.2.5**
Contract Sum, Definition of
9.1
Contract Time
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Contractor, Definition of
3.1, 6.1.2
Contractor's Construction and Submittal Schedules
3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2
Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3
Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2
Instruments of Service, Definition of
1.1.7
Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, 11.2, 11.4, 11.5
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13
Interest
13.5
Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5
Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1
Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2
Notice
1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1
Notice of Cancellation or Expiration of Insurance
11.1.4, 11.2.3
Notice of Claims
1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1
Notice of Testing and Inspections
13.4.1, 13.4.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.3.1, 9.6.6, 9.8
Orders, Written
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Evidence of Financial Arrangements
2.2, 13.2.2, 14.1.1.4
Owner, Information and Services Required of the
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4
Owner's Authority
1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.5, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.4
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2, 14.4
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3
Partial Occupancy or Use
9.6.6, **9.9**
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**
Permits, Fees, Notices and Compliance with Laws
2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7
Progress and Completion
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4
Progress Payments
9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4
Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.2**
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3**
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, **14.2,** 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 9.1.2
Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.3.2
Waiver of Claims by the Contractor
9.10.5, 13.3.2, **15.1.7**
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**
Waiver of Consequential Damages
14.2.4, 15.1.7
Waiver of Liens
9.3, 9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2
Weather Delays
8.3, 15.1.6.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (AIA Document A101-2017 as modified therein) and consist of the Agreement, General Conditions of the Contract for Construction, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner. Unless specifically enumerated in the Agreement otherwise, the Contract documents do include bidding requirements (Advertisements or Invitation to Bid, Instruction to Bidders, Supplementary Instructions to Bidders, sample forms, the Contractors bid and portions of addenda relating to bidding requirements).

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.4.1 The entire project shall be considered as one "portion" unless separate areas or phases are designated for separate completion times or separate areas of completion and occupancy. This definition is for use in determining release of retainage.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 In the event of conflicts or discrepancies among the contract documents, interpretations will be based on the following priorities:

1. Modifications, with those of later date having precedence over those of earlier date.
2. The Agreement (AIA Document A101-2017 as modified by the parties).
3. Addenda, with those of later date having precedence over those of earlier date.
4. General Conditions of the Contract for Construction (AIA Document A201-2017 as modified herein by the parties).
5. Division 1 of the specifications.
6. Drawings and Divisions 2 through 40 of the specifications.
7. Other documents specifically enumerated in the agreement as part of the Contract Documents.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 The "Section Includes" listing at the beginning of the specification section presents a brief indication of the principal Work included in that section but does not limit Work to a specific subject.

§ 1.2.5 Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Owner for determination.

§ 1.2.6 The specifications have been partially "streamlined" and some words and phrases have been intentionally omitted. Missing portions shall be supplied by inference as with notes and drawings**.**

§ 1.2.7 The words "approve(s)", "directed", "selected", and similar words and phrases shall be presumed to be followed by "Owner". The words "satisfactory", "submitted", "reported" and similar words and phrases shall be presumed to be followed by the word "Owner". Words like "install", "provide", "furnish", and "supply", shall be construed to include complete furnishings and installing or construction. Words like "shown", "noted", and "scheduled" shall have the same meaning as indicated, and are used to assist the reader in locating particular items, Instructions, directions, and requirements as specified shall be considered to be followed by the phrase "unless otherwise specified or indicated".

§ 1.2.8 A colon (:) following a material or item shall be used in place of the words, "shall be".

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, and (2) the titles of numbered articles.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.7.1 Contractor acknowledges that Instruments of Service or any other information of documentation Contractor received in digital form may contain transmission or translation errors and are issued for convenience only, and if a discrepancy occurs, the Contractor shall rely on only hard-copy Instruments of Service.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols agreed upon by the Owner, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in the Agreement a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative assigned to the Project.

§ 2.1.2 The Owner's Representative as assigned in the Agreement shall be the Owners principal contact with the Contractor, and all communications from the Contractor to the Owner shall be made to the Owner's Representative. The Owner shall promptly notify the Contractor in writing of any replacement of the Owner's Representative.

§ 2.1.3 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give not of, or enforce claims pursuant to bonds.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 LEFT BLANK

§ 2.3.3 LEFT BLANK

§ 2.3.4 LEFT BLANK

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 The Contractor will be furnished, free of charge, one set of Drawings and Project Manual for use in construction of this Project. Additional sets may be purchased at the cost of reproductions, postage and handling by the Contractor.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The contractor shall not base any claim for additional time or money on any stop-work order issued under the provisions of this Section.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are pursuant to Section 9.5.1, where Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. The Contractor is an independent contractor and shall not for any purpose relating to or arising out of this Contract be an agent or employee of Owner.

(Paragraph deleted)

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner in the Owner's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall provide timely notice, in writing, to the Owner, and shall propose alternative means, methods, techniques, sequences, or procedures in writing. The Owner shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. If the Contractor is instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor in writing, the Contractor shall be fully and solely responsible for performing, and shall proceed to perform, the Work as safely as possible, but the Contractor shall not be liable for any loss or damage directly resulting from the Owner's refusal to accept the particular changes proposed by the Contractor, as opposed to loss or damage resulting from unsafe performance by the Contractor or other causes.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor has the responsibility to ensure all of its employees, Subcontractors, suppliers, and their agents, employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors adhere to the Contract documents, that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials in sufficient time to comply with the Project Schedule. The Contractor shall be coordinate its work with that of all others in the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with the Owner and all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.3.5 Without the prior written consent of Owner, Contractor shall not (i) employ any person to perform work hereunder who is a Close Family member: or (ii) subcontract Work to be performed hereunder to a Close Family Member or to any entity which is controlled by a Close Family Member. For the purposes of this Section, a Close Family Member means any of the following biological, step, half, foster, or by marriage person: parents, grandparents, children, grandchildren, spouses, brothers, sisters, or in-laws of any employee of Owner who is directly or indirectly involved with the administration, supervision, or implementation of this Agreement or the Work to be performed hereunder.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Contractor may make substitutions only with the consent of the Owner, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 LEFT BLANK

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 3.4.3.1 Contractor shall use adequate numbers of skilled workmen, thoroughly trained and experienced in the necessary crafts and completely familiar with the specified requirements and methods needed for proper performance of the Work. Owner has the right to require Contractor to remove from its work force assigned to the Work any employee deemed incompetent, careless, or otherwise objectionable, or any personnel whose actions are deemed to be contrary to public interest or inconsistent with the best interest of the Project. Contractor shall promptly furnish qualifications for any employees that in the opinion of Owner are unsatisfactory.

§ 3.4.4. After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the following conditions:

1. Required product cannot be supplied in time for compliance with Contract requirements.
2. Required product is not acceptable to Owner, or determined to be non-compatible, or cannot be properly coordinated, warranted, or insured, or has other recognized liability as certified by Contractor.
3. Substantial advantage is offered to Owner after deducting off-setting disadvantages including delays, additional compensation for redesign, investigation, evaluation, other necessary services, and/or similar considerations.

§ 3.4.2.1 By making requests for substitutions based on Section 3.4.4 above, the Contractor:

1. Represents that he has personally investigated the proposed substitute product and determined that it is equivalent or superior in all respects to that specified.
2. Represents that he has submitted the proposed substitution to owner and has received approval for said substitution.
3. Represents he will provide the same warranty for the substitution that he would for that specified.
4. Certifies that the cost of data presented is complete and includes all related costs under separate contracts, substitution which became apparent; and
5. Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The warranty shall continue for a period of 1 year from the date of Substantial Completion of the work unless otherwise specified, or as provided in 3.5.11.

§ 3.5.3 The contractor shall remedy at the Contractor's expense any failure to conform or any defect. In addition, the Contractor shall remedy at the Contractors expense damage to real or personal when that damage is the result of:

1. The Contractors failure to conform to Contract requirements; or
2. Any defect of equipment, material, or workmanship.

§ 3.5.4 The Contractor shall restore any work damaged in fulfilling the terms and condition of this section. The Contractors warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

§ 3.5.5 The Owner shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

§ 3.5.6 If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 3.5.7 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:

1. Obtain Warranties that would be given in normal commercial practice.
2. Require all warranties to be executed in writing, for the benefit of the Owner, if directed by the Owner, and
3. Enforce all warranties for the benefit of the Owner, if Directed by the Owner.

§ 3.5.8 The Contractor is responsible to enforce any subcontractor's, manufacturer's, or supplier's warranty should they extend beyond the period specified.

§ 3.5.9 Unless a defect is caused by the negligence of the Contractor, the Contractor shall not be liable for the repair of any defects of material furnished by the Owner nor for the repair of any damage that results from any defect in Owner-furnished material.

§ 3.5.10 The Owner's rights with respect to latent defects, gross mistakes, or fraud shall not be limited by the warranty provisions of these Contract Documents.

§ 3.5.11 In the event that the Contractor is required to make repairs during the warranty period, the provisions of Article II, Insurance and Bonds, shall remain in effect at no additional cost to the Owner.

§ 3.5.12 Contractor hereby assigns to the Owner, effective upon Substantial Completion, all express and implied warranties made or assigned at any time to the Contractor by any Subcontractor, Sub-subcontractor or material supplier relating to any part of the Work or any product incorporated into Work. Such warranties shall be in addition to and shall not diminish the warranties of the Contractor under Subparagraph 3.5.2 or other provisions of the Contract Documents.

§ 3.5.13 Contractor represents and warrants to owner that neither Contractor nor any individual entity or organization holding any ownership interest or controlling interest in Contractor, including any officer or director, is an individual, entity, or organization with whom any United States law, regulation, or executive order prohibits U.S. companies and individuals from dealing, including without limitation, names appearing on the SDN List. Contractor covenants to Owner that it will not cause Owner to be in violation of any regulation administered by the Office of Foreign Assets Control.

§ 3.5.14 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Owner shall obtain and pay for plan check(s) as required by the State of Washington and Benton County and required building permit fees. The Contractor shall pay for mechanical and electrical permits required by the State of Washington or local Authority. The Contractor shall obtain and pay for all licenses and permits and shall pay all fees and charges for connections to materials, parking, utility services, temporary obstructions, enclosures, opening and patching of streets, etc. off of the property of the Owner arising from the construction and completion of the work.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statues, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction or related thereto (including fines and penalties), which costs shall not be considered consequential damages waived by operation of Section 15.1.6 hereof.

1. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor, stating the reasons. If Contractor disagrees with the Owner's determination or recommendation, the Contractor may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner may notify the Contractor, stating whether the Owner (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The superintendent shall not be changed except with prior approval of the Owner, unless the superintendent ceases to be in the Contractor's employ. The replacement superintendent shall also be subject to these conditions.

§ 3.9.5 The superintendent's normal and customary duties may include labor related activities associated with installing components of the building.

§ 3.9.6 The superintendent's normal and customary duties shall encompass full-time QUALITY CONTROL, including but not limited to:

1. Proper coordination and sequencing of the various trades, materials, personnel, testing and data during all phases of the project;
2. Process schedule management including critical path analysis;
3. Written confirmation of all important communications shall be kept in the daily construction log.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Prepare and submit all required data under the provisions of Section 01 33 00 – Submittals.

§ 3.10.1.1 Contractor shall promptly notify the Owner in writing of any proposed changes in the Project Schedule or the Contract Time or of any event which could delay performance of any item of the Work, stating the cause of the delay, expected duration of the delay, the anticipated effect of the delay on the Project Schedule and the action being taken to correct the delay. Notification of potential delay does NOT constitute a change in the Contract Time; only a Change Order signed by the Owner can amend the Contract Time.

§ 3.10.1.2 If any Project Schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the Date(s) of Substantial Completion established in the Work Authorization (as the same may be extended as provided in the Contract Documents), the Contractor shall submit to the Owner for their review and approval a narrative description of the means and methods which the Contractor proposes to use to expedite the progress of the Work to ensure timely completion of the various phases of the Work and Work as a whole. Regardless of the cause of any delay, the Contractor shall exercise reasonable efforts to bring the Project back into compliance with the Project Schedule.

§ 3.10.1.3 To the extent that the Contractor or any Subcontractor, Sub-subcontractor or material supplier is responsible for the delay, the Contractor shall take all necessary action to bring the Project back into compliance with the Project Schedule, including without limitation increasing the number of personnel on the Project and implementing overtime and double shifts, and in that event, the Contractor shall not be entitled to an adjustment in the Contract Sum, Contract Time or the Project Schedule.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's approval. The Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Prepare and submit all required data under the provisions of Section 01 33 00 – Submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy submitted to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Owner without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Owner, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Owner.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Owner of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Owner's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner. The Owner shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner has specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Owner will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Owner at the time and in the form specified by the Owner.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 The Contractor shall comply with cleaning instructions contained in the specifications. In absence of specific cleaning instructions, follow accepted cleaning practices or the recommendation of the manufacturer of the material to be cleaned.

§ 3.16 Access to Work

The Contractor shall provide the Owner with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

(Paragraphs deleted)

ARTICLE 4 OWNER'S REPRESENTATIVE (LEFT BLANK)

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.2.1 The term "Subcontractor" or "Sub-subcontractor" includes every person or entity who has a contract to perform a portion of the Work at the site, of every tier regardless of how remove. The term "supplier" includes every supplier of materials or equipment used in the Work, of every tier regardless of how remote.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner may notify the Contractor whether the Owner (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3.1 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 an electrical contractor license, if required by chapter 19.28 RCW, or an elevator 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.

§ 5.3.2 The Contractor shall first pay out payments received under this Agreement to (and secure the discharge of any liens asserted by) all persons furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors, Sub-subcontractors and supplier). The Contractor agrees that, provided the Owner has paid the Contractor in accordance with this Agreement, the Owner has the right to a lien-free Project. The Owner may, at its discretion, make joint payments to the Contractor and its creditors. The Owner reserves the right in event any claim is made against the Owner arising out of any obligation incurred by the Contractor under this Agreement or in connection with performance of Work, to withhold payments due or to become due, to the Contractor, in such amounts as are necessary to cover the claim(s) and any costs or expenses arising in connection with the legal settlement thereof. The Contractor further agrees that if any lien or claim is filed or made against the Project site, the Project or the Owner as a result of the Contractor's failure to meet its obligations, the Owner upon fourteen (14) days prior written notice shall have the right to settle said lien or claim directly and deduct the cost of the settlement from payments due the Contractor (and, if the amount still due the Contractor is insufficient to cover such costs, to recover the shortfall from the Contractor directly), provided that the Contractor within such fourteen (14) day period has not settled such lien or claim or provided a bond against such lien or claim in a manner satisfactory to the Owner.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor. A Construction Change Directive may be issued by the Owner and may or may not be agreed to by the Contractor..

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Owner's Representative and signed by the Owner and Contractor stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the work covered by such Change Order in Application for Payment as if such work were originally part of the Project and Contract Documents.

§ 7.2.3 The allowances outlined in 7.3.11 shall also apply to Change Orders.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner's Representative and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner in writing within forty-eight hours of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner's Representative. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 LEFT BLANK.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Owner's Representative concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner's Representative will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In Subparagraph 7.3.4, the allowance for the combined overhead, insurance, bonds, coordination, supervision and profit included in the total cost to the owner shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, 10 percent of the cost.
2. For the Contractor, for Work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for work performed by that Subcontractor's or Sub-subcontractor's own forces, 10 percent of the cost.
4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, 5 percent of the amount due the Sub-subcontractor.
5. Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.4.
6. Overhead shall be considered to include hand tools, field office costs other than included in subparagraph 7.4.7.5, home office costs, and all other costs not specifically listed in paragraph 7.3.4.
7. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, equipment and subcontract. Labor, materials and equipment shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over $1,000.00 be approved without such itemization.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

The Owner's Representative may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Owner's Representative's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner's Representative and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's Representative's Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.4 Minor Changes in the Work

The Owner's Representative may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Owner's Representative's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner's Representative and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's Representative's order for a minor change without prior notice to the Owner's Representative that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The time stated for final completion shall include final cleanup of the premises and all documentation required by the Contract Documents.

§ 8.1.1.1 The Contractor shall substantially complete the work as defined by paragraph 9.8.1, no later than 150 days from the issuance of the Notice Proceed.

§ 8.1.2 The date of commencement of the Work is the date established in the Notice to Proceed.

§ 8.1.3 The date of Substantial Completion is the date certified by the Owner's Representative in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.4.1 When computing any period of time, the day of the event from which the period of time begins to run shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day which is not a weekend or holiday. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 It is the Contractor's option to complete the project earlier than the date specified in the Contract Documents, thus any claim based on delay shall be evaluated based upon the dates specified in the Contract Document, not an earlier projected completion that the Contractor may propose.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, of an employee of the Owner, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of Owner, its agents or employees or any other Contractor, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work.

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and supported by such data to substantiate its accuracy as the Owner may require, , shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. **This project closeout amount is different than project retainage, and shall cover expenses related to final corrections, cleaning, submittal of closeout documentation, and related work/value. Prepare and submit Schedule of Values under the provisions of Section 01 29 00 – Contract Considerations.**

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner's Representative before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner. This schedule, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner's Representative and supported by such data to substantiate its accuracy as the Owner may require, and unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. This project closeout amount is different than project retainage, and shall cover expenses related to final corrections, cleaning, submittal of closeout documentation, and related work/value. Prepare and submit Schedule of Values under the provisions of Section 01 29 00 – Contract Considerations.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner's Representative an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner requires, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directive, or by interim determinations of the Owner and included in Change Orders.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The form of application for payment shall be AIA Form G702-Application and Certificate for Payment, and supported AIA Form G703-Application and Certificate for Payment Continuation Sheet. Submit one original and 2 copies.

§ 9.3.1.4 The Contractor shall not withhold from a subcontractor or supplier more than the percentage of retainage held from processed payment certification for their port of the work.

§ 9.3.1.5 Until conditions set forth in Paragraph 9.10 are met, the Owner shall pay ninety-five (95) percent of the amount due the Contractor on account of progress payments.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Offsite storage will not be approved at locations more than 25 miles from the project site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Owner's Representative will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue a Certificate for Payment for such amount as the Owner determines is properly due, and notify the Contractor of the Owner's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor the reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation to the Owner, based on the Owner's Representative evaluation of the Work and the data in the Application for Payment, that, to the best of the Owner's Representative's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner's Representative may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Owner's Representative is unable to certify payment in the amount of the Application, the Owner's Representative will notify the Contractor as provided in Section 9.4.1. The Owner's Representative may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Owner's Representative withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Contractor that such payment will reflect on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Contractor.

§ 9.6.1.1 Progress Payments shall fall due 30 days after receipt of the Application for Payment by the Owner.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. The Owner shall not have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Owner's Representative does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Owner's Representative or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner's Representative a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner's Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's Representative's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner's Representative. In such case, the Contractor shall then submit a request for another inspection by the Owner's Representative to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Owner's Representative will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The payment shall be sufficient to increase the total payment to ninety-five (95) percent of the contract sum, less such amounts as the Owner's Representative shall determine for incomplete work and unsettled claims. The amount of retainage held for incomplete work and unsettled claims shall be double the value of the items remaining to facilitate completion of work and settlement of claims.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner's Representative as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Contractor, shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative will promptly make such inspection. When the Owner's Representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative will promptly issue a final Certificate for Payment stating that to the best of the Owner's Representative's knowledge, information and belief, and on the basis of the Owner's Representative's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's Representative's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The final retainage shall become due and payable to the Contractor in not more than sixty (60) days after issuance of the final Certificate of Payment by the Owner's Representative; provided releases have been obtained from the Washington State Department of Revenue, the Washington State Employment Security Department, and the Washington State Department of Labor and Industries; and provided the conditions of paragraph 9.10.2 are fully satisfied

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Representative (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner's Representative prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The owner will suffer financial loss if the Project is not Substantially Complete on the date set forth in the Contract Documents. The Contractor (and his Surety) shall be liable for and shall pay to the Owner the sums hereafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete. See A101 paragraph 4.5.

§ 9.10.7 The work of this Contract shall be commenced on a date to be specified in the Notice to Proceed and shall be completed within the time limits stipulated in the Contract Documents. The Contractor shall reimburse the Owner for any loss suffered through failure to meet the schedule.

§ 9.10.8 If an extension of Contract time is granted to the Contractor by Change Order, the Contractor shall indemnify and hold harmless the Owner from any loss to any other Contractor or Subcontractor caused by such extension of time. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

§ 9.10.9 It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act; and where under the Contract a time extension is allowed pursuant to Paragraph 8.3, Delays and Extensions of Time, the new time limit fixed by such extension shall be of the essence of this Contract.

§ 9.10.10 When the Contract work is substantially complete, the Owner's Representative will notify the Contractor in writing of the substantial completion date. If the Work is not substantially complete by the date established in the Contract Documents, the Contractor shall pay the dollar amount, as defined in the provisions of A101 Paragraph 4.5 as liquidated damages for each and every calendar day that the Contractor is in default until the Work is substantially complete. Said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficult of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount shall be deducted from the Contract amount and not paid by the Owner.

§ 9.10.11 For overruns in contract time occurring after substantial completion, damages shall be assessed on the basis of direct architectural, administrative, and related costs assignable to the project until the date of actual completion of all the contract work. The Owner may offset these costs against any payment due the Contractor. The Contractor shall complete the remaining work as promptly as possible. Upon request by the Owner's Representative, the Contractor shall furnish a written schedule for completing the Contract.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.4.1 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor will promptly reply to the Owner in writing stating whether or not they have reasonable objection to the persons or entities proposed by the Owner. If the Contractor has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor has no reasonable objection. When the material or substance has been rendered harmless, Work in the

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner shall be named as additional insured under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.2.1 The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits and as follows:

Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than two million dollars ($2,000,000) each occurrence, two million dollars ($2,000,000) general aggregate, and two million dollars ($2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including:

1. Damages because of bodily injury, sickness or disease, including the occupational sickness or disease, and death of any person;
2. Personal and advertising injury;
3. Damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
4. Bodily injury or property damage arising out of completed operations; and

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

5. the Contractor's indemnity obligations under Section 9.15

Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than one million dollars ($1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 11.1.2.3 The Owner, Owner's employees, and their consultants shall be named as an Additional Insured on the insurance required above with a 30-day notice to cancel any coverage, and the insurance shall contain the severability of interest clause as follows: "The insurance afforded herein applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability".

§ 11.1.2.4 All coverage shall be placed with an insurance company duly admitted in the State of Washington and shall be reasonable acceptable to Owner.

§ 11.1.2.5 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 1.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. For insurance written on a Commercial General Liability policy form, an ACORD form 255 will be acceptable. All insurance Certificates of Liability Insurance must name Owner's Project Number, Project Title and Project Address.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Insurance During Warranty Period – In the event the Contractor is required to make corrections on the premises in accordance with the warranty provisions of the Contract, the above insurance requirements shall remain applicable at no additional cost to the Owner.

§ 11.1.5 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 The Owner shall purchase and maintain, from any insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payee.

§ 11.2.2.1 The insurance required by this Section 11.2.2 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

§ 11.2.2.2 Specific Required Coverages. The insurance required by this Section 11.2.2 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Owner's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

§ 11.2.2.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 11.2.2 or, if necessary, replace the insurance policy required under Section 11.2.2 or, if necessary, replace the insurance policy required under Section 11.2.2 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 1 of the General Conditions.

§ 11.2.2.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section 11.2.2 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions of $5,000.00.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages to the work caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Owner, Owner's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 Performance Bond and Payment Bond

§ 11.6.1 The Contractor shall furnish Owner with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Owner, in an amount equal to 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.

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.6.3 The Bond shall include maintenance provisions covering workmanship and materials for a period of one year or for longer periods where so specified, from and after the Date of Substantial Completion. The Contractor shall include the cost of the Bond as part of the Contract Price.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 11.6.4 The Contractor shall promptly furnish additional security required to protect the Owner and persons supplying labor or materials under this Contract if:

1. Any surety upon any bond furnished with this Contract becomes unacceptable to the Owner;
2. Any surety fails to furnish reports on its financial condition if requested by the Owner.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's Representative's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner's Representative, be uncovered for the Owner's Representative's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner's Representative has not specifically requested to examine prior to its being covered, the Owner's Representative may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Owner's Representative or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.1 Contractor shall comply with applicable provisions of Revised Codes of Washington (RCW) and the Washington Administrative Code (WAC), including but not limited to the following (this listing is not intended to limit applicable RCWs and WACs but to emphasize the following:

1. Prevailing Wage Rates, RCW 39.12 and Certified Payroll Records WAC 296-127-320
2. Nondiscrimination, RCW 49.60
3. Hours of Labor, RCW 49.28
4. Contractor's Bond, RCW 39.08
5. Contractor's Regulations, RCW 18.27
6. Handicapped Provisions, RCW 70.92

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner's Representative timely notice of when and where tests and inspections are to be made so that the Owner's Representative may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Owner will instruct the Contractor to make

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner's Representative of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Representative.

§ 13.4.5 If the Owner's Representative is to observe tests, inspections, or approvals required by the Contract Documents, the Owner's Representative will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents (30 days from date received by the Owner's Representative) shall bear interest from the date payment is due at one percent (1%) per month per RCW 39.76.011.

§ 13.6 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at, or sent by e-mail, facsimile, registered or certified mail or by courier service to the last business address or e-mail address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual date of dispatch for e-mail or facsimile, or three (3) calendar days after the date of postmark for mail.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Owner's Representative has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.2.1 After the Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Contractor.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. otherwise is guilty of substantial breach of a provision of the Contract Documents.
5. becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency or makes an assignment for the benefit of creditors without the previous written consent of the Owner, except to a financial institutional authorized to do business in the State of Washington; then, the Owner may, after serving seven days' notice to the Contractor and surety, either:
   1. Transfer the performance of work from the Contractor to the surety or;
   2. Terminate the Contract and, at the Owner's option, provide such labor or materials as required to complete the work or delete the remaining work. Any extra costs or damages to the Owner shall be deducted from any money due or coming due to the Contractor under the Contract.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Owner's Representative that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 The Contractor and the surety shall bear any extra expenses incurred by the Owner in completing the work, including all increased costs for completing the work, and all damages sustained, or which may be sustained, by the Owner by reason of such refusal, neglect, failure, or discontinuance of work by the Contractor. After all the Work contemplated under the Contract has been completed, the Owner will calculate the total expenses and damages for the completed work. If the total expenses and damages are less than any unpaid balance to the Contractor, the excess will be paid by the Owner to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the surety shall be jointly and severally liable to the Owner and pay the difference to the Owner on demand.

§ 14.2.5 Upon receipt of a notice that the work is being transferred to the surety, the surety shall enter upon the premises and take possession of all materials, tools, and appliances for the purpose of completing the work included under the Contract and employ by Contract or otherwise any person or persons satisfactory to the Owner to finish the work and provide the materials without termination of the Contract. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments on estimates covering work subsequent to the transfer shall be made to the extent permitted under law to the surety or its agents without any right of the Contractor to make any claim.

§ 14.2.6 The Contractor and its surety shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in the work.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 14.2.7 If the termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been pursuant to Section 14.3 Suspension by the Owner for Convenience and Section 14.4 Termination by the Owner for Convenience.

§ 14.2.8 The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

If the Contractor asserts there is cause for a claim, the Contractor shall:

1. Immediately give a signed written Notice of Claim to the Owner before doing the Work;
2. Supplement the written claim notice within 7-calendar days with a written statement and supporting documents providing the following:
   a. The date and nature of the claim;

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

b. A full discussion of the circumstances which caused the claim, including names of persons involved, time, duration and nature of the Work involved, and a review of the Plans and Contract Provisions referenced to support the claim;
c. The estimated dollar cost, if any, of the Work related to the claim and a detailed breakdown showing how that estimate was determined; and
d. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption; and
e. If the claim is continuing, the information required above shall be supplemented upon request by the Owner's Representative until the claim is resolved.

Once such Claim is identified, the claimant shall cooperate with the Owner and the other party against whom the Claim is made in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. The claim resolution procedure defined in Section 15.2 shall be followed upon receipt of Contractor's claim.

Throughout any Work related to a claim, the Contractor shall keep complete records of extra costs and time incurred. The Contractor shall permit the Owner access to these and any other records related to the Work as determined by the Owner. The records for disputed work shall be in accordance with Section 7.3.7. By failing to follow the procedures of this Section, the Contractor completely waives any right for compensation or extended duration claims for protested Work. An additional Claim made after the initial Claim has been implemented by Change Order will not be allowed.

(Paragraphs deleted)

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Owner's Representative will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5.1 No adjustment in the Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 15.1.5.2 The parties agree that an integral part of this Contract is the ability to resolve claims and disputes in a timely manner. To achieve this timely resolution, the parties agree to establish a set cost allowance for delays and time extensions. There will be no additional allowance for equitable adjustment for any general conditions, costs or mobilization, demobilization, layout, temporary facilities, equipment, home office, or field overhead costs (extended overhead) or other costs of supervision herein relating to change orders, time extensions, or delays, other than as set forth in this paragraph. The Owner will pay only for the following verifiable costs associated with the time extension or delay: 1) the actual labor costs, fringe benefits, employment taxes and insurance related to the Project Superintendent; 2) the cost associated with the fair rental value of the Project Superintendent's vehicle directly related to the time extension; 3) the direct costs attributable to the extension for the field office facility including telephone line, utilities, power, lights, water, and sewer (toilets). Mark-up on these costs will not be allowed.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make claim for an increase in the Contract time, as stated in the Contract Documents, written notice, as provided herein, shall be given. The Contractor's claim shall include an estimate of cost and of probably effect of delay on progress of the Work based on contract time as stated in the Contract Documents. In case of a continuing delay, only one claim is necessary. All claims for costs related to claims for additional time shall be pursuant to Section 4.3.5. No adjustment in the Contract Time shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Deputy County Administrator will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

AIA Document A201® – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 17:32:27 ET on 12/06/2021 under Order No.3087112080 which expires on 03/11/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1801940066)

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Contract w/ CKJT Architects, PLLC. for the Architectural & Engineering Design of the Justice Center Tenant Improvement Project
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

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

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

Summary / Background Information

Qualifications were solicited to provide architectural & engineering design services for the Justice Center Tenant Improvement Project.

After reviewing the qualifications submitted, it was determined that CKJT Architects, 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 CKJT Architects, PLLC.

Fiscal Impact

Amount: $195,317.00 excluding W.S.S.T.

Fund: Capital Projects Fund (Fund# 0305-101)

Recommendation

Approve the Contract with CKJT Architects, PLLC. for the Justice Center Tentant Improvement project design.

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 CKJT ARCHITECTS, PLLC. FOR PROVIDING ARCHITECTURAL & ENGINEERING DESIGN SERVICES FOR THE JUSTICE CENTER TENANT IMPROVEMENT PROJECT

WHEREAS, qualifications were solicited to provide architectural & engineering services for the Justice Center Tenant Improvement project; and

WHEREAS, after review of qualifications submitted, it was determined that CKJT Architects, 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 CKJT Architects, PLLC.; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby approves the Professional Services Contract with CKJT Architects, PLLC. of Kennewick, Washington, to provide professional architectural & engineering design services for the Justice Center Tenant Improvement project with a maximum total amount payable not to exceed $195,317.00, excluding Washington State Sales Tax, unless agreed to by amendment by both parties; and

BE IT FURTHER RESOLVED the term of this contract commences on this date and terminates on December 31, 2024.

Dated this 25th day of January 2022.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

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

BENTON COUNTY
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 **CKJT ARCHITECTS, PLLC**, a corporation organized under the laws of the State of Washington with its principal offices at 128 Vista Way (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; and
b. Exhibit B – Scope Drawings; and
c. Exhibit C – Estimates & Fees; and
d. Exhibit D – Billing Rates; and
e. Exhibit E – Project Schedule.

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on December 31, 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

a. The CONTRACTOR shall provide architectural & engineering design services, as well as project management services for the Justice Center TI Project. The Justice Center TI Project consist of general office remodel of approximately Eighteen thousand square feet of the Courts Buildings. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, “Scope of Services" & Exhibit B, “Scope Drawings”, which is attached hereto and incorporated herein by reference.

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

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

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Terrance Casey
Address:	128 Vista Way Kennewick, WA 99337
Phone:	509-783-5444
Email:	tdc@ckjt.com

b. For COUNTY:

Name:	Robert Blain
Address:	7122 W Okanogan Place; STE E330 Kennewick, WA 99336
Phone:	509-736-3080
Email:	Robert.Blain@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid insert at the rates set forth in line #5,6, & 14 of Exhibit C, “Estimates & Fees” & Exhibit D, “Billing Rates”, which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed One Hundred Ninety-Five Thousand Three Hundred Seventeen Dollars and Zero Cents ($195,317.00), including W.S.S.T.

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

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of

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

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

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

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

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

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

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

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

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

e. **Other Insurance Provisions**:

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

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

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

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 8(a), shall be written on an Occurrence Policy form.

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

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

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

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

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

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.

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

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 W. Okanogan

Place, Bldg. A, Kennewick, WA 99336.

9. 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 all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

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

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

with the exception of L&S Engineering Associates Inc. and Thomas Consulting.

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

b. 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.

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

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 1/10/2022

FOR: CKJT ARCHITECTS, PLLC

_____
Signature

Principal Architect
Title:

Terrance D. Casey
Print Name

January 7, 2022
CKJT Architects, pllc

Exhibit A
Scope of Services
Justice Center Tenant Improvement Project

PROJECT UNDERSTANDING:

Benton County has built a new administrative building leaving vacated space within the Justice Center building. As a result, there is a need to reassign and expand four departments within the Justice Center to accommodate current needs and future growth. The base project remodels are approximately 17,913 sq. ft. over the four separate departments (see exhibit B).

CLIENT RESPONSIBILITIES:

The County is expected to provide the following as required to complete the work:

- A hazardous materials survey for the areas of work,
- Coordination with CKJT to provide access to the facility,
- Existing facility As-built CAD Files for floor plans, mechanical and electrical drawings, and
- Operational needs in order to create the most effective phasing plan.
- Needs Matrix and Programming Requirements (See Scope of Services section C)

SCOPE OF SERVICES:

To complete the project, the Consultant services to be performed include architectural, mechanical, and electrical services. These services further include establishing project scope, initial ROM costs, construction cost estimating, analysis of relocated department needs, as-built investigations, schematic design, design development, contract documents production (drawings and technical specifications; front end specifications and Owner/Contractor Contract to be provided by Benton County), project bidding support, and construction project administration as follows:

A. DEVELOPMENT OF THE PROJECT SCOPE AND ROM ESTIMATE.

  - Establish the Project Work Area – See exhibit B
  - Fixed Fee for Base Project A&E Scope – See exhibit C
  - Develop a Rough Order of Magnitude (ROM) estimate for Base Project Construction costs (includes A&E Services) – See exhibit C
  - Project Walk Through with Consultants

B. VERIFICATION OF AS-BUILT DRAWING PHASE SERVICES
Review County's documents provided to the Consultant, propose an Estimate of Project Scope (Exhibit C) and perform updated as-built measurements and updated as-built drawings of the total 17,913 square feet of existing Justice Center designated areas of work.

C. NEEDS ANALYSIS MATRIX

Developed and provided by the County. Establishes each office/departmental program needs for existing personnel; circulation needs for private, semi-private, and public spaces; establishing levels of security; establishing layouts for required equipment/furnishings, and space for growth. We will discuss clarifications to the project programming requirements with Benton County's designated project representative for the following departments:

1. Clerks
2. Judges
3. Therapeutic Courts
4. Office of Public Defense

This Needs Analysis Matrix will serve as the as the program for the project.

D. SCHEMATIC DESIGN PHASE SERVICES (30%)

1. The Consultant shall review the program needs derived from the Needs Analysis Matrix, other information furnished by the County, and shall review laws, codes, and regulations as applicable to the building life safety and programming needs.
2. Based on the Project's requirements agreed upon with the County, the Consultant shall prepare and present for the County's review/comment a preliminary design illustrating the scale and relationship of the Project's total components.
3. The Consultant shall revise the preliminary design and submit the Schematic Design Documents to the County, provide the County with 30% construction cost estimate, and request the County's approval.

E. DESIGN DEVELOPMENT (DD) PHASE SERVICES (60%)

1. Based on the County's approval of the Schematic Design Documents, and on the County's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Consultant shall prepare preliminary Design Development Documents for the County's review/comment. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents, including plans and interior elevations to fix and describe the size and character of all project elements.
2. The Consultant shall revise the preliminary DD's and submit the Design Development Documents to the County, provide the County with 60% document construction cost estimate, and request the County's approval.

F. CONSTRUCTION DOCUMENTS PHASE SERVICES (90% & 100%)

1. Based on the County's approval of the Design Development Documents, and on the County's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Consultant shall prepare Construction Documents for the County's approval. The Construction Documents shall

illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Technical Specifications setting forth in detail the quality levels of materials and other requirements for the construction of the Work. The County and Consultant acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples, and other similar submittals which the Consultant shall review during the Construction Phase.

2. The Consultant shall incorporate into the Construction Documents the design requirements of governmental Authorities Having Jurisdiction (AHJ) over the Project.
3. The consultant shall provide 90% construction cost estimate, and request the County's approval..
4. During the development of the Construction Documents, the Consultant shall assist the County in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the County and Contractor; and (3) the Conditions of the Contract for Construction. The Consultant shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms (the General, Supplementary, and other Conditions of the project manual are to be provided by the County).
5. The Consultant shall submit the Construction Documents to the County, advise the County of any adjustments to the estimated Cost of the Work, and request the County's approval.

G. BIDDING PHASE SERVICES

1. The Consultant shall assist the County in bidding the Project by:
    a) Organizing and conducting a pre-bid conference for prospective bidders.
    b) Preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.
    c) The advertisement of, the printing of, and the distribution of, the Contract Documents to prospective bidders is to be handled by the County. The County shall also provide printed contract documents to the design team, the selected General Contractor and as needed to the General’s sub-contractors.
2. The Consultant shall consider requests for substitutions and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

H. CONSTRUCTION ADMINISTRATION PHASE SERVICES

1. GENERAL
    a) The Consultant shall provide administration of the Contract and General Conditions of the Contract for Construction between the County and the

General Contractor in a form of an Agreement to be approved by the County.

b) The Consultant shall advise and consult with the County during the Construction Phase Services. The Consultant shall have authority to act on behalf of the County only to the extent provided in this Agreement. The Consultant shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Nor shall the Consultant be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant shall not have control over, charge of, or be responsible for, acts of or omissions of the Contractor, or of any other persons or entities performing portions of the Work.

c) The Consultant's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates forty (40) days after the date of Substantial Completion of the final phase of construction.

2. EVALUATIONS OF THE WORK

a) The Consultant shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Consultant shall keep the County reasonably informed about the progress and quality of the portion of the Work completed, and report to the County (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

b) The Consultant has the authority to reject Work that does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

c) The Consultant shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the County or Contractor. The Consultant's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
d) Interpretations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Consultant shall endeavor to secure faithful performance by both County and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

3. CERTIFICATES FOR PAYMENT TO CONTRACTOR
   a) The Consultant shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Consultant's certification for payment shall constitute a representation to the County, based on the Consultant's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Consultant.
   b) The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the County to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
   c) The Consultant shall maintain a record of the Applications and Certificates for Payment.

4. SUBMITTALS
   a) The Consultant shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Consultant's action in reviewing submittals shall be taken in accordance with the approved

submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Consultant's professional judgment to permit adequate review.

b) In accordance with the Consultant-approved submittal schedule, the Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with the information given and then design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise explicitly stated by the Consultant, of any construction means, methods, techniques, sequences, or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

c) The Consultant shall review and respond to requests for information about the Contract Documents. The Consultant shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Consultant's response to such requests shall be made in writing within any time limits agree upon or otherwise with reasonable promptness. If appropriate, the Consultant shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

d) The Consultant shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

5. CHANGES IN WORK

a) The Consultant may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Consultant shall prepare Change Orders and Construction Change Directives for the County's approval and execution in accordance with the Contract Documents.

b) The Consultant shall maintain records relative to changes in the Work.

6. PROJECT COMPLETION

a) The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and

forward to the County, for the County's review and records, written warranties, and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

b) The Consultant's inspections shall be conducted with the County to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
c) When the Work is found to be substantially complete, the Consultant shall inform the County about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.
d) The Consultant shall forward to the County the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the County against liens; and (3) any other documentation required of the Contractor under the Contract Documents.
e) Upon request of the County, and prior to the expiration of one year from the date of Substantial Completion, the Consultation shall, without additional compensation, conduct a meeting with the County to review the facility operations and performance.

I. SUPPLEMENTAL AND ADDITIONAL SERVICES

SUPPLEMENTAL SERVICES

Supplemental Services are not included in Basic Services. The Architect shall provide the following Supplemental Services, and the Owner shall compensate the Architect as provided in Exhibit C.

- Needs Analysis Matrix and Programming
- Telecommunications/Data
- Security
- Measured Drawings of Existing Conditions
- Detailed Cost Estimates
- Interior Architectural Design
- Record Drawings

ADDITIONAL SERVICES

1. When requested by the County, Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Consultant, any Additional Services

provided shall entitle the Consultant to compensation pursuant to Exhibit D Hourly Rates and appropriate adjustment in the Consultant's schedule.

2. Upon recognizing the need to perform the following Additional Services, the Consultant shall notify the County with reasonable promptness and explain the facts and circumstances giving rise to the need. The Consultant shall not proceed to provide the following services until the Consultant receives the County's written authorization:
    a) Services necessitated by a change in the Initial Information, previous instructions or approvals given by the County, or a material change in the Project including, but not limited to, size, quality, complexity, the County's schedule or budget for Cost of the Work, or procurement or delivery method;
    b) Services necessitated by the County's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
    c) Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
    d) Services necessitated by decisions of the County not rendered in a timely manner or any other failure of performance on the part of the County or the County's consultants or contractors;
    e) Preparing digital data for transmission to the County's consultants and contractors or other County authorized recipients;
    f) Preparation of design and documentation for alternate bid or proposal requests proposed by the County;
    g) Preparation for and attendance at a public presentation, meeting or hearing;
    h) Preparation for and attendance at a dispute resolution proceeding or legal proceeding, except where the Consultant is party thereto;
    i) Evaluation of the qualifications of bidders or persons providing proposals;
    j) Consultation concerning replacement of Work resulting from fire or other cause during construction;
    k) Assistance to the Initial Decision Maker, if other than the Consultant; or
    l) Providing Construction Phase Services beyond 40 days after the date of Substantial Completion of the Work.
3. If the services covered by this Agreement have not been completed within twenty-eight (28) calendar months of the date of this Agreement, through no fault of the Consultant, extension of the Consultant's services beyond that time shall be compensated as Additional Services.

ASSUMPTIONS:

1. The areas of work and associated complexity are assumed to be as shown and stated in attached Exhibit B.

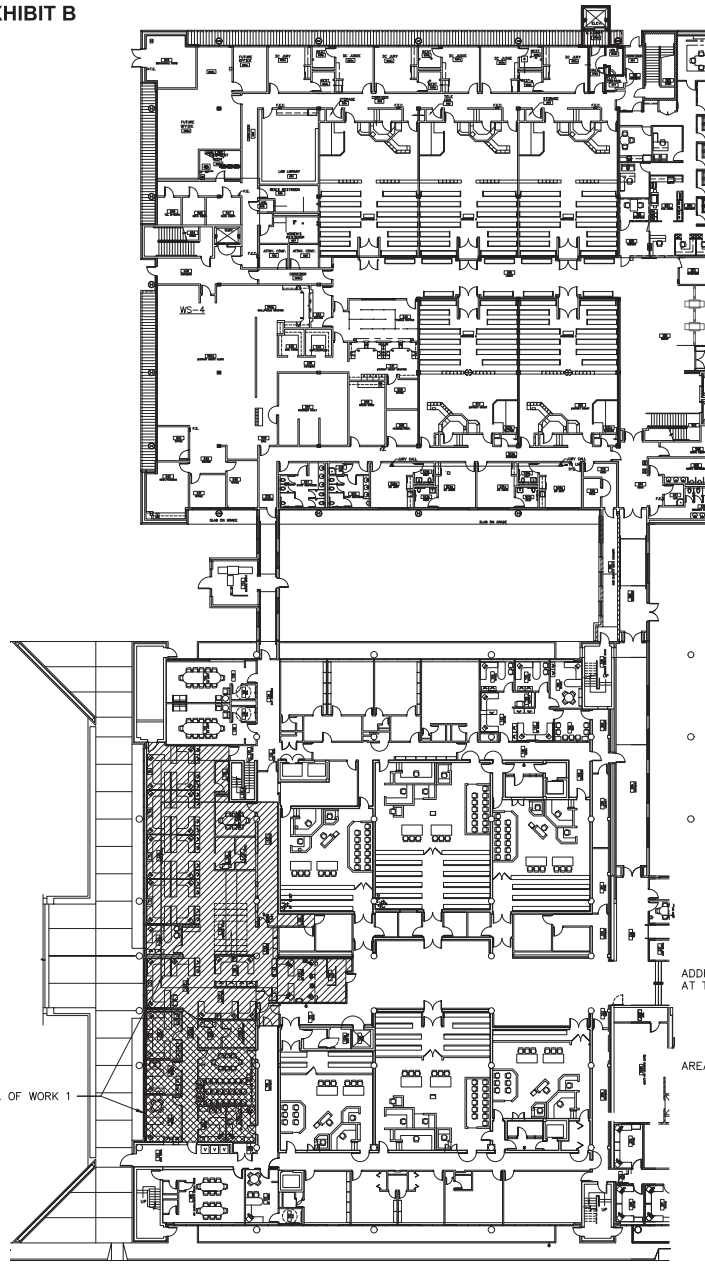
DELIVERABLES:

1. Project Preliminary ROM Cost Estimate and Project Schedule. (See Exhibits C & E)
2. Construction Phasing Plan. PDF format.
3. Schematic Design (30%) Design Drawings. PDF format.
4. Schematic Design (30%) Construction Cost Estimate. PDF format.
5. Design Development (60%) Design Drawings. PDF format.
6. Design Development (60%) Construction Cost Estimate. PDF format.
7. Construction Document (90%) Drawings & Specifications. PDF format.
8. Construction Document (90%) Construction Cost Estimate. PDF format.
9. 100% completion of Contract Document Deliverables,
10. Bid Documents, & Permit Application completed and ready for submittal to the City of Kennewick. PDF format.
11. As-Built Drawings. AutoCAD & PDF format.

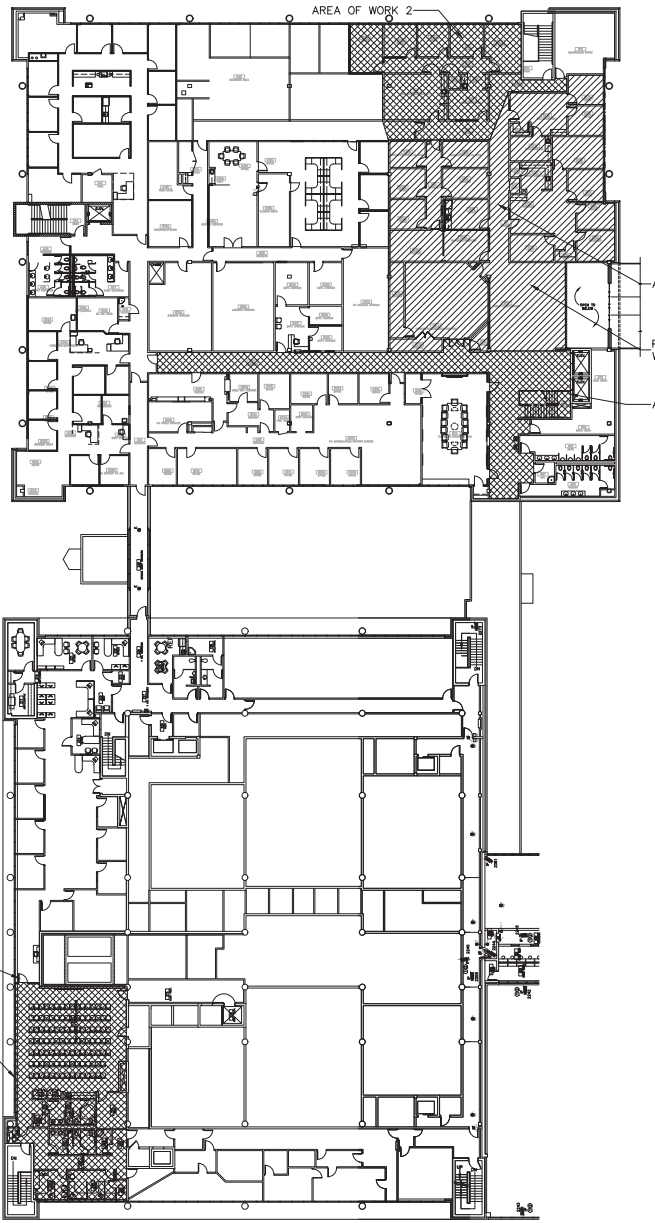
NOT INCLUDED IN THIS CONTRACT:

- 3-D drawings
- Renderings
- Structural Design Services
- Civil Design Services
- Commissioning

EXHIBIT B



FIRST FLOOR SCOPE PLAN
1" = 20'-0"
NORTH



SECOND FLOOR SCOPE PLAN
1" = 20'-0"
NORTH

BASE CONTRACT SCOPE OF WORK AREAS:

(8,081 S.F. MINIMAL + 9,832 S.F. MODERATE TO EXTENSIVE = 17,913 S.F.)

- **AREA OF WORK 1 - 5,880 S.F (BECOMES CLERKS JURY SELECTION & JUDGES OFFICES)**
  Level of remodel:
  MODERATE TO EXTENSIVE: (4,258 S.F)
  MINIMAL: (1622 S.F)
- **AREA OF WORK 2 - 9,359 S.F. (BECOMES CLERKS OFFICES)**
  Level of remodel:
  MODERATE TO EXTENSIVE: (5,574 S.F.)
  MINIMAL: FLOORING REPLACEMENT (3,785 S.F)
- **AREA OF WORK 3 - 2,674 S.F. (BECOMES OFFICE OF PUBLIC DEFENSE)**
  Level of remodel:
  MINIMAL: (2,674 S.F.)

LEGEND

MODERATE TO EXTENSIVE

MINIMAL

ckjt architects, pllc
128 Hoeia Hwy Kennewick, wa.99336 509.783.5444

date: 01-07-22
project no. 2118
drawn: mcm
checked: mcm
approved: mcm

SCOPE PLANS

BENTON COUNTY JUSTICE CENTER REMODEL
7122 W Okanogan Pl
KENNEWICK, WASHINGTON

1
of 1 sheets

date 01-07-2022
CKJT Architects, pllc

Exhibit C

Benton County Justice Center Interior ROM Cost Estimate

Base Contract Scope Work

Total Base Project Area of Work (S.F.) 17,913

Total Base Project Estimated Cost $1,421,049

Line Item						
			Moderate to Extensive Area of Work: 9,832 S.F.			
1	$	983,200.00	Construction Cost - Extensive & Moderate	@	$	100.00
2	$	84,555.00	Sales Tax on Construction Cost	@		8.6%
3	$	78,656.00	Design Contingency	@		8.0%
4	$	6,764.00	Sales Tax on Design Contingency	@		8.6%
5	$	134,856.00	Basic Architectural & Engineering Service Fees (Stipulated Sum)			
6	$	57,057.00	Supplemental Architectural & Engineering Service Fees			
7	$	350.00	Printing Plan Review and Bid Documents			
8	$	600.00	Bid Advertisement Cost			
9	$	10,000.00	Building Department Plan Review & Bldg Permit Fees (estimated)			
	$	1,356,038.00	Total Estimated Cost		$	137.92
			Minimal Area of Work: 8,081 S.F.			
10	$	52,526.50	Construction Cost	@	$	6.50
11	$	4,517.00	Sales Tax on Construction Cost	@		8.6%
12	$	4,202.00	Design Contingency	@		8.0%
13	$	361.00	Sales Tax on Design Contingency	@		8.6%
14	$	3,404.00	Basic Architectural & Engineering Service Fees (Stipulated Sum)			
	$	65,010.50	Total Estimated Cost		$	8.04

January 07, 2022
CKJT Architects, pllc

Exhibit D
Design Team Hourly Billing Rates 2022

CKJT Architects

Principal	$160.00 /hour
Project Architect	$130.00 /hour
Staff Architect	$115.00 /hour
Intern / CAD Designer	$90.00 /hour
Administrative	$65.00 /hour

L&S Engineering (Mechanical& Electrical)

Principal	$160.00 /hour
Associate	$130.00 /hour
Project Manager	$120.00 /hour
Designer	$105.00 /hour
CAD Tech	$90.00 /hour

Thomas Consulting (Estimator)

Principal	$140.00 /hour
Project Manager	$125.00 /hour
Estimator	$105.00 /hour

Justice Center Tenant Improvement Project

EXHIBIT E

Project Schedule: 1/7/2022

CKJT Architects

Project Start: Thu, 19-Aug-2021

TASK	DURATION	PROGRESS	START	FINISH
1. DEVELOPMENT OF THE PROJECT SCOPE AND ROM ESTIMATE				
Project Kick Off Meeting		100%	19-Aug-21	19-Aug-21
Develop Project Scope, Fees & ROM Estimate	35	100%	20-Aug-21	11-Oct-21
County to provide CKJT with Access to the Facility		100%		
County to provided Facility As-Builts		100%		
County to provided Hazardous Materials Survey		100%		
Project walk Through with Consultants		100%	22-Sep-21	22-Sep-21
County Review and Approval	56	100%	11-Oct-21	30-Dec-21
Execution of Contract & Notice to Proceed	20	50%	31-Dec-21	31-Jan-22
2. VERIFICATION OF AS-BUILT DRAWING PHASE SERVICES				
As-Built Measurement Verifications in Areas of Work	10		1-Feb-22	15-Feb-22
3. Programming from County				
County Provided Matrix Programming	10		1-Feb-22	15-Feb-22
Review the programming County Representatives	2		17-Feb-22	21-Feb-22
Provide Prelminary layouts based on programming	12		23-Feb-22	11-Mar-22
County Review of a Approval of Prelminary layout	10		14-Mar-22	28-Mar-22
County Reps Meeting: security and circulation requirements	5		29-Mar-22	5-Apr-22
4. SCHEMATIC DESIGN PHASE SERVICES (30%)				
Revise Preliminary Plans & Proposed Phasing	15		6-Apr-22	27-Apr-22
County Meeting: Construction Phasing Plans	2		27-Apr-22	29-Apr-22
Revise to Schematic Design	5		2-May-22	9-May-22
Submit 30% Document Deliverables to County			9-May-22	9-May-22
County Review and Approval of 30% Design	15		9-May-22	30-May-22
Updated Construction Cost Estimate for 30% Docs	10		30-May-22	13-Jun-22
5. DESIGN DEVELOPMENT (DD) PHASE SERVICES (60%)				
Prepare Design Development Documents	25		13-Jun-22	19-Jul-22
County Meeting % Review of 60% Docs	5		12-Jul-22	19-Jul-22
Revise Design Development Documents	5		19-Jul-22	26-Jul-22
Submit 60% Document Deliverables to County			27-Jul-22	27-Jul-22
County Review and Approval of 60% Design	15		27-Jul-22	17-Aug-22
Updated Construction Cost Estimate for 60% Docs	15		17-Aug-22	7-Sep-22
6. CONSTRUCTION DOCUMENTS PHASE SERVICES (90% - 100%)				
Revise 60% Docs based on Construction Cost Estimate Feedb	10		7-Sep-22	21-Sep-22
AHJ's Coordination and Feedback	15		7-Sep-22	28-Sep-22
Prepare 90% Construction Documents & Specifications	40		21-Sep-22	16-Nov-22
Meeting with County Rep. to Review 90% CD's & Specs	2		20-Nov-22	22-Nov-22
Revise 90% CD's and Specs	10		22-Nov-22	7-Dec-22
Submit 90% Document Deliverables to County			7-Dec-22	7-Dec-22
County Review and Approval of 90% CD's and Specs	15		7-Dec-22	28-Dec-22
Updated Construction Estimate for 90% Docs	10		28-Dec-22	11-Jan-23
Prepare 100% Construction Documents	10		11-Jan-23	25-Jan-23
Prepare 100% Specifications in Coordination w/ County Reps	5		11-Jan-23	18-Jan-23
Submit 100% Document Deliverables to County			19-Jan-23	19-Jan-23
County Review and Approval of 100% CD's and Specs	15		19-Jan-23	9-Feb-23
Building Permit Documents and Application	25		10-Feb-23	17-Mar-23
7. BIDDING PHASE SERVICES				
Provide County Bid Documents	5		17-Mar-23	24-Mar-23
County Bid Advertisement, Bid Period, Award & Notice to Pr	30		25-Mar-23	5-May-23
Bidding Support Services	30		25-Mar-23	5-May-23
Organize and Conduct Pre-Bid Conference	5		13-Apr-23	20-Apr-23
Tentative Bid Opening Date			25-Apr-23	25-Apr-23
8. CONSTRUCTION ADMINISTRATION PHASE SERVICES				
Construction Phase Support Services	175		5-May-23	5-Jan-24
Organize and Conduct Pre-Construction Conference Meeting	5		5-May-23	12-May-23
Construction Mobilization	15		5-May-23	26-May-23
Phase 1 Construction	30		26-May-23	7-Jul-23
Phase 1 Punch List with County Feedback	10		7-Jul-23	21-Jul-23
Phase 2 Construction	30		7-Jul-23	18-Aug-23
Phase 2 Punch List with County Feedback	10		18-Aug-23	1-Sep-23
Phase 3 Construction	30		18-Aug-23	29-Sep-23
Phase 3 Punch List with County Feedback	10		29-Sep-23	13-Oct-23
Phase 4 Construction	30		29-Sep-23	10-Nov-23
Phase 4 and Final Project Punch List with County Feedback	10		10-Nov-23	24-Nov-23
Site Visits appropriate to the stage of construction				0-Jan-00
Conduct Weekly Construction Progress Meetings				0-Jan-00
Monthly Pay Application Review & Provide Recommendation				0-Jan-00
9. PROJECT CLOSE-OUT				
Review and Recommend Substantial Completion	5		24-Nov-23	1-Dec-23
Verify Completion of Punch List items	10		12-Dec-23	26-Dec-23
Review and recommend Final Project Completion	TBD			
Review Final Pay Application and provide Recommendation	5			
Produce & Deliver As-Constructed Drawings	20		26-Dec-23	23-Jan-24

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Executing an Interlocal Cooperative Agreement with the City of Prosser for General Equipment and/or Services
Presenter:	N/A
Prepared By:	S. Christen
Reviewed By:	D. D'Hondt

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

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

Summary / Background Information

There is a desire to be able to share equipment and services with other public agencies when the need arises. Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment. Such an Interlocal has been prepared with the City of Prosser, has been reviewed and approved as to form by our Departmental Deputy Prosecuting Attorney, and signed by the Mayor of Prosser.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The County Engineer recommends the Board approve the proposed Interlocal Agreement for General Equipment and/or Services with the City of Prosser.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE CITY OF PROSSER AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, the City of Prosser and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by the Mayor of Prosser; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with the City of Prosser, finding such to be beneficial to Benton County; **NOW THEREFORE,**

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement between City of Prosser and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with the City of Prosser on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2022 and shall continue through December 31, 2026.

Dated this 25th day of January 2022.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest._____
Clerk of the Board

Original: Public Works
c: Procurement

S. Christen

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN CITY OF PROSSER AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES
THROUGH THE PUBLIC WORKS DEPARTMENT

This agreement is made and entered into by and between City of Prosser and Benton County, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

ARTICLE I
PURPOSE

1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton County, through its Public Works Department, and City of Prosser, through its Public Works Department, will temporarily provide equipment and/or services to the other party. Neither Benton County nor City of Prosser are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

ARTICLE II
ADMINISTRATION

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 City of Prosser's representative shall be the Public Works Director, or designee.

2.03 Benton County's representative shall be the County Engineer, or designee.

2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or work in writing in the form of a Task Letter. Written requests shall be submitted prior to rental of equipment or performance of work. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or work may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

ARTICLE III
DURATION AND RENEWAL OF AGREEMENT

3.01 **DURATION AND RENEWAL.** This Agreement shall be effective January 1, 2022 and shall continue through December 31, 2026. The obligation to provide compensation for the use of equipment or service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

ARTICLE IV
COMPENSATION

4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the work performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, 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. Also, an additional five percent (5%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a certified statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

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 **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 subject 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 material for the applicable retention period under federal and Washington law.

5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.

5.04 **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.

5.05 **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.

5.06 **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.

5.07 **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.

5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton County shall be to the County Engineer, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to City of Prosser for all purposes under this Agreement shall be to City of Prosser, Public Works Director, P.O. Box 1639, Prosser, Washington 99350 and the Prosser City Council, P.O. Box 1639, Prosser, Washington 99350.

ARTICLE VI
INDEMNIFICATION

6.01 **MUTUAL INDEMNITY.** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against City of Prosser or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton County or its officers, officials, employees, or agents by any employee of City of Prosser, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for City of Prosser 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 City of Prosser expressly waives any immunity City of Prosser might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

6.02 **SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII
DISPUTES

7.01 **DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

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, further 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 application 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 are 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 parities hereto.

9.05 **INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by City of Prosser, shall remain the sole property of City of Prosser. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton County, shall remain the sole property of Benton County.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on City of Prosser's or Benton County's website as required by RCW 39.34.040.

9.06 **EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, City of Prosser shall provide Benton County and Benton County shall provide City of Prosser with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (City of Prosser) and Exhibit B (Benton County).

This section intentionally left blank.

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

CITY OF PROSSER

By: _____
Randy Taylor
Mayor

Date: 11/23/2021

BENTON COUNTY, WASHINGTON

By: _____
Jhon Small, Chairman
Board of County Commissioners

Attest:

_____
Clerk of the Board

Date: _____

Approved as to form:

_____
Attorney, City of Prosser

Date: 11/23/2021

Approved as to form:

_____
Reid Hay, Benton County Prosecuting Attorney

Date: 11/12/21

CITY OF PROSSER, WASHINGTON
RESOLUTION NO. 21-1688

A RESOLUTION APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF PROSSER FOR EQUIPMENT AND/OR SERVICES THROUGH THEIR DEPARTMENT OF PUBLIC WORKS

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, Benton County and the City of Prosser desire to provide equipment and/or services through their Department of Public Works; and

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120, the legislative authority of each county is authorized to enter into contracts on behalf of the County and have the care of County property and management of County funds and business; and

WHEREAS, the City Council constitutes the legislative authority of the City of Prosser and desires to enter into the attached agreement as being in the best interest of the City of Prosser,

NOW, THEREFORE BE IT RESOVLED the City of Prosser City Council hereby approves the attached Interlocal Cooperative Agreement between Benton County and the City of Prosser for equipment and/or services through their Department of Public Works; and

BE IT FURTHER RESOLVED this Agreement shall be effective when executed by both parties and shall continue through December 31, 2026.

ADOPTED by the City Council of the City of Prosser and **APPROVED** by the Mayor of the City of Prosser this 23rd day of November, 2021.

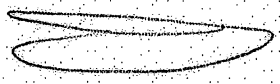
MAYOR RANDY TAYLOR

ATTEST:

RACHEL SHAW, CITY CLERK

CITY OF PROSSER, WASHINGTON
Incorporated 1893
Official Seal

APPROVED AS TO FORM:



HOWARD SAXTON, CITY ATTORNEY

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Approving purchase of sign materials for the TrafficJet Print System from Avery Dennison utilizing City of Yakima's contract
Presenter:	
Prepared By:	Shannon Christen
Reviewed By:	Doug D'Hondt, Clayton Rawlings

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

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

Summary / Background Information

Benton County has an Intergovernmental Cooperative Purchasing Agreement with the City of Yakima which, in accordance with RCW 39.34, allows Benton County to make purchases using contracts that have been executed according to State statues.

The sign shop needs to purchase consumable sign materials (sheeting and inks) throughout the year to print signs with the TrafficJet Print System. The City of Yakima has a contract in place with Avery Dennison that will allow us to purchase the consumable sign materials. Public Works Department staff has taken the necessary steps to make sure the City of Yakima has complied with all bidding and contract requirements.

The Yakima contract term was for one year, with automatic renewals each year for 4 additional years, starting September 1, 2020 and extending to August 31, 2025. This approval will allow Benton County to purchase supplies not to exceed $30,000 per year for the remaining contract term.

A Purchase Agreement with Avery Dennison has been prepared, our Deputy Prosecuting Attorney has approved as to form, and it has been signed by Avery Dennison.

Fiscal Impact

Amount: Not to exceed $30,000.00 per year excluding WSST

Fund: Road Fund (0101-101)

Recommendation

The County Engineer recommends the Board approve the purchase of sign materials for the TrafficJet Print System from Avery Dennison in an amount not to exceed $30,000 per year excluding WSST from January 1, 2022 through August 31, 2025 payable from the Road Fund.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF SIGN MATERIALS FOR THE TRAFFICJET PRINT SYSTEM FOR THE ROAD SIGN SHOP FROM AVERY DENNISON UTILIZING THE CITY OF YAKIMA'S CONTRACT AND AUTHORIZING THE CHAIRMAN TO SIGN THE PURCHASE AGREEMENT

WHEREAS, per Resolution 2016-802 Benton County and the City of Yakima have entered into an Intergovernmental Cooperative Purchasing Agreement which, in accordance with RCW 39.34 allows us to purchase goods using contracts that have been executed according to State statues; and

WHEREAS, the City of Yakima has a contract in place with Avery Dennison; and

WHEREAS, a part of this contract with Avery Dennison allows for the as needed ordering of consumable sign materials (sheeting and inks); and

WHEREAS, sign materials need to be purchased in order to have supplies on hand to print signs; and

WHEREAS, a Purchase Agreement has been prepared, our Deputy Prosecuting Attorney has approved as to form, and it has been signed by Avery Dennison; and

WHEREAS, the County Engineer recommends the purchase of the sign materials for the TrafficJet Print System from Avery Dennison in an amount not to exceed $30,000.00 per year excluding WSST from January 1, 2022 through August 31, 2025 utilizing the City of Yakima's contract; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners approves the purchase of sign materials for the TrafficJet Print System from Avery Dennison through the Interlocal Agreement with the City of Yakima in an amount not to exceed $30,000.00 per year excluding WSST from January 1, 2022 through August 31, 2025 payable from the Road Fund; and

BE IT FURTHER RESOLVED, the Chairman is authorized to sign the attached Purchase Agreement.

Dated this 25th day of January 2022.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Dept. S. Christen
c: Auditor, Procurement, pwfinance

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: Avery Dennison
Vendor Code:
Vendor Contact: Jared Jachino
Vendor Contact Phone: 224-275-1402
Vendor Principal Place of Business: 7542 N. Natchez Ave., Niles, IL 60714-3804

Ship To:
Attn: Nick Curtis
Benton County Maintenance Facility
102808 Wiser Parkway
Kennewick, WA 99338
509-539-8532

Bill To:
Attn: Clayton Rawlings
Benton County Public Works Department
102808 Wiser Parkway
Kennewick, WA 99338
509-546-1782

AGREEMENT:
In exchange for the consideration identified herein, the Vendor agrees to provide the following to Benton County under the terms described.

Date:

		Est Qty	Unit Price	Total Price
	City of Yakima Contract No. 12014			
	Traffic Sign Digital Printing System and Consumables			
	Purchase consumables for the TrafficJet Print System			
	through use of the City of Yakima's contract. Term of this			
	agreement is from January 1, 2022 through August 31, 2025,		Not to exceed	
	as long as the contract with the City of Yakima is active.	4 years	$30,000.00 per year	$120,000.00
	Purchases from Avery Dennison are not guaranteed.			
	A not to exceed amount of $30,000 per year			
	excluding Washington State Sales Tax is being approved.			

Payment is due by the County to Vendor within 30 days of delivery and the paperwork required pursuant to City of Yakima Contract #12014. Payment will be made to: Avery Dennison, 96989 Collection Center Drive, Chicago, IL 60693.

	Not to exceed
SUB TOTAL =	$ 120,000.00
SALES TAX =	9,600.00
TOTAL ORDER =	$ 129,600.00

This purchase agreement incorporates by reference all terms and conditions issued off the City of Yakima Contract No. 12014 between the City of Yakima and Avery Dennison.

Vendor signature on this purchase agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms.

In case of conflict, the order of precedence is:
1. City of Yakima Contract 12014
2. This Purchase Agreement

Questions and Clarifications should be Addressed to Buyer Contact:

Contact: Clayton Rawlings
Address: 102808 Wiser Parkway
Kennewick, WA 99338
Phone: 509-546-1782
Email clayton.rawlings@co.benton.wa.us

Approved as to Form

Reid Hay, Civil Deputy Prosecuting Attorney

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

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

Vendor Name (Print): Jared Jachino Title: Bid Specialist Date: 1/5/22

Vendor Signature: Jared Jachino

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Authorizing payment to Wilbur-Ellis Company, LLC for purchase of herbicides
Presenter:	
Prepared By:	S. Christen
Reviewed By:	D. D'Hondt

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

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

Summary / Background Information

By Resolution 2021-153 a Purchase Agreement with Wilbur-Ellis Company, LLC was approved for the purchase of herbicides to control vegetation along County roads and on County owned property. Purchase Agreements were also approved with Helena Chemical Company and Nutrien Ag Solutions, Inc. with a combined total not to exceed amount of $200,000.00. No purchases were made from either Helena Chemical or Nutrien Ag Solutions. The Purchase Agreement expired December 31, 2021.

Due to unforeseen vegetation growth, there was a need for the purchase of additional herbicides. An improper calculation was done on the total amount spent to date when the additional herbicides were ordered. The total invoice amount from Wilbur-Ellis exceeds the Purchase Agreement amount by $17,351.11.

Board approval is needed for the payment of the invoice.

Fiscal Impact

Amount: $17,351.11

Fund: Road Fund (0101101)

Recommendation

The County Engineer recommends the Board authorize the additional payment to Wilbur-Ellis Company, LLC for herbicides in the amount of $17,351.11 including Washington State Sales Tax.

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING PAYMENT TO WILBUR-ELLIS COMPANY, LLC FOR THE PURCHASE OF HERBICIDES

WHEREAS, by Resolution 2021-153 a Purchase Agreement with Wilbur-Ellis Company, LLC, that expired December 31, 2021, was approved for the purchase of herbicides to control vegetation along County roads and on County owned property in an amount not to exceed $200,000.00; and

WHEREAS, due to unforeseen vegetation growth, there was a need for the purchase of additional herbicides. An improper calculation was done on the total amount spent to date when the additional herbicides were ordered; and

WHEREAS, the final invoice for the herbicides exceeds the maximum amount of the contract by $17,351.11 and requires Board approval for payment of the invoice; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby authorizes the additional payment to Wilbur-Ellis for herbicides in the amount of $17,351.11 including Washington State Sales Tax.

.

Dated this 25th day of January, 2022.

_____
Chairman.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Dept. S. Christen
c: Auditor, pwfinance

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Executing a contract with Apollo Mechanical Contractors for the Courtroom IT HVAC Project
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

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

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

Summary / Background Information

Per resolution 2022-020, Apollo Mechanical Contractors was awarded the Courtroom IT HVAC Project.

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 Apollo Mechanical Contractors, Kennewick, WA

Fiscal Impact

Amount: $145,769.00 excluding W.S.S.T.

Fund: Trial Court Improvement Fund (Fund # 156-101)

Recommendation

Approve the execution of the contract with Apollo Mechanical Contractors for the Courtroom IT HVAC Project in an amount not to exceed $145,769.00.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING THE CONTRACT WITH APOLLO MECHANICAL CONTRACTORS, KENNEWICK, WA FOR THE COURTROOM IT HVAC PROJECT

WHEREAS, per Resolution 2022-020, Apollo Mechanical Contractors was awarded the Courtroom IT HVAC Project; 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 Apollo Mechanical Contractors, Kennewick, WA; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to execute the contract with Apollo Mechanical Contractors for the Courtroom IT HVAC Project in a not to exceed amount of $145,769.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, said contract expires 120 calendar days after the Notice to Proceed is given.

Dated this 25th day of January, 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

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

Orig.: Purchasing Department P. Schut
c: Auditor, Facilities, Procurement

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the day of in the year 2021
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Benton County
P.O. Box 1001
Prosser, WA 99350
Telephone Number: 509-736-2704

and the Contractor:
(Name, legal status, address and other information)

Apollo Mechanical Contractors
1133 W Columbia Drive
Kennewick, WA 99336
509-987-1442

for the following Project:
(Name, location and detailed description)

Benton County Justice Center Courtroom IT Server Closets - HVAC Project
7122 W. Okanogan Place; Bldg. A
Kennewick, WA 99336

The Architect:
(Name, legal status, address and other information)

Wave Design Group
418 N. Kellogg St., Suite B
Kennewick, WA 99336
Telephone Number: 509-737-1000

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

TABLE OF ARTICLES

1 THE WORK OF THIS CONTRACT

2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3 CONTRACT SUM

4 PAYMENT

5 DISPUTE RESOLUTION

6 ENUMERATION OF CONTRACT DOCUMENTS

7 GENERAL PROVISIONS

8 OWNER

9 CONTRACTOR

10 ARCHITECT

11 SUBCONTRACTORS

12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

13 CHANGES IN THE WORK

14 TIME

15 PAYMENTS AND COMPLETION

16 PROTECTION OF PERSONS AND PROPERTY

17 INSURANCE AND BONDS

18 CORRECTION OF WORK

19 MISCELLANEOUS PROVISIONS

20 TERMINATION OF THE CONTRACT

21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of this Agreement.

AIA Document A104™ – 2017 **(formerly A107™** – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check the appropriate box and complete the necessary information.)

[X] Not later than (120) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[X] Stipulated Sum, in accordance with Section 3.2 below

[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be One Hundred Forty-Five Thousand Seven Hundred Sixty-Nine Dollars and Zero Cents ($ 145,769.00), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.2.2 Unit prices, if any:
(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

Item	Units and Limitations	Price per Unit ($0.00)

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price

§ 3.3 Cost of the Work Plus Contractor's Fee – Section Not Needed

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price – Section Not Needed

§

§ 3.5 Liquidated damages, if any:
(Paragraphs deleted)
(Insert terms and conditions for liquidated damages, if any.)

*(Paragraphs deleted)*If the Work is not substantially complete within this period of time, or extension thereof granted by the Owner, the Owner will sustain damage that will be impracticable and extremely difficult to quantify in the event of and by reason of such delays. The Contractor shall pay to the Owner liquidated damages in the sum of $750 for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the thirtieth day of the same month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

%

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

.4 Retainage will only be released in accordance with RCW 60.28 on completion of the work and once all required forms and reports have been filed with the Owner, Architect, Department of Labor and Industries, Department of Revenue and the Employment Securities Department

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 21.6 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications:

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages

§ 6.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
G-000	COVER SHEET AND GENERAL NOTES	11-15-2021
A-111	SUPERIOR COURT SERVER COOLING ROOMS	12-2-2021
M-001	HVAC NOTES AND LEGEND	12-1-2021
M-101	DISTRICT COURT SERVER COOLING PLAN	12-1-2021
M-102	SUPERIOR COURT SERVER COOLING PLAN	12-1-2021
M-401 THRU M-403	ENLARGED SERVER COOLING PLANS	12-1-2021
M601	HVAC EQUIPMENT SCHEDULE	12-1-2021

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
Addenda #1	12/2/2021	10 Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract
(Paragraphs deleted)
Documents – Section not needed.

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails to remedy any failure, defect, or damage within ten days of receiving notice or if the remedy continues to be inadequate or does not cure the defect or damage, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense. Such action by the Owner and amounts charged to the Contractor shall be discussed with and justified to the Architect and the Architect may, pursuant to Section 15.4.3,

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided

AIA Document A104™ – 2017 **(formerly A107™** – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on 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.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 After consultation with the owner, the Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- **.1** the documents enumerated in Article 6, including all Modifications thereto;
- **.2** a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- **.3** a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- **.4** a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- **.5** a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

.1 defective Work not remedied;
.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- **.1** liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars ($1,000,000) each occurrence, two million dollars ($2,000,000) general aggregate, and two million dollars ($2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- **.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- **.2** personal and advertising injury;
- **.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- **.4** bodily injury or property damage arising out of completed operations; and
- **.5** the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than one million dollars ($1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

(Paragraphs deleted)

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits

§ 17.2 Owner's Insurance
§ 17.2.1 Owner's Liability Insurance
The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance
§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:
(Name, address, email address and other information)

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

Robert Blain
P.O. Box 1001
620 Market St.
Prosser, WA 99350
Telephone Number: 509-736-2704
Robert.blain@co.benton.wa.us

§ 19.5 The Contractor's representative:
(Name, address, email address and other information)

Dan Sanders Jr. – Project Manager
1133 W Columbia Drive
Kennewick, WA 99336
509-987-1442
Dan.Sanders@apollosm.com

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- **.5** owner invokes its right to carry out work in accordance with § 8.2 and § 8.3 of this contract.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

AIA Document A104™ – 2017 **(formerly A107**™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:
(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

- This section left blank intentionally -

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

DocuSign Envelope ID: 072F7947-D7FE-4DC9-8152-74D157CE7176

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

Dated:_____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest:_____
Clerk of the Board

Approved as to Form

DocuSigned by:
Eric Andrews
B4E7673BB8A1486...

Civil Deputy Prosecuting Attorney

Dated: 1/18/2022

FOR: APOLLO MECHANICAL CONTRACTORS

DocuSigned by:
Dale Hollandsworth
FA7D9C4BC1BD453...

Signature

Vice President

Title:

Dale Hollandsworth

Print Name

Init.

/

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:31:49 ET on 01/10/2022 under Order No.2114278006 which expires on 01/09/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: (1144214650)

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	PricewaterhouseCoopers LLP "PwC"
Presenter:	N/A
Prepared By:	Adam Morasch, Risk Manager
Reviewed By:	Mary Christen, Administrative Assistant

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

PricewaterhouseCoopers LLP has been providing actuarial services for Benton County for over 20 years. This actuarial review of the self-insured workers' compensation and self-insured liability program is conducted every two years. Benton County has continued to contract with PricewaterhouseCoopers LLP due to their knowledge of Benton County's self-insured programs. They also serve as the Washington Counties Risk Pool's actuary and are familiar with the Risk Pool's programs. PricewaterhouseCoopers LLP is also able to obtain the historical liability experience of Benton County from the Risk Pool.

This review serves as guide in the determination of appropriate cost and reserve levels for the workers' compensation and liability programs and establish future assessment rates for the 2023/2024 budget.

Fiscal Impact

Total fee is $37,500 which was budgeted and will be paid from the Insurance Management Fund.

Recommendation

Approve the attached Resolution to use PricewaterhouseCoopers LLP for actuarial services for Benton County to establish future assessment rates for the 2023/2024 budget.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD OF BENTON COUNTY COMMISSIONERS TO SIGN THE ENGAGEMENT LETTER BETWEEN PRICEWATERHOUSECOOPERS LLP AND BENTON COUNTY TO PROVIDE AN ACTUARIAL REVIEW OF BENTON COUNTY'S SELF-INSURED WORKERS' COMPENSATION AND SELF-INSURED LIABILITY PROGRAMS.

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

WHEREAS, in preparation for Benton County's 2023-2024 Biennial Budget, the Benton County Risk Manager requested from PricewaterhouseCoopers LLP a proposal for actuarial services for Benton County's Self-Insured Workers' Compensation and Self-Insured Liability Programs; and

WHEREAS, the Risk Manager received a proposal from PricewaterhouseCoopers LLP in the amount not to exceed $37,500.00 including WSST; and

WHEREAS, the Risk Manager reviewed the proposal and recommends award of said services to PricewaterhouseCoopers LLP; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners, hereby authorizes the Chairman to sign the attached engagement letter between PricewaterhouseCoopers LLP and Benton County for actuarial services not to exceed $37,500.00 including WSST which will begin mid-February 2022 and will expire upon project completion and acceptance.

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

Orig: A. Morasch
cc: Auditor

Prepared by: A. Morasch

January 3, 2022

Mr. Adam Morasch
Risk Manager
Benton County
7122 W. Okanogan Pl., Suite E330
Kennewick, Washington 99336

Dear Mr. Morasch:

This engagement letter dated January 3, 2022 (the "Effective Date") confirms that Benton County ("the County", "You", or "Client") has engaged PricewaterhouseCoopers LLP ("PwC") to perform the professional services described below. Client and PwC are sometimes referred to in this engagement letter as the "parties" and each, individually, as a "party."

SCOPE OF PWC SERVICES, DELIVERABLES, AND TIMING.

(a) Services to be provided by PwC. Client is engaging PwC to the following professional services (the "Services"):

The County has requested that PwC perform an actuarial study for the self-insured workers' compensation program and the self-insured liability program (general liability and automobile liability). The study will rely on data as of December 31, 2021.

Scope of Work for the Self-Insured Workers' Compensation Review

1. Estimate the County's net outstanding claim related obligations as of December 31, 2021. This includes estimations of ultimate loss, loss reserves, and the outstanding liability due to the Department of Labor and Industries (L&I) assessments;
2. Provide perspective on funding adequacy as of December 31, 2021;
3. Project losses for 2022, 2023 and 2024;
4. Estimate future payments during calendar years 2022, 2023 and 2024; and
5. Estimate funding rates for 2022, 2023 and 2024 per worker hour by job classification.

Scope of Work for the Self-Insured Liability Review

1. Estimate the County's net outstanding claim liability as of December 31, 2021. This includes estimations of ultimate loss and loss reserves. Separate estimates will be provided for the general liability and automobile liability coverages;
2. Provide perspective on funding adequacy as of December 31, 2021;
3. Project losses for 2022, 2023 and 2024;
4. Estimate future payments during calendar years 2022, 2023 and 2024; and
5. Allocate the automobile and general liability program costs for 2022 through 2024 to the following County departments: Sheriff, Public Works, and All Other.

The findings of these studies will be summarized and documented in a draft report. Modifications to the draft report will be made as appropriate based on County feedback.

To facilitate our work, you agree to provide the following key information necessary for the actuarial evaluation as outlined below:

Data Requirements for the Workers' Compensation Study

Information provided by the County should include:

1. Two separate claim detail listings in Excel format valued as of December 31, 2020 and 2021. These claim listings should include all claims for fiscal years 1994 to present. They should be similar to what has been provided for prior studies. At a minimum the claim detail should provide the following information for each claim:

a)	Claim Number	b)	Date of Injury
c)	Department	d)	Total Incurred
e)	Total Paid	f)	Status of Claim (Open, Closed)

2. Annual Reports of Self-Insured Business as of December 31, 2020 and 2021 prepared for the Department of L&I.

3. Quarterly Reports of Self-Insured Business for each quarter ending March 31, 2020 through December 31, 2021 prepared for the Department of L&I.

4. Current investment yield of the County.

5. Worker classifications for which the County provides medical benefits only.

6. Estimated worker hours by job classification for 2022 through 2024.

7. Actual and estimated per occurrence self-insured retentions and excess insurance limits for 2020 through 2024.

8. Actual and estimated excess insurance premium amounts for 2020 through 2024.

9. Actual 2021 self-insurance program expenses attributable to workers' compensation and estimates of such for 2022 through 2024. These expenses should include: salaries, supplies, interfund services, risk management services and benefits (benefits include industrial insurance, social security, personal retirement, and medical insurance). In prior studies these expenses were taken from the County's Expenditure Status Report for Workers' Compensation.

10. From the December 31, 2021 County Treasurer's Financial Statement, the B.C. Workmans' Comp and the Workmans' Comp Invest fund balances.

11. Any additional information about the County's workers' compensation self-insurance program that you believe we may need to consider for our analysis.

Data Requirements for the Liability Study

Detailed claim listings of the County's liability loss experience valued as of December 31, 2020 and 2021 will be obtained from the Washington Counties Risk Pool.

Information to be provided by the County is listed below.

1. Actual 2020 and 2021 self-insurance program expenses attributable to liability and estimates of such for 2022 through 2024; in past years the source of these expenses has been the County's Expenditure Status Report for Insurance Management.

2. Actual 2020 through 2021 exposures (number of County vehicles per year by department and worker hours per quarter by department) as well as aggregate estimates of such for 2022 through 2024.

3. From the December 31, 2021 County Treasurer's Financial Statement, the Insurance Reserve Fund balance, for the liability portion of the study.

4. Also, please provide us with any additional information about the County's self-insured liability program that you believe we should be aware of for our analyses.

If any of the requested information is not readily available, please advise us so we can make alternative arrangements.

PwC is not required to perform services that are inconsistent with the scope of Services or terms and conditions set forth in this engagement letter. Either party may request changes to the scope of Services. To be effective, such change(s) must be agreed in writing and signed by the parties. PwC is not required to perform, and may cease performance of, any changes until and unless such changes are agreed to in writing and signed by the parties.

(b) Deliverables. PwC will provide the following Deliverables (as defined in the "Deliverables: Terms and Definitions" section below): a written report documenting the results of our analysis.

(c) Timing. The timing of the Services is as follows:

The estimated engagement start date is: January 7, 2022.

The estimated engagement end date is: July 29, 2022.

FEES, EXPENSES, AND PAYMENT.

(a) Professional Fees and Expenses.

The fee for Services relative to this project as described in the "Scope of PwC Services, Deliverables, and Timing" section above will be $37,500 based on the scope, schedule, responsibilities, and Deliverables stated within.

If PwC is requested or authorized by Client or required by government regulation, regulatory agency, subpoena, or other legal process to produce PwC's Deliverables, working papers, or personnel for testimony or interview with respect to services PwC performed for Client, Client will reimburse PwC for PwC's, the PwC Subcontractors' (as defined below), and their respective counsels' reasonable expenses and professional time incurred in responding to such a request, provided, however, that such reimbursement obligation shall not apply when PwC is an original party to the proceeding in which the information is sought.

(b) Payment Terms. PwC will bill Client for reasonable out-of-pocket expenses (including when PwC uses a third party booking agent, nominal per-ticket charges charged by such agent) and any applicable sales, use, excise, or-value added tax. Amounts billed for Services performed by PwC or the PwC Subcontractors (as defined below) shall be considered fees and not expenses and will be billed as set forth above. PwC will invoice Client on a monthly basis in arrears. Client will pay each invoice within 30 calendar days after the invoice date.

DELIVERABLES: TERMS AND DEFINITIONS.

(a) Ownership and License. Client will own each particular copy (whether in tangible or electronic form) of the Materials (as defined below) prepared for and delivered to Client under this engagement letter that are identified as a "Deliverable" (collectively, the "Deliverables"). PwC will own all intellectual property rights in and to the Deliverables and any other Materials (as defined below) that PwC, the PwC Subcontractors (as defined below), or their respective personnel may make, conceive, develop, or create during or as a result of the Services, including PwC's working papers (the "Work Product"). As between PwC and Client, each party will continue to own Materials made, conceived, developed, or created by or for such party independent from, or prior to commencement of, the performance of Services under this



engagement letter and any intellectual property rights therein (collectively, together with any relevant third-party Materials procured by the applicable party or to which the applicable party may otherwise have rights, the applicable party's "Background Materials"). Subject to Client's compliance with the terms of this engagement letter, PwC grants to Client under PwC's intellectual property rights a non-exclusive, non-transferable license to use the Deliverables and Work Product delivered to Client for Client's internal business purposes only. For the avoidance of doubt, neither the Work Product nor PwC's Background Materials include Client's Confidential Information (as defined below) or Client's Background Materials, both of which shall remain the sole and exclusive property of Client. As used herein, "Materials" means information, know-how, data, and other technology, including works of authorship and other creations and ideas, databases, compilations, inventions, developments, software, firmware, and other computer programs (in source code, object code, or any other format), documentation, technical information, specifications, configuration information, designs, plans, drawings, writings, schematics, documents, reports, methods, procedures, concepts, techniques, protocols, systems, elements, components, subsystems, devices, equipment and other hardware.

(b) Use and Disclosure.

(i) PwC provides the Services and the Deliverables, Work Product, and PwC's Background Materials solely for Client's internal use and benefit and not for any other person's or entity's use, benefit, or reliance, and PwC disclaims any contractual or other responsibility, liability, or duty of care to any person or entity other than Client in connection with the Services, Deliverables, Work Product, or PwC's Background Materials. Client shall indemnify and hold harmless PwC and the Beneficiaries (defined below) from and against all third party claims, losses, liabilities and damages (including, but not limited to, any costs, expenses and reasonable attorneys' fees) arising from or relating to the Services or Deliverables.

(ii) Except as described in this section, PwC's prior written consent (which consent may include the requirement to enter into an access letter in PwC's standard form) shall be required if Client wishes to disclose the Deliverables, Work Product, or PwC's Background Materials to any other person or entity or refer to PwC in connection with the Services. Client may disclose Unbranded Deliverables (as defined below) to a third party if Client first accepts and represents them as its own and makes no reference to PwC in connection with such Deliverables. "Unbranded Deliverables" are those Deliverables that do not contain PwC's name or any other information that could identify PwC as the source (either because PwC provided a Deliverable without identifying information or because Client subsequently removed it). Without PwC's prior written consent, Client may disclose Deliverables to, or discuss information relating to the Services with, Client's third-party professional advisors (including subcontractors, accountants, auditors, attorneys, financial, and other advisors) that are acting solely for Client's benefit and on Client's behalf and that have a need to know such information in order to provide advice or services to Client (collectively, "Third-Party Professional Advisors"), provided that such Third-Party Professional Advisors agree: (i) that PwC did not perform the Services or prepare the Deliverables for such Third-Party Professional Advisors' use, benefit, or reliance and that PwC assumes no duty, liability, or responsibility to such Third-Party Professional Advisors; and (ii) not to disclose the Services or Deliverables to any other person or entity without PwC's prior written consent. For the avoidance of doubt, Third-Party Professional Advisors do not include any parties that have or may obtain a financial interest in Client or in an anticipated transaction, including parties that are providing or may provide insurance, financing, capital in any form, a fairness opinion, or selling or underwriting securities.

(iii) PwC recognizes that our Deliverables could be subject to requests under a public record disclosure statute. In the event such a request is made, Client will promptly notify PwC of the request so that PwC can take any action permitted by law to withhold disclosure of the information, if it so desires.

(c) Oral Advice and Draft Deliverables. Client may rely only on final, written Deliverables and not on oral advice, draft Deliverables, or other information provided by PwC. Upon Client's request, PwC will confirm oral advice in a Deliverable on which Client may rely.

(d) Other Materials. To facilitate PwC's provision of Services and Deliverables, during the term of this engagement letter, PwC may provide or otherwise make available to Client certain of PwC's Background Materials, including (for example) spreadsheets and scripts, automations, visualization tools and other software (collectively, the "PwC Technology"), whether on a hosted basis or for installation on Client's systems. To avoid doubt, PwC Technology is PwC's Confidential Information. Subject to the terms and conditions of this engagement letter, PwC hereby grants to Client a non-exclusive, non-transferable, non-sublicensable license to install (if and as directed by PwC), access and use PwC Technology in accordance with PwC's instructions solely for Client's internal use and benefit in connection with and during the term of PwC's performance of the Services. PwC will, or will empower Client to, establish individual user accounts for each Client employee (and each Client contractor employee for whom PwC has consented to provide access) as set forth in this engagement letter (or as otherwise agreed, including via email) whom Client authorizes to access and use PwC Technology on Client's behalf ("Client Users"). Client will identify each Client User to PwC (by name and email address) prior to allowing the Client User to access PwC Technology, and Client will promptly notify PwC (email will suffice) of any changes to the set of Client Users. Client will, and will cause each Client User to, install (if applicable), access and use PwC Technology in compliance with all applicable laws, rules, regulations, obligations to third parties, and this engagement letter. Client is responsible for all use and access of PwC Technology by Client Users. Client will not (and will not permit any other party to): install (if applicable), access or use PwC Technology other than as expressly permitted herein. Without limiting PwC's confidentiality obligations hereunder with respect to any Client Confidential Information processed by PwC Technology, PwC Technology is provided "AS-IS" and PwC and its service providers hereby disclaim all representations and warranties with respect thereto, whether express, implied, or statutory, including any implied warranties of merchantability, fitness for a particular purpose, title, non-infringement or accuracy, and those arising from course of dealing or performance, or usage of trade. Without limiting PwC's obligations to perform the Services and provide the Deliverables as set forth herein, PwC may change the functionality of, or suspend or discontinue access to, all or any portion of PwC Technology at any time by notice to Client via any means (notwithstanding any formal notice process set forth herein). PwC Technology is not suitable for, and may not be used for, maintaining master or original documents. PwC Technology is licensed, not sold. There are no implied licenses hereunder. PwC and its suppliers reserve all rights not expressly granted hereunder.

PWC RESPONSIBILITIES.

(a) PwC will perform the Services in accordance with the American Academy of Actuaries' Code of Professional Conduct and relevant Actuarial Standards of Practice.

(b) PwC's role under this engagement letter is advisory only. PwC will not provide an audit, accounting, or attest opinion or other form of assurance. PwC will not verify or audit any information provided to it.

CLIENT RESPONSIBILITIES.

Client is responsible for all management functions and decisions relating to the Services, including without limitation evaluation and acceptance of the adequacy of the scope of Services in addressing Client's needs. It is Client's responsibility to establish and maintain its internal controls. Client also is responsible for the results achieved from using the Services or Deliverables. Client will designate a competent member of Client's management to oversee the Services. Client will provide reasonable assistance and accurate and complete information on a timely basis. PwC will perform the Services on the basis of information provided by Client or on its behalf, and PwC will have no responsibility or liability for such information, or for any third-party hardware, software, information or materials selected or supplied by Client. Client represents and warrants that it has and will maintain the requisite rights, licenses, consents and permissions to collect, access, use and disclose, and to permit PwC and the PwC Subcontractors



to access, use and disclose, all information, materials (including emails), software and hardware (including any third-party hardware, software, information or materials supplied by Client) provided or otherwise made available to PwC or the PwC Subcontractors in connection with the Services and/or this engagement letter.

CONFIDENTIALITY.

"Confidential Information" means non-public information marked "confidential" or "proprietary" or information that otherwise should be understood by a reasonable person to be confidential in nature, provided by a party or on its behalf. All terms of this engagement letter, including but not limited to the fee and expense structure, are considered Confidential Information. Confidential Information does not include any information that: (i) is rightfully known to the receiving party ("Recipient") prior to its disclosure; (ii) is released by the disclosing party ("Discloser") generally to others without restriction; (iii) is independently developed by Recipient without use of or reliance on Discloser's Confidential Information; (iv) is or later becomes publicly available without violation of this engagement letter; or (v) may be lawfully obtained by Recipient from a third party without applicable restriction. Recipient will protect the Confidential Information of Discloser using reasonable measures commensurate with those that Recipient uses to protect its own Confidential Information. Recipient may use or disclose the Confidential Information of Discloser only: (1) in connection with the Services; (2) as permitted in this engagement letter; or (3) as requested or directed by Discloser. Except as set forth in this section, Recipient will not disclose the Confidential Information of Discloser to third parties without Discloser's prior consent. Notwithstanding the foregoing, without Discloser's prior written consent, Recipient may disclose Confidential Information (a) to professional advisors, subcontractors, PwC Subcontractors, or employees on a need-to-know basis, provided that such entities and individuals are required to comply with confidentiality obligations, and (b) as required by law, statute, rule, regulation or professional standard. If disclosure of Discloser's Confidential Information is required by law, statute, rule, or regulation (including any subpoena or other similar form of process), or by professional standards, Recipient shall provide Discloser with written notice prior to such disclosure (to the extent permitted by applicable law); provided, however, that prior written notice is not required in connection with requests for disclosures arising from or related to government audits, investigations, or supervisory examinations by regulatory authorities with jurisdiction over Recipient.

LIMITATIONS OF LIABILITY.

Except to the extent finally determined to be prohibited by law, PwC's aggregate liability for all claims, losses, liabilities, or damages in connection with this engagement letter or its subject matter, whether as a result of breach of contract, tort (including but not limited to negligence and strict liability), or otherwise, regardless of the theory of liability asserted, is limited to no more than the total amount of fees paid to PwC for the particular Service giving rise to the liability under this engagement letter. In addition, in no event will PwC be liable for lost profits, consequential, indirect, incidental, punitive, exemplary, or special damages.

OTHER PWC FIRMS; PWC SUBCONTRACTORS. PwC is a firm in the global network of separate and independent PricewaterhouseCoopers firms (exclusive of PwC, the "Other PwC Firms"). PwC may draw on the resources of and/or subcontract to its subsidiaries and affiliates, the Other PwC Firms, and/or third-party contractors and subcontractors within or outside of the United States (each a "PwC Subcontractor") in connection with the provision of Services and/or for internal, administrative and/or regulatory compliance purposes. Client agrees that PwC may provide information PwC receives in connection with this engagement letter to the PwC Subcontractors for such purposes. PwC will be solely responsible for the provision of the Services (including those performed by the PwC Subcontractors), for the protection of any Confidential Information provided to the PwC Subcontractors and for compliance with the other terms and conditions of this engagement letter. The PwC Subcontractors and the partners, principals, members and employees of PwC and the PwC Subcontractors (collectively the "Beneficiaries") shall have no liability or obligations arising out of this engagement letter. Client agrees to bring any claim or other legal proceeding of any nature arising from the Services



against PwC and not against the Beneficiaries. Client also shall ensure that its subsidiaries and affiliates do not assert any claim or other legal proceeding against PwC or the Beneficiaries related to or arising from the Services, or Deliverables. Client assumes responsibility and liability in the event that Client's subsidiaries and affiliates pursue such claims or proceedings. While PwC is entering into this engagement letter on its own behalf, this section also is intended for the benefit of the Beneficiaries.

TERMINATION. Any party may terminate this engagement letter without penalty upon written notice to the other party. Any provisions of this engagement letter that expressly or by implication are intended to survive its termination will survive and continue to bind the parties.

DISPUTE RESOLUTION. Any disputes that arise between the parties that are not resolved by mutual agreement shall be resolved by arbitration, except that either party shall be free to seek temporary injunctive relief in court in the event of a breach or threatened breach of a party's obligations of confidentiality or intellectual property under this engagement letter. The arbitration will be conducted in accordance with the Rules for Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution (the "Rules") then in effect. The arbitration will be conducted before a panel of three arbitrators selected using the screened process provided in the Rules. The arbitration shall be seated and take place in a venue mutually agreeable to the arbitrators. The arbitration panel, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of, or defenses with respect to, this engagement letter, including but not limited to issues of arbitrability. The arbitration panel shall have no power to award non-monetary or equitable relief of any sort. It shall also have no power to award damages inconsistent with the limitations of liability provisions or any other terms herein. Judgment on any arbitration award may be entered in any court having jurisdiction. All aspects of the arbitration shall be treated as confidential. Each party accepts and acknowledges that any demand for arbitration arising from or in connection with the Services must be issued within one year from the date such party became aware or should reasonably have become aware of the facts that give rise to the alleged liability and, in any event, no later than two years after the cause of action accrued.

CHOICE OF LAW. This engagement letter and any dispute between the parties, including any claims or defenses asserted, whether in contract, tort, or otherwise, will be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Washington, without giving effect to any choice of law principles or provisions relating to conflicts of laws that would require the laws of another jurisdiction to apply.

CPA NOTICE. PwC is owned by professionals who hold CPA licenses as well as by professionals who are not licensed CPAs. Depending on the nature of the Services, non-CPA owners may be involved in providing Services under this engagement letter.

NO LEGAL ADVICE; CHANGES IN LAWS. The Services do not include the provision of legal advice, and PwC makes no representations regarding questions of legal interpretation. Client should consult with its attorneys with respect to any legal matters or items that require legal interpretation under federal, state, or any other type of law or regulation. Changes in the law and/or its interpretation may take place before PwC's advice is acted upon or may be retrospective in effect; PwC accepts no responsibility for changes in the law or its interpretation that may occur after the provision of the Services.

COMPLIANCE WITH LAWS. Each party will comply with all relevant United States federal and state laws and regulations that are directly applicable to such party's performance of its obligations under this engagement letter.



MISCELLANEOUS.

(a) Non-Exclusive Agreement; Other Matters.

This is a non-exclusive agreement, and subject to its confidentiality obligations, PwC and the PwC Subcontractors are not prevented or restricted from providing services to other clients. PwC is an independent contractor, not a fiduciary or agent of Client, and shall not perform any obligation of Client, whether regulatory or contractual, nor shall PwC negotiate on Client's behalf. PwC may use Client's name and logo in experience citations and recruiting materials, and/or in the development of case studies related to the Services provided Client has the right to approve such case studies prior to any external distribution.

Notwithstanding any other provision of this engagement letter, PwC and the Other PwC Firms may use Confidential Information received hereunder, including tax return information, to develop, enhance, modify and improve technologies, tools, methodologies, services and offerings, and/or for development or performance of data analysis or other insight generation. Information developed in connection with these purposes may be used or disclosed to Client or current or prospective clients to provide them services or offerings. PwC and the Other PwC Firms will not use or disclose the Confidential Information in a way that would permit Client to be identified by third parties without Client's consent.

With respect to tax return information, Client may request in writing a more limited use and disclosure than the foregoing. The foregoing consent is valid until further notice by Client.

If PwC commenced Services prior to execution of this engagement letter, the terms of this engagement letter shall govern such Services.

(b) Order of Precedence. If there is a conflict between the terms contained in the main body of this engagement letter and any attachment to this engagement letter, the following order of precedence shall apply: (i) the applicable attachment; and then (ii) the main body of this engagement letter.

(c) Entire Agreement; Severability. This engagement letter and its attachments represent the entire agreement between the parties with regard to the subject matter hereof and supersede any prior understandings, proposals, or agreements concerning the Services. If any provision (or any part thereof) of this engagement letter is found to be unenforceable or invalid, the remainder of such provision shall remain enforceable to the maximum extent permitted by law.

(d) Assignment. No party to this engagement letter may assign or transfer this engagement letter or any rights, licenses, obligations, claims, or proceeds from claims arising out of or in any way relating to this engagement letter, any Services provided hereunder, or any fees for this engagement letter or such Services to anyone, by operation of law or otherwise, without the prior written consent of the other party; and any assignment without such consent shall be void and invalid. This engagement letter shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns, and except as expressly provided herein, nothing in this engagement letter shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this engagement letter.

(e) Force Majeure. No party shall be liable for any delay or failure to perform any of the Services or obligations in this engagement letter due to causes beyond its reasonable control.

(f) Counterparts; Headings. This engagement letter may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one single document between the parties. Counterparts may be exchanged by facsimile or attached as a pdf, jpeg, or similar file type to an email or by DocuSign, Adobe Acrobat, or other electronic signature. Headings in this engagement letter are for convenience only and shall not be used in interpreting this engagement letter or any provision of it.



* * * * *

If Client has any questions about this engagement letter, please discuss them with Kevin Wick at (206) 295-7366. If the Services and terms outlined in this engagement letter are acceptable to Client, then please sign one copy of this engagement letter in the space provided and return it to Kevin Wick as a pdf, jpeg, or similar file attached to an email to Kevin at Kevin.L.Wick@pwc.com**.**

Very truly yours,

PricewaterhouseCoopers LLP

Christine Kogut

_____

Christine Kogut

Principal

Date: January 3, 2022

_____

ACKNOWLEDGED AND AGREED:

Benton County

_____

(Name)

_____

(Title)

Date: _____

Approved to Form: _____

_____

(Title)

Date: _____

Adam Morasch

From: Eric Andrews
Sent: Friday, January 7, 2022 11:02 AM
To: Adam Morasch
Cc: Mary Christen
Subject: RE: PwC - Actuarial Services

I approve as to form.

Eric T. Andrews
Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

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

From: Adam Morasch <Adam.Morasch@co.benton.wa.us>
Sent: Monday, January 3, 2022 10:25 AM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>
Cc: Mary Christen <Mary.Christen@co.benton.wa.us>
Subject: PwC - Actuarial Services

Good Morning Eric.
Please find the following attached pdf. for your reference and review.

1. PwC Engagement Letter to Benton County – December 31 2021

Please let me know if you have any questions or concerns. Appreciate all your help Eric.

Thank you.
Adam

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Executing Contract w/Embark Safety for Employee Driver Monitoring Services
Presenter:	N/A
Prepared By:	Adam Morasch, Risk Manager
Reviewed By:	Mary Christen, Administrative Assistant

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

Risk Management received notification from the Washington State Transit Insurance Pool (WSTIP) in November that they would be ending our Interlocal Agreement for driver record monitoring services. With the help of WSTIP we were able to find Embark Safety to help us monitor drivers records on a monthly basis. The Risk Manager recommends using Embark Safety to monitor drivers in a risk control effort to target driving exposures to the County.

Fiscal Impact

Amount: $65,000 including W.S.S.T.

Fund: Insurance Management Fund (Fund # 0504-101)

Recommendation

Approve the attached Resolution and sign the attached Personal Services Contract between Benton County and Embark Safety.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE PERSONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND EMBARK SAFETY TO MONITOR DRIVER RECORDS ON A MONTHLY BASIS.

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

WHEREAS, per Benton County policy, the Risk Manager shall verify license and driving record history for employees who drive county vehicles or who use their personal vehicles to perform official County duties; and

WHEREAS, RCW 46.52.130 provides for local governments that are authorized to self-insure to request the driving records of employees for risk management purposes; and

WHEREAS, Embark Safety has an established program with the Washington State Department of Licensing to monitor driving records of employees and volunteers who operate motor vehicles in the course of their work and will provide monthly updates to any changes in monitored records; and

WHEREAS, the information on employees driver records will be kept confidential and used solely by the County official for verifying the driving status of the County driver; and

WHEREAS, the Risk Manager recommends the use of this service as a risk control effort targeting driving exposures to the County; **NOW, THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the recommendation and agrees to sign the attached agreement between Benton County and Embark Safety for a contract amount not to exceed $65,000 including WSST; and

BE IT FURTHER RESOLVED, the contract shall begin immediately upon execution by both parties and expire on December 31, 2025.

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

Orig: A. Morasch
cc: Auditor, Sonia Godinez

Prepared by: A. Morasch

BENTON COUNTY
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **EMBARK SAFETY**, a corporation organized under the laws of the State of Washington with its principal offices at PO Box 780699, Orlando, FL 32878 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

a. Terms and Conditions; and
b. Exhibit A, Embark Safety.

2. DURATION OF CONTRACT

The term of this Contract shall begin immediately upon execution by both parties and shall expire on **December 31, 2025**. 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 employee license and driving record history. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

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

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

d. The CONTRACTOR shall complete its work in a timely manner and

in accordance with the schedule agreed by the parties.

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Edwin Sosa
Address:	P.O. Box 780699 Orlando, FL 32878
Phone:	(407) 536-7233
Email:	edwinsosa@embarksafety.com

b. For COUNTY:

Name:	Adam Morasch
Address:	7122 W Okanogan Pl. #E330 Kennewick, WA 99336
Phone:	(509) 736-3082
Email:	adam.morasch@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates set forth in Exhibit A, 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 $65,000 including W.S.S.T.

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

d. The CONTRACTOR may, in accordance with Exhibit A, submit invoices to the COUNTY not more than once per month during

the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

a. **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 employer's 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 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

c. **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.

d. **Cyber Liability:** The CONTRACTOR shall maintain cyber liability insurance for not less than one million dollars ($1,000,000) per occurrence and an annual aggregate of two million dollars ($2,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion, and network security. Such coverage is required only if any products

and/or services related to information technology (including hardware and/or software) are provided to COUNTY and for claims involving any professional services for which the CONTRACTOR is engaged with COUNTY for such length of time as necessary to cover any and all claims.

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. 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.

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 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 Pl. #E330, 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 subsection shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

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

performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer

these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

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

27. PUBLIC RECORDS ACT

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

virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

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

Dated:_____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest:_____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 1/10/22

FOR: EMBARK SAFETY

Edwin Sosa
Signature

President
Title:

Edwin Sosa
Print Name

Adam Morasch

From: Eric Andrews
Sent: Friday, January 7, 2022 11:06 AM
To: Adam Morasch
Subject: RE: Embark Contract Review

Follow Up Flag: Follow up
Flag Status: Flagged

I approve as to form.

Eric T. Andrews
Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

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

From: Adam Morasch <Adam.Morasch@co.benton.wa.us>
Sent: Tuesday, December 28, 2021 2:02 PM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>
Cc: Robert Blain <Robert.Blain@co.benton.wa.us>; Paul Schut <Paul.Schut@co.benton.wa.us>; Mary Christen <Mary.Christen@co.benton.wa.us>
Subject: Embark Contract Review

Good Afternoon Eric.
Please find the following attached pdf. for your reference and review.

1. 12-9-2021 – Embark – Personal Services Contract_Draft#1
2. Exhibit A to PSC_12-20-2021

If you could review and approve to form, that would be much appreciated. As always, thoughts or concerns are welcomed.

Thank you Eric.
Adam

Exhibit A

1. EMBARK SAFETY SERVICES. Embark Safety is defined as a "consumer reporting agency" pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA") and applicable state law. The FCRA-regulated screening reports that Embark Safety furnishes pursuant to this Agreement are defined by the FCRA and applicable state law as "consumer reports" and/or "investigative consumer reports" (collectively, "Screening Reports"). Subject to the terms and conditions of this Agreement, and upon Subscriber's request, Embark Safety will furnish Screening Reports and the related services described in this Agreement in connection with Subscriber's screening of job applicants, employees and/or other individuals for which Embark Safety provides information for legally permissible purposes (each, an "Applicant"). Subscriber acknowledges and agrees that Embark Safety may fulfill its services under this Agreement through its affiliates and subsidiaries, provided, Embark Safety shall remain solely responsible for its obligations under this Agreement. Embark Safety relies on the information furnished by third-party information suppliers ("Suppliers") and Embark Safety clients when preparing Screening Reports. References to "Screening Report(s)" refer to an entire Screening Report as well as any specific information contained in a Screening Report. If Subscriber obtains services from Embark Safety under this Agreement that fall outside the scope of the FCRA and similar United States laws (collectively, "Non-US Services"), the parties will enter into appropriate addenda setting forth their respective rights and obligations related to such Non-US Services. Except as otherwise established by the laws and regulations governing Non-US Services, all other terms and conditions of this Agreement will apply to the Non-US Services.

2. SUBSCRIBER OBLIGATIONS.
(a) Compliance with FCRA and other Applicable Laws. Subscriber shall comply with all local, state, federal, and international laws and regulations (collectively, "Laws") applicable to Subscriber in connection with its procurement and use of Screening Reports and other services provided pursuant to this Agreement. In utilizing Embark Safety's FCRA-regulated services, Subscriber is considered a "user" of Screening Reports under the FCRA and applicable state law. Subscriber shall comply with its certifications and obligations set forth in Attachment A. Subscriber acknowledges it has received, reviewed and will comply with its obligations in the *Notice to Users of Consumer Reports: Obligations Of Users Under The FCRA* available at: http://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf . Subscriber acknowledges that if it obtains Non-US Services under this Agreement, Subscriber may have additional or different legal obligations than those described in this section. Subscriber shall comply with all such obligations. Subscriber shall promptly notify Embark Safety if Subscriber believes it has failed to fulfill any obligation in this Agreement, including, without limitation, those obligations related to confidentiality, consumer privacy, data protection, and compliance with Laws.
(b) Account Access and Maintenance. Subscriber shall designate to Embark Safety the name of a "Super User(s)" who shall be: (i) Subscriber's main contact(s) for the services obtained under this Agreement, and (ii) responsible for the strict administration and control of Subscriber's account identification numbers and passwords. The Super User(s) shall identify and authorize all Subscriber account users and their respective access privileges, and promptly notify Embark Safety of any changes of account users and/or if any account identification numbers or passwords become invalid, inactive or compromised in any manner. In accordance with Section 4, a Super User may be an Outsourced Provider.
(c) Data Privacy and Security. Subscriber shall maintain reasonable and appropriate technical, physical, administrative and other organizational precautions and security measures to protect against unauthorized access to and/or misuse of the Embark Safety system and Screening Reports. At a minimum, Subscriber shall comply with the Information Access & Security Requirements set forth in Attachment A. Embark Safety may, in its reasonable discretion and without penalty, suspend and, upon written notice, cancel Subscriber's account if Embark Safety reasonably suspects or identifies any misuse of or unauthorized access to its system and/or Screening Reports through Subscriber's account.
(d) Audits and Record Retention. Embark Safety and/or its Suppliers or their designated representatives may conduct reasonable periodic audits of Subscriber's compliance with this Agreement. Unless otherwise required by applicable Laws, Subscriber shall maintain copies of all Applicant consent forms and pre-adverse and adverse action notices (as further described in Attachment A) for a minimum period of five (5) years, and Subscriber shall, upon reasonable advance notice, during its normal business hours, make available to Embark Safety and/or its Suppliers or their designated representatives such documentation reasonably requested to demonstrate Subscriber's compliance with its obligations in this Agreement. If Subscriber becomes aware of an audit initiated by a third-party involving Embark Safety's services provided pursuant to this Agreement, Subscriber shall provide Embark Safety prompt written notice of the audit. Unless otherwise required by applicable Laws, Subscriber shall not provide access to its Embark Safety account to any auditing party unless Embark Safety consents to such request and an Embark Safety representative participates in the review/audit.
(e) Prohibition on Resale or Reuse of Reports. Except as otherwise set forth in this Agreement, Subscriber shall not, directly or indirectly, sell, transfer, disclose the contents of or distribute Screening Reports, in whole or in part, to any third-party (other than to the applicable Applicant or in conjunction with a Required Disclosure). Subscriber shall use Screening Reports solely as an end-user, for a single, one-time use.
(f) Compliance; No Legal Advice. Subscriber acknowledges that Embark Safety will not render any opinions regarding Screening Report content, and Subscriber shall base its screening processes, guidelines and decisions on its own policies and procedures. Any consultation, training and forms provided by Embark Safety are provided for informational purposes only, and not for the purpose of providing legal advice. EMBARK SAFETY STRONGLY RECOMMENDS THAT SUBSCRIBER CONSULT WITH ITS OWN LEGAL COUNSEL FAMILIAR WITH SUBSCRIBER'S UNIQUE REQUIREMENTS AND LEGAL/REGULATORY OBLIGATIONS RELATED TO THE COMPLIANT PROCUREMENT AND USE OF SCREENING REPORTS AND OTHER SERVICES OBTAINED PURSUANT TO THIS AGREEMENT.

3. EMBARK SAFETY OBLIGATIONS.
(a) Compliance with FCRA and Other Applicable Laws. Embark Safety shall comply with all Laws applicable to Embark Safety in its preparation and transmission of Screening Reports and other services provided pursuant to this Agreement. Embark Safety acknowledges that if it provides Non-US Services under this Agreement, Embark Safety may have additional or different legal obligations than those described in this section. Embark Safety shall comply with all such obligations.
(b) Service Performance. Upon Subscriber's request, Embark Safety shall, in accordance with the terms of this Agreement, perform the services identified in the Schedule of Fees attached hereto as Attachment B ("Schedule of Fees").
(c) Data Privacy and Security. Embark Safety shall implement commercially reasonable and appropriate technical, physical and administrative measures to protect Applicant data against Embark Safety's accidental or unlawful destruction and unauthorized disclosure or access. Embark Safety is not responsible for disclosure or compromise of such data due to Subscriber's acts or omissions or otherwise resulting from use of Subscriber's passwords or accounts, due to no fault of Embark Safety.
(d) Report Maintenance. Subject to Section 13(b), during the Term of this Agreement, Embark Safety shall maintain
Screening Report information for a minimum of five (5) years, unless otherwise required or prohibited by applicable Laws.
(e) Management Reports. Embark Safety shall provide Subscriber with Embark Safety's standard "Management Reports" functionality to enable Subscriber to generate available reports relating to Subscriber's account activity.
(f) Service Standards; Disclaimer of Warranty. EMBARK SAFETY'S SERVICES WILL BE PERFORMED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH INDUSTRY STANDARDS. EMBARK SAFETY WILL MAINTAIN AND FOLLOW REASONABLE PROCEDURES TO ASSURE THE MAXIMUM POSSIBLE ACCURACY OF THE INFORMATION CONTAINED IN EACH SCREENING REPORT, AND EMBARK SAFETY WILL RE-VERIFY ANY DISPUTED SCREENING REPORT IN ACCORDANCE WITH APPLICABLE LAWS. SUBSCRIBER ACKNOWLEDGES THAT EMBARK SAFETY IS NOT AN INSURER OR GUARANTOR OF THE ACCURACY, RELIABILITY, VALIDITY, DEPTH OR COMPLETENESS OF THE INFORMATION PROVIDED BECAUSE SUCH INFORMATION IS SUBJECT TO HUMAN ERROR AND IS OBTAINED FROM PUBLIC RECORDS AND OTHER THIRD-PARTY SOURCES THAT ARE NOT UNDER THE CONTROL OF EMBARK SAFETY AND MAY NOT ALWAYS BE ACCURATE, CONSISTENT, VALID OR COMPLETE. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EMBARK SAFETY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY ARISING FROM THE COURSE OF DEALING, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND NONINTERRUPTION OF SYSTEM USE.

4. MOTOR VEHICLE REPORTS
(a) Motor Vehicle Records. Subscriber acknowledges and agrees that motor vehicle reports ("MVRs") and related information are considered Screening Reports for purposes of this Agreement. If Subscriber requests MVRs or related information from Embark Safety under this Agreement, then Subscriber further represents and agrees that: (i) it is qualified to do business and validly holds all licenses required to operate Subscriber's business in all states where Subscriber conducts business and/or has employees; (ii) it will comply with all applicable Laws related to the use and review of MVRs, including, without limitation, the Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq. ("DPPA"); (iii) it will not use the MVRs to build its own database; and (iv) it will, from time to time upon Embark Safety's request, execute paperwork required by applicable state Departments of Motor Vehicles and/or other data sources for Subscriber's access to MVRs.

5. LIMITATION OF LIABILITY To the maximum extent permitted by applicable Laws, each party's total liability to the other party pursuant to this Agreement ("Limitation of Liability") shall not exceed three (3) times the fees paid by Subscriber and collected by Embark Safety pursuant to this Agreement within the twelve (12) month period immediately preceding the event(s) giving rise to the claim. Embark Safety's liability shall be further limited to the extent that any Applicant conduct giving rise to the claim, and the damages sustained thereby, are reasonably of the same class as the Screening Report record at issue. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE

DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Embark Safety and Subscriber shall each use good faith reasonable efforts to mitigate any potential damages or other adverse consequences arising from or related to this Agreement.

6. INDEMNIFICATION Each party ("Indemnifying Party") shall indemnify, defend and hold the other party ("Indemnified Party") harmless from and against any third-party claims, demands, suits, judgments, costs, expenses and liabilities, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), to the extent caused by the Indemnifying Party's failure to comply with the FCRA or other applicable Laws. With respect to Embark Safety's liability for any Applicant Claim alleging inaccurate or incomplete Screening Report information, Subscriber shall, prior to having taken any action adverse to the Applicant based on the Screening Report, have provided Embark Safety a reasonable opportunity to reinvestigate the disputed information in accordance with Embark Safety's FCRA-imposed reinvestigation obligations and deadlines. If Subscriber engages Embark Safety to perform professional reference checks, Subscriber further agrees to defend, indemnify and hold Embark Safety harmless from and against all Claims with respect to the content of reference questions that have been customized at Subscriber's request and the content of the reference's responses accurately reported by Embark Safety as received from the reference. Each party's total aggregate liability shall not exceed the Limitation of Liability applicable to such party as set forth in Section 5. An Indemnified Party seeking indemnification pursuant to this Agreement shall provide the Indemnifying Party with prompt written notice of a Claim and shall cooperate with the Indemnifying Party in good faith and in all reasonable respects in connection with the defense of any such action at the expense of the Indemnifying Party. The Indemnified Party may, at its option, participate in the defense of any such Claim, with its separate counsel and at its own cost, and the Indemnifying Party agrees to cooperate in good faith and in all reasonable respects with such counsel; provided, however, that the Indemnifying Party shall have sole control of the defense and any settlement of such Claim or action, and the Indemnified Party shall not compromise or settle any such Claim without the prior written consent of the Indemnifying Party. The Indemnifying Party shall not without the consent of the Indemnified Party (such consent not to be unreasonably withheld, conditioned or delayed), enter into any settlement that requires a finding or admission of fault of the Indemnified Party, or reasonably can be expected to require a material affirmative obligation of, result in any ongoing material liability to, or otherwise prejudice the Indemnified Party.

7. NOTICES Any notices regarding this Agreement: (i) must be in writing, (ii) must be delivered (a) by facsimile (with transmission confirmed), (b) in person, (c) by certified mail, return receipt requested, postage pre-paid, or (d) by a nationally recognized overnight delivery service; (iii) must be delivered to the applicable party at the address set forth below in this section, or such other address as a party may designate by notice in accordance with this section; and (iv) will be deemed given on the date of delivery.

If to Embark Safety:

Embark Safety
PO BOX 780699
Orlando, FL 32878
Office (407) 536-7233
Fax: (877) 347-7745

If to Subscriber:

COMPANY NAME (LEGAL ENTITY NAME): BENTON COUNTY

CONTACT NAME: Adam Morasch, Risk Manager

ADDRESS: 7122 W Okanogan Pl., Bldg E#330

CITY, STATE, ZIP CODE: Kennewick, WA 99336

Compliance Certification; Information Access & Security Requirements

A. Subscriber Compliance Certification
Subscriber certifies to Embark Safety as follows with respect to each FCRA-regulated Screening Report Subscriber orders and/or receives:

1. Permissible Purpose. Subscriber shall procure and use Screening Reports only for the legally permissible purposes set forth in the Agreement.

2. Applicant Disclosure and Consent. Subscriber will ensure that prior to its procurement of a Screening Report for *employment purposes*: (i) Subscriber has made a clear and conspicuous disclosure in writing to the Applicant, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes (and for California Applicants, the disclosure shall also include the name, address and telephone number of Embark Safety, the nature and scope of the investigation requested, a summary of the provisions of Ca. Civil Code §1786.22, and otherwise comply with Ca. Civil Code §1786.16); and (ii) the Applicant has authorized in writing the procurement of the Screening Report by Subscriber (and for CA, OK and MN Applicants, Subscriber shall provide the Applicant, by means of a check box, an option by which the Applicant may indicate on their written consent form that the Applicant wishes to receive a copy of any Screening Report that is prepared).

3. Pre-Adverse Action Disclosures. In using a Screening Report for *employment purposes*, before taking any adverse action based in whole or in part on the Screening Report, Subscriber shall provide to the Applicant to whom the Screening Report relates: (i) a copy of the Screening Report; and (ii) a description in writing of the rights of the Applicant under the FCRA, as prescribed by the Federal Trade Commission under FCRA §609(c)(3) ("Summary of Consumer Rights"), and any other notices required by applicable Laws.

4. Adverse Action Disclosures. After providing the Applicant with the pre-adverse action disclosure described in paragraph 3 above, and after Subscriber has given the Applicant reasonable time to dispute the information contained in their Screening Report, Subscriber will, if intending to take adverse action with respect to the Applicant based in whole or in part on information contained in the Screening Report, send the Applicant a follow-up notification that the Subscriber is taking adverse action (e.g., denying employment or promotion) based in whole or in part on the information contained in the Screening Report.

5. EEO Compliance. The information from the Screening Report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation.

6. Investigative Consumer Reports. For each Investigative Consumer Report, as defined by the FCRA (e.g., professional reference check), that Subscriber procures from Embark Safety, Subscriber has complied with its obligations under FCRA §606(a) and (b), including, without limitation, the following: a) clearly and accurately disclosing to the Applicant that an Investigative Consumer Report including information as to the Applicant's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure: i) is made in writing mailed, or otherwise delivered, to the Applicant not later than three days after the date on which the report was first requested; and ii) includes a statement informing the Applicant of his right to request the additional disclosures provided for under FCRA §606(b) as set forth in (b.) below, and a written Summary of Consumer Rights; and b) upon written request made by the Applicant within a reasonable period of time after the receipt by him of the disclosure required. Subscriber will make a complete and accurate disclosure of the nature and scope of the investigation requested. The disclosure will be made in a writing mailed, or otherwise delivered, to the Applicant not later than five days after the date on which the request for such disclosure was received from the Applicant or such report was first requested, whichever is the later.

B. Information Access & Security Requirements
1. Subscriber shall protect its Embark Safety account identification number(s) and password(s) ("Account I.D.'s") so that only key Subscriber personnel with an authorized need-to-know this sensitive information are given the ability to order and access Screening Reports. Subscriber shall not post or otherwise publicly display its Account I.D.'s. If a person who knows the Account I.D.'s leaves Subscriber's company or no longer needs to have access due to a change in duties, the Account I.D.'s should be changed immediately.
2. Subscriber shall place all terminal devices or systems used to obtain Screening Reports in a secure location within Subscriber's facility so that unauthorized persons cannot easily access them. After normal business hours or when left unattended, be sure to turn off and/or lock all such devices or systems used to access Screening Reports.
3. Subscriber shall secure hard copies and electronic files of Screening Reports within Subscriber's facility so that only authorized personnel can access them.

4. Subscriber shall shred or otherwise permanently destroy all *hard copy* Screening Reports when no longer needed and when applicable regulation(s) permit destruction, to prevent the unauthorized access to and/or use of applicant/employee data and/or any other personally identifiable information of applicants/employees.
5. Subscriber shall erase and overwrite or scramble *electronic files* containing Screening Reports and Applicant information when no longer needed and when applicable regulation(s) permit destruction, to prevent the unauthorized access to and/or use of applicant/employee data and/or any other personally identifiable information of applicants/employees.
6. Subscriber shall make all appropriate employees aware that Subscriber can order and use Screening Reports only for permissible employment purposes, and that employees may not order their own reports nor should they order or access the report of a family member or friend unless it is approved for the permissible employment purpose authorized in, and conducted in accordance with this Agreement.
7. Subscriber shall, in addition to its other obligations in this Agreement, comply with the "Access Security Requirements" and hereby incorporated by reference into this Agreement. Subscriber acknowledges that the Access Security Requirements are mandated by Embark Safety Supplier(s) and may be updated from time to time. By executing this Agreement, Subscriber represents to Embark Safety that Subscriber has reviewed and will comply with the Access Security Requirements to the extent applicable to the products and services Subscriber obtains from Embark Safety.
8. Subscribe must comply with all applicable laws that require the notification of individuals in the event of unauthorized release of Data or other event requiring notification. Subscriber must disclose the breach to Embark Safety prior to any public notification. In the event of a breach of Subscriber's security obligations or any permissible use as stated herein, Subscriber must notify Embark Safety by telephone and e-mail of such an event within 24 hours of discovery (407)536-7233 admin@embarksafety.com
Subscriber must also cooperate with Embark Safety to complete notification of all necessary individuals as determined by Embark Safety. Subscriber must reimburse Embark Safety for all costs associated with the notification, in addition to other reimbursable costs related to the breach.

Subscriber:

COMPANY NAME (LEGAL ENTITY NAME):	BENTON COUNTY
CONTACT NAME:	Adam Morasch
TITLE:	Risk Manager
DATE:	
AUTHORIZED SIGNATURE:	X Adam Morasch

Embark Safety
Name: Edwin Sosa

Title: General Manager, Authorized member

Date:

Authorized Signature: Edwin Sosa

Standard charges:

Monitoring / System Fee	***MVR Connection Fee:*** applies when an MVR is request or when a new activity appears on a driver's record
$0.65 per driver per month	$0.50 + State fee

Additional charges:

Account Setup Fee: ~~$1,000~~ - WAIVED

Optional Fees:

- $10/driver class assigned through the platform – optional
- PSP $10 + Connection Fee
- CDLIS $2 + Connection Fee

States	Monitoring	Frequency	Requirements	MVR Lookback	State Fees	Notes
Alabama	Yes	Monthly		3 Yrs	$10.00	
Alaska*	Convictions Only	Monthly		3 Yrs	$13.00	*Annual MVRs required*
Arizona*	Convictions Only	Monthly	Last 4 SSN	3 Yrs	$8.00	*Annual MVRs required*
Arkansas	Yes	Weekly		3 Yrs	$10.00	*MVR provided when driver is enrolled to monitoring - Bi-annual MVRs required*
California	Yes	Daily	State registration	3 Yrs	$2.00	*MVR provided when driver is enrolled to monitoring ($5.00 driver enrollment fee + connection fee), $2.00 activity fee. Annual MVR provided automatically on the date that the driver was originally enrolled to monitoring.*
Colorado	Yes	Monthly		7 Yrs	$2.20	
Connecticut	Yes	Monthly		3 Yrs	$18.00	
Delaware	Convictions Only	Monthly		3 Yrs	$25.00	
DC	Yes	Daily		3 Yrs	$7.00	
Florida	Yes	Daily		3 Yrs / 7 Yrs	*3 YR Report*: $8.10 *7 YR Report*: $10.10	*State provides daily suspension monitoring (Activity report $2.00) and monthly conviction monitoring*
Georgia	Suspensions Only	Monthly		3 Yrs / 7 Yrs	*3 YR Report*: $6.00 *7 YR Report*: *$8.00*	
Hawaii	N/A	N/A		3 Yrs	$23.00	*MVR Monitoring is expected to be released by Q4 2020*
Idaho	Yes	Daily		3 Yrs	$9.00	
Illinois*	Yes	Weekly	Last 4 SSN	3 Yrs	$12.00	*Annual MVRs required*
Indiana*	Yes	Monthly	Last 4 SSN + address	7 Yrs	$7.50	*Annual MVRs required*
Iowa*	Yes	Monthly	Last 5 SSN	3 Yrs	$8.50	*Annual MVRs required*
Kansas	Yes	Monthly		5 Yrs	$13.70	
Kentucky*	Yes	Monthly		3 Yrs	$5.50	*Excludes class A license disqualifications - Annual MVRs required*
Louisiana	Yes	Daily		3 Yrs	$18.00	
Maine	Yes	Monthly		3 Yrs	$7.00	
Maryland	Yes	Daily		3 Yrs	$12.00	*MVR provided when a driver is enrolled into monitoring. Annual MVR provided automatically on the date when the driver was enrolled into monitoring*
Massachusetts	Yes	Daily/Monthly		3 Yrs	$8.00	*State provides daily suspension monitoring and monthly conviction monitoring*
Michigan	Yes	Weekly		7 Yrs	$11.00	*Annual MVRs required on the date that the driver was*
Minnesota	Yes	Daily		5 Yrs	$5.00	
Mississippi*	Yes	Monthly	Last 4 SSN	3 Yrs	$14.00	*Annual MVRs required*
Missouri	Yes	Weekly		3 Yrs	$5.88	*MVR baseline provided on Fridays for drivers without a MVR baseline - Driver must be enrolled by Thursday before 4:00pm EST*
Montana	Yes	Monthly		3 Yrs	$7.37	
Nebraska	Yes	Monthly		3 Yrs	$7.50	
Nevada	Yes	Monthly		3 Yrs	$8.00	
New Hampshire	N/A	N/A		3 Yrs	$13.00	*State currently does NOT provide MVR monitoring*
New Jersey*	Yes	Monthly	Full SSN + Zip Code	5 Yrs	$12.00	*Annual MVRs required*
New Mexico	Yes	Monthly		3 Yrs	$6.50	
New York	Yes	Daily		3 Yrs	$7.00	*Standard 3-YR MVR baseline provided when a driver is enrolled into monitoring ($7.00/driver) - MVR does NOT include Medical Certificate - Yearly license status report ($2.00)*
North Carolina	Yes	Daily		3 Yrs / 5 Yrs	*3 YR Report*: $10.00 *7 YR Report*: $10.00	
North Dakota	Yes	Monthly		3 Yrs	$3.00	
Ohio	Yes	Monthly		3 Yrs	$5.00	
Oklahoma*	Convictions Only	Monthly		3 Yrs	$27.50	*Annual MVRs required*
Oregon	Yes	Monthly		3 Yrs	$11.83	
Pennsylvania*	Yes	Monthly	State registration. Last 4 SSN	10 Yrs	$15.00	*Annual MVR required. State registration required for MVR request - 4-week turnaround - Annual MVRs required*
Rhode Island	Yes	Monthly		3 Yrs	$20.00	
South Carolina	Yes	Weekly		3 Yrs / 10Yrs	$7.25	
South Dakota	Yes	Monthly		3 Yrs	$5.00	
Tennessee	Yes	Monthly		3 Yrs	$7.50	
Texas	Yes	Daily		3 Yrs / 5 Yrs (CDL Only)	3 YR Report: $6.50 5 YR Report: $7.50	*MVR baseline provided when a driver is enrolled into monitoring*
Utah	Yes	Monthly	State registration	3 Yrs	$11.00	*State registration required for monitoring - 2-week turnaround*
Vermont*	Yes	Monthly		3 Yrs	$18.00	Annual MVRs required
Virginia	Yes	Daily		3 Yrs	$8.00	
Washington	Yes	Monthly		3 Yrs	$13.00	
West Virginia	Yes	Monthly		7 Yrs	$12.50	
Wisconsin	Yes	Daily		3 Yrs	$7.00	
Wyoming*	Convictions Only	Monthly		3 Yrs / 10 Yrs (CDL Only)	$9.00	*Annual MVRs required*

_____
Account Number

SUBSCRIBER CERTIFICATION OF USE

Choose one:

☐ **Insurance company**

I hereby certify:

1. The insurance carrier to which the named individual has applied for motor vehicle insurance or life insurance and/or has life insurance in effect covering the named individual.
2. That the insurance carrier or the agent of the insurance carrier designated below as Subscriber:
   a. Has motor vehicle insurance in effect covering the employer or a prospective employer; or
   b. Has motor vehicle insurance in effect covering the names individual; or
   c. Is the insurance carrier to which the employer or prospective employer has applied for motor vehicle insurance.
3. That _____ is acting as agent for Subscriber.
   Contractor name
4. That abstracts of driver records shall be used exclusively for our insurance underwriting purposes only, and that no information contained therein shall be divulged, sold, assigned, or otherwise transferred to any third person or party.
5. That the information contained in the abstracts of driver records obtained from the Department shall be used in accordance with the requirements and in no way violate the provisions of RCW 46.52.130, attached in part for easy reference.

☑ **Employer/Transit authority/Volunteer organization**

I hereby certify:

1. That the company or their agent designated below as Subscriber is an employer, prospective employer, a volunteer organization, or a transit authority for is vanpool program.
2. That _____ is acting as agent for Subscriber.
   Contractor name
3. That abstracts of driver records shall be used exclusively for determining:
   a. Whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle, or
   b. Whether an employee, prospective employee, or volunteer should be employer to operate a vehicle or for employer purposes related to driving by an individual as a condition of that individual's employment upon the public highways.
4. That no information contained therein shall be divulged, sold, assigned, or otherwise transferred to any third person or party.
5. That the information contained in the abstracts of driver records obtained from the Department shall be used in accordance with the requirements and in no way violate the provisions of RCW 46.5.130.

The Subscriber listed below agrees to, and shall indemnify and hold harmless the state of Washington, Department of License (DOL), the Director of DOL, and all DOL employees from any and all suits at law or equity, and from any and all claims, demands or loss of any nature, including but not limited to all costs and attorney's fees, arising from any incorrect or improper disclosure of individual names or addresses under this "Certification of Use;" any defects in any of Subscriber's procedures followed or omitted or arising from the failure of Subscriber or its officers, employees, customers, contractors or agents to fulfill any of its obligations under this Contract; or arising in any manner from any negligent act or omission by Subscriber or its officers, employees, customers, contractors or agents.

I affirm that I am a representative authorized to bind the Subscriber named below.

Subscriber name: BENTON COUNTY			
Address: 7122 W Okanogan Pl., Bldg E#330	Kennewick	WA	99336
Authorized representative name: Adam Morasch	Title: Risk Manager		

January 10, 2022 - Benton County
Date and Place Signed

x Adam Morasch
Authorized representative signature

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	MOU with US Marshals – Violent Offender Task Force 2021/2022
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Commander Lee Cantu

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 United States Marshal Service (USMS) has been granted authority to direct and coordinate permanent US Marshal Services Violent Offender Task Forces consisting of Federal, state, and local law enforcement for the purpose of locating and apprehending fugitives.

The Benton County Sheriff's Office (BCSO) has a detective who is part of the Joint Law Enforcement Operations Task Force (JLEO) for the United States Marshal.

In past years, the Sheriff has signed the Memorandum of Understanding (MOU) between Benton County Sheriff's Office and US Marshal Eastern District of Washington for reimbursement, if funding is available, for overtime incurred by the state or local investigators who provide support to USMS Joint Law Enforcement Task Forces.

BCSO received the attached MOU indicating that Benton County qualifies for funding reimbursement for the fiscal year 2021/2022 in an amount up to $19,372.00 for services and expenses mentioned above.

Fiscal Impact

FY2022 Overtime Reimbursements for an amount up to $19,372.00. These revenue & expenditures were included in the 2021/2022 budget process; therefore, no budget adjustment will be necessary.

Recommendation

Approve the attached Resolution, authorizing the Benton County Sheriff's signature on the attached Memorandum of Understanding for the Joint Law Enforcement Operations Task Force between the Benton County Sheriff's Office and US Marshal Eastern District of Washington for a reimbursement back to Benton County for an amount up to $19,372.00

Suggested Motion

Approve as part of the Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS AUTHORIZING THE BENTON COUNTY SHERIFF'S SIGNATURE ON THE MOU BETWEEN BENTON COUNTY SHERIFF'S OFFICE AND UNITED STATES MARSHAL - EASTERN DISTRICT OF WASHINGTON FOR THE JOINT LAW ENFORCEMENT OPERATIONS TASK FORCE FOR 2021-2022

WHEREAS, the United States Marshal Service (USMS) has been granted authority to direct and coordinate permanent USMS Violent Offender Task Forces consisting of Federal, state, and local law enforcement for the purpose of locating and apprehending fugitives; and

WHEREAS, the Benton County Sheriff's Office has a detective who is part of the Joint Law Enforcement Operations Task Force (JLEO) for the United States Marshal; and

WHEREAS, reimbursement is granted by the USMS, if funding is available, for overtime incurred by the state or local investigators who provided full time support to USMS joint law enforcement task forces; and

WHEREAS, the attached obligation document and Memorandum of Understanding outlines the amount of reimbursement to Benton County Sheriff's Office in the amount up to $19,372.00 for the period of October 12, 2021 to September 30, 2022; and

WHEREAS, the Benton County Sheriff recommends moving forward with the attached MOU between the Benton County Sheriff's Office and US Marshal Eastern District of Washington and have the Board of Commissioners authorize the Sheriff's signature on the attached MOU; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the Memorandum of Understanding for the Joint Law Enforcement Operations Task Force between Benton County Sheriff's Office and US Marshal Eastern District of Washington for a reimbursement to Benton County for an amount up to $19,372.00 for the period of October 12, 2021 to September 30, 2022; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Benton County Sheriff's signature on the MOU between United States Marshal Service and Benton County Sheriff's Office

Dated this_____day of_____, 2022

_____
Chairman

_____
Member

_____
Member

Attest: _____

Clerk of the Board

Constituting the Board of County Commissioners
of Benton County, Washington

Orig: BCSO, Auditor; PA, USMS

K.Gillies

U.S. Department of Justice
United States Marshals Service

Joint Law Enforcement Operations Task Force Obligation Document

INSTRUCTIONS: See last page for detailed instructions.

SECTION 1: OBLIGATION

DOCUMENT CONTROL #: M-22-D85-O-000054

SECTION 2: PARTICIPATING AGENCIES

Notification to state and local agencies of funding provided in support of Joint Law Enforcement Operations, pursuant to the Memorandum of Understanding (MOU) between:

Benton County Sheriff's Office

and

Eastern District of Washington (85)

All other terms and conditions of the MOU remain the same.

SECTION 3: PERIOD OF PERFORMANCE

October 12, 2021 to September 30, 2022

SECTION 4: APPROPRIATION DATA

FISCAL YEAR	ORGANIZATION	FUND	PROJECT	SOC / PURPOSE	DOLLAR AMOUNT
2022	D85	AFF-B-OP	JLEOTFS4	25205 - TFO Overtime	$19,372.00

Total Obligation Amount: $19,372.00

SECTION 5: DESCRIPTION OF OBLIGATION

Funds provided for the reimbursement of USMS approved Overtime for Task Force Officers (TFO) assigned to the Pacific Violent Offender Task Force (PNVOTF) for the period of 10/12/21 - 09/30/22.

Total Cap Amount: $19,372.00

SECTION 6: CONTACT INFORMATION

DISTRICT/RFTF CONTACT:		STATE/LOCAL CONTACT:	
Name:	SDUSM Jerome Brown	Name:	
Phone:	(509) 842-1408	Phone:	
E-mail:	jerome.brown@usdoj.gov	E-mail:	

SECTION 7: AUTHORIZATION

USMS Representative - Certification of Funds:

Signature: ERIK LINDEBAK Digitally signed by ERIK LINDEBAK Date: 2022.01.03 08:49:30 -08'00' Date: 1/3/2022

Erik Lindebak, Program Support Specialist

Chief Deputy or RFTF Commander - Obligation Approval:

Signature: GAVIN DUFFY Digitally signed by GAVIN DUFFY Date: 2022.01.03 09:29:39 -08'00' Date: 1/3/2022

Gavin Duffy, Chief Deputy U.S. Marshal

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-1811-12, Step 1, of the general pay scale for the RUS. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted monthly or quarterly on a fiscal year basis, and which provides the names of the investigators who incurred overtime for the Task Force during the quarter; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator.

Departmental Representative - Acknowledgement:

Signature: Date: 1/4/2022

Thomas Croskrey, Sheriff

FORM USM-607 INSTRUCTIONS

The Joint Law Enforcement Operations Task Force Obligation Document is designed to provide district and regional fugitive task forces with one standard obligating form to record new obligations in UFMS. To adjust funding in an existing obligation, please refer to Form USM-607A, Joint Law Enforcement Operations Task Force Modification Document. Funding in support of the JLEO mission is pursuant to the existing Memorandum of Understanding (MOU) between the USMS and the JLEO participant. Reimbursements are subject to the availability of funds and contingent upon the submission of proper documentation. Please note that overtime reimbursements require the submission of agency invoices and supporting documentation on a quarterly basis.

In the event that the USMS will use a payment method OTHER than reimbursement directly to the state or local agency, additional guidance will be provided by USMS Headquarters. The district or RFTF office is responsible for communicating payment procedures to their partnering agencies. All payments are made via Electronic Funds Transfer (EFT) through the U.S. Department of Treasury.

SECTION 1: Obligation Number

A. Enter UFMS Document Control Number.

SECTION 2: Participating Agencies

A. BOX 1: Enter name of state or local JLEO participating agency.
B. BOX 2: Use drop down menu to select appropriate USMS District/RFTF.

SECTION 3: Period of Performance

A. Insert valid period of performance for the obligation. Obligations created using the one-page JLEO Task Force Obligation Form may not cross fiscal years. If there is a need to cross fiscal years, please utilize a Purchase Order for the obligation.
B. Period of performance must begin no earlier than the date of funds availability (provided by IOD and the Asset Forfeiture Division) and end no later than September 30 of the following calendar year.

SECTION 4: Appropriation Data

A. Enter information across appropriate field for all items being obligated. All fields for a line item must be completed in order to proceed to the next step.
B. Project Codes: District task force obligations are funded under the **JLEOTFS4** project code for a JLEO obligation. RFTF project codes have been assigned by region and will be entered by Headquarters IOD staff.

SECTION 5: Description of Obligation

A. Enter description of obligation (optional). Include any pertinent information such as number of TFO vehicles, for example.

SECTION 6: Contact Information

A. Enter District/RFTF contact information (Box 1) and State/Local contact information (Box 2).

SECTION 7: Authorization

A. Certification of Funds: Signature will be applied by USMS District official or IOD representative (RFTF) after the Asset Forfeiture Division has confirmed that funds have been moved into the budget.
B. Obligation Approval: Signature will be applied by District or RFTF representative upon receipt of obligation document. To ensure sufficient internal controls and proper segregation of duties, the district/RFTF representative approving obligation forms cannot also approve invoices or reimbursements related to the same obligation. (See U.S. Office of Management and Budget (OMB) Circular A-123 and USMS Office of Finance guidance for further information regarding internal controls.)
C. Acknowledgement: Signature will be applied by state or local agency representative. The obligation is not valid until all parties have signed. When completed, the form will be returned to the District/RFTF office. Districts are responsible for entering obligations into UFMS. RFTF obligations will be forwarded to Headquarters IOD to be entered into UFMS.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	2021 Federal Equitable Sharing Agreement Certification
Presenter:	N/A
Prepared By:	Katie Gillies, CFO
Reviewed By:	Jon Law, Undersheriff

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

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

Summary / Background Information

The Benton County Sheriff's Office participates in the Equitable Sharing Agreement with the federal government for the use of federally forfeited cash, property proceeds, and any interest earned thereon, which are equitably shared with the participating law enforcement agencies. Pursuant to this agreement the Benton County Sheriff's Office is required to submit yearly the Equitable Sharing Agreement and Certification.

The yearly Equitable Sharing Agreement and Certification must be signed by the Benton County Sheriff and the Chairman of the Board of Benton County Commissioners.

Fiscal Impact

N/A

Recommendation

Approve the attached Resolution and authorize the Chairman of the Board of Benton County Commissioners to sign, on behalf of the Board, the Federal Equitable Sharing Agreement and Certification Report for 2021.

Suggested Motion

Approve as part of Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE 2021 FEDERAL EQUITABLE SHARING AGREEMENT AND CERTIFICATION REPORT.

WHEREAS, the Benton County Sheriff's Office participates in the Federal Equitable Sharing Agreement with the federal government for the use of federally forfeited cash, property proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. Pursuant to this agreement the Benton County Sheriff's Office is required to submit yearly the Federal Annual Certification Report; and

WHEREAS, the annual Equitable Sharing Agreement and Certification Report must be signed by the Benton County Sheriff and the Chairman of the Board of Benton County Commissioners; **NOW THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners that the Chairman of the Board of Benton County Commissioners is authorized to sign, on behalf of the Board, the Federal Equitable Sharing Agreement and Certification Report for 2021.

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

Orig: Sheriff's Office
cc: Auditor

Prepared by: Katie Gillies

OMB Number 1123-0011
Expires: December 31, 2021

Equitable Sharing Agreement and Certification

NCIC/ORI/Tracking Number: WA0030000
Agency Name: Benton County Sheriff's Office **Type:** Sheriff's Office
Mailing Address: 7122 W. Okanogan Place #A120
Kennewick, WA 99336

Agency Finance Contact
Name: Gillies, Katie L
Phone: 509-735-6555 x 3273 **Email:** katie.gillies@co.benton.wa.us

Jurisdiction Finance Contact
Name: Coverdell, Aileen
Phone: 509-786-5620 **Email:** aileen.coverdell@co.benton.wa.us

ESAC Preparer
Name: Gillies, Katie L
Phone: 509-735-6555 x 3273 **Email:** katie.gillies@co.benton.wa.us

FY End Date: 12/31/2021 **Agency FY 2022 Budget:** $15,320,373.00

Annual Certification Report

	Summary of Equitable Sharing Activity	Justice Funds [1]	Treasury Funds [2]
1	Beginning Equitable Sharing Fund Balance	$0.00	$0.00
2	Equitable Sharing Funds Received	$2,112.21	$0.00
3	Equitable Sharing Funds Received from Other Law Enforcement Agencies and Task Force	$0.00	$0.00
4	Other Income	$0.00	$0.00
5	Interest Income	$0.00	$0.00
6	Total Equitable Sharing Funds Received (total of lines 2-5)	$2,112.21	$0.00
7	Equitable Sharing Funds Spent (total of lines a - n)	$2,112.21	$0.00
8	Ending Equitable Sharing Funds Balance (difference between line 7 and the sum of lines 1 and 6)	$0.00	$0.00

[1] Department of Justice Asset Forfeiture Program participants are: FBI, DEA, ATF, USPIS, USDA, DCIS, DSS, and FDA
[2] Department of the Treasury Asset Forfeiture Program participants are: IRS, ICE, CBP and USSS.

	Summary of Shared Funds Spent	Justice Funds	Treasury Funds
a	Law Enforcement Operations and Investigations	$0.00	$0.00
b	Training and Education	$0.00	$0.00
c	Law Enforcement, Public Safety, and Detention Facilities	$0.00	$0.00
d	Law Enforcement Equipment	$2,112.21	$0.00
e	Joint Law Enforcement/Public Safety Equipment and Operations	$0.00	$0.00
f	Contracts for Services	$0.00	$0.00
g	Law Enforcement Travel and Per Diem	$0.00	$0.00
h	Law Enforcement Awards and Memorials	$0.00	$0.00
i	Drug, Gang, and Other Education or Awareness Programs	$0.00	$0.00
j	Matching Grants	$0.00	$0.00
k	Transfers to Other Participating Law Enforcement Agencies	$0.00	$0.00
l	Support of Community-Based Programs	$0.00	
m	Non-Categorized Expenditures	$0.00	$0.00
n	Salaries	$0.00	$0.00
	Total	$2,112.21	$0.00

Equitable Sharing Funds Received From Other Agencies

Transferring Agency Name	Justice Funds	Treasury Funds

Other Income

Other Income Type	Justice Funds	Treasury Funds

Matching Grants

Matching Grant Name	Justice Funds	Treasury Funds

Transfers to Other Participating Law Enforcement Agencies

Receiving Agency Name	Justice Funds	Treasury Funds

Support of Community-Based Programs

Recipient	Justice Funds	

Non-Categorized Expenditures

Description	Justice Funds	Treasury Funds

Salaries

Salary Type	Justice Funds	Treasury Funds

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section at 1400 New York Avenue, N.W., Washington, DC 20005.

Privacy Act Notice

The Department of Justice is collecting this information for the purpose of reviewing your equitable sharing expenditures. Providing this information is voluntary; however, the information is necessary for your agency to maintain Program compliance. Information collected is covered by Department of Justice System of Records Notice, 71 Fed. Reg. 29170 (May 19, 2006), JMD-022 Department of Justice Consolidated Asset Tracking System (CATS). This information may be disclosed to contractors when necessary to accomplish an agency function, to law enforcement when there is a violation or potential violation of law, or in accordance with other published routine uses. For a complete list of routine uses, see the System of Records Notice as amended by subsequent publications.

Single Audit Information

Independent Auditor

Name: Ginny Waltman, Program Manager
Company: Office of the Washington State Auditor
Phone: 509-581-3970 **Email:** waltmang@sao.wa.gov

Were equitable sharing expenditures included on your jurisdiction's prior fiscal year's Schedule of Expenditures of Federal Awards (SEFA)?

YES [X] NO [ ]

Prior year Single Audit Number Assigned by Harvester Database: 853927

Affidavit

Under penalty of perjury, the undersigned officials certify that they have read and understand their obligations under the *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (Guide)* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations. The undersigned officials certify that the information submitted on the Equitable Sharing Agreement and Certification form (ESAC) is an accurate accounting of funds received and spent by the Agency.

The undersigned certify that the Agency is in compliance with the applicable nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq*.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. The Agency agrees that it will comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the Agency, and (3) the Agency's governing body, sets forth the requirements for participation in the federal Equitable Sharing Program and the restrictions upon the use of federally forfeited funds, property, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By submitting this form, the Agency agrees that it will be bound by the *Guide* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations. Submission of the ESAC is a prerequisite to receiving any funds or property through the Equitable Sharing Program.

1. Submission. The ESAC must be signed and electronically submitted within 60 days of the end of the Agency’s fiscal year. Electronic submission constitutes submission to the Department of Justice and the Department of the Treasury.

2. Signatories. The ESAC must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body head is the head of the agency that appropriates funding to the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, administrator, commissioner, and governor. The governing body head cannot be an official or employee of the Agency and must be from a separate entity.

3. Uses. Shared assets must be used for law enforcement purposes in accordance with the *Guide* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations.

4. Transfers. Before the Agency transfers funds to other state or local law enforcement agencies, it must obtain written approval from the Department of Justice or Department of the Treasury. Transfers of tangible property are not permitted. Agencies that transfer or receive equitable sharing funds must perform sub-recipient monitoring in accordance with the Code of Federal Regulations.

5. Internal Controls. The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury, funds from state and local forfeitures, joint law enforcement operations funds, and any other sources must not be commingled with federal equitable sharing funds.

The Agency certifies that equitable sharing funds are maintained by the entity that maintains the Agency's appropriated or general funds and agrees that the funds will be subject to the standard accounting requirements and practices employed by the Agency's jurisdiction in accordance with the requirements set forth in the *Guide,* any subsequent updates, and the Code of Federal Regulations, including the requirement to maintain relevant documents and records for five years.

The misuse or misapplication of equitably shared funds or assets or supplantation of existing resources with shared funds or assets is prohibited. The Agency must follow its jurisdiction's procurement policies when expending equitably shared funds. Failure to comply with any provision of the *Guide*, any subsequent updates, and the Code of Federal Regulations may subject the Agency to sanctions.

6. Single Audit Report and Other Reviews. Audits shall be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards. The Agency must report its equitable sharing expenditures on the Schedule of Expenditures of Federal Awards (SEFA) under Catalog of Federal Domestic Assistance number 16.922 for Department of Justice and 21.016 for Department of the Treasury. The Department of Justice and the Department of the Treasury reserve the right to conduct audits or reviews.

7. Freedom of Information Act (FOIA). Information provided in this Document is subject to the FOIA requirements of the Department of Justice and the Department of the Treasury. Agencies must follow local release of information policies.

8. Waste, Fraud, or Abuse. An Agency or governing body is required to immediately notify the Money Laundering and Asset Recovery Section of the Department of Justice and the Executive Office for Asset Forfeiture of the Department of the Treasury of any allegations or theft, fraud, waste, or abuse involving federal equitable sharing funds.

Civil Rights Cases

During the past fiscal year: (1) has any court or administrative agency issued any finding, judgment, or determination that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above; or (2) has the Agency entered into any settlement agreement with respect to any complaint filed with a court or administrative agency alleging that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above?

☐ **Yes** ☒ **No**

Agency Head

Name: Thomas Croskrey
Title: Benton County Sheriff
Email: Tom.Croskrey@co.benton.wa.us

Signature: _____ Date: _____

To the best of my knowledge and belief, the information provided on this ESAC is true and accurate and has been reviewed and authorized by the Law Enforcement Agency Head whose name appears above. Entry of the Agency Head name above indicates his/her agreement to abide by the Guide, any subsequent updates, and the Code of Federal Regulations, including ensuring permissibility of expenditures and following all required procurement policies and procedures.

Governing Body Head

Name: Shon Small
Title: Chairman of the Board
Email: shon.small@co.benton.wa.us

Signature: _____ Date: _____

To the best of my knowledge and belief, the Agency's current fiscal year budget reported on this ESAC is true and accurate and the Governing Body Head whose name appears above certifies that the agency's budget has not been supplanted as a result of receiving equitable sharing funds. Entry of the Governing Body Head name above indicates his/her agreement to abide by the policies and procedures set forth in the Guide, any subsequent updates, and the Code of Federal Regulations.

☐ I certify that I have obtained approval from and I am authorized to submit this form on behalf of the Agency Head and the Governing Body Head.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01/25/2022
Subject:	2021 Personal Property Uncollectible
Presenter:	
Prepared By:	Veronica Bivins
Reviewed By:	Kenneth Spencer

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Pursuant to RCW 84.56.240, the County Treasurer is required to file a list of uncollectible personal property taxes by February 1st of each year with the County Legislative Authority. The attached Exhibit "A" details all the personal property taxes that were deemed uncollectible by the Treasurer for 2021.

Fiscal Impact

Amount: **$3,187.07**

Fund: **N/A**

Recommendation

It is recommended that the board pass the resolution pertaining to the personal property taxes the Treasurer has deemed uncollectible.

Suggested Motion

Not applicable, Consent agenda form

Veronica Bivins

From: Reid Hay
Sent: Tuesday, January 4, 2022 3:26 PM
To: Veronica Bivins
Cc: Raquel Avinion
Subject: RE: 2021 Distraint Uncollectible Listing

Veronica,

Everything looks good to me. As we discussed over the phone a moment ago, presumably you will also include the affidavit from the Treasurer referenced in the text of the resolution.

I again apologize for not responding to your e-mail from last week – I was on vacation last week and am now responding to those messages I received while I was off.

I hope you enjoyed your holidays as well,
-- 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: Veronica Bivins <Veronica.Bivins@co.benton.wa.us>
Sent: Wednesday, December 29, 2021 12:05 PM
To: Reid Hay <Reid.Hay@co.benton.wa.us>
Cc: Raquel Avinion <Raquel.Avinion@co.benton.wa.us>
Subject: 2021 Distraint Uncollectible Listing

Good morning Reid,

I am preparing the uncollectible listing for 2021 Distraint that will be submitted to the Commissioner's for write-off approval. In the past we have had you look over the list for approval prior to submitting the documents to the Commissioners to be added to a meeting agenda. I am hoping to have this included in the meeting on January 25th. If you would please review the attached spreadsheet as well as the resolution for any obvious errors or potential issues I would appreciate it. Thanks so much and have a great day!

Kind regards,

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF CANCELLING TAXES ASSESSED UPON PERSONAL PROPERTY WITHIN BENTON COUNTY, WHICH THE BENTON COUNTY TREASURER HAS DETERMINED TO BE UNCOLLECTIBLE.

WHEREAS, taxes have been duly assessed upon the personal property listed on the schedule of property attached hereto as Exhibit "A", and duly extended on the tax rolls of Benton County; and,

WHEREAS, the Benton County Treasurer has made diligent search inquiries for goods and chattels upon which to collect such taxes; and

WHEREAS, the Benton County Treasurer has filed an affidavit (Exhibit "B") with the Board of Benton County Commissioners, asserting that no such goods and chattels could be found, and that said taxes are therefore uncollectible; **NOW THEREFORE,**

BE IT RESOLVED, that the taxes assessed upon the personal property as enumerated on Exhibit "A", attached hereto, are determined to be uncollectible and pursuant to the provisions of RCW 84.56.240, such taxes are hereby canceled from the tax rolls of Benton County.

Dated this _____day of _____, 2022

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

CC: Treasurer, Assessor, Auditor

Prepared by: Heather Hutchison

Exhibit "A"

BENTON COUNTY TREASURER'S 2021 PERSONAL PROPERTY UNCOLLECTIBLE

PARCEL NAME	PARCEL NUMBER	TAX YR	TCA	REASON	AMOUNT
THE BEAUTIFUL MANAGEMENT GROUP LLC	30PT32500000000	2020	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$177.46
THE BEAUTIFUL MANAGEMENT GROUP LLC	30PR20100000000	2020	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$60.08
BACCHUS TASTING ROOM & INTERIORS	30PB79000000000	2020	P1	BUSINESS CLOSED/UNABLE TO COLLECT	$38.03
GMA CONSTRUCTION INC	30PG35500000000	2020	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$13.18
AFFORDABLE DETAILING	30PA88400000000	2019	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$110.50
GENERAL WIRELESS OPERATIONS INC	30PR09400200000	2018	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$123.06
GENERAL WIRELESS OPERATIONS INC	30PR09400100000	2018	R1	BUSINESS CLOSED/UNABLE TO COLLECT	$62.11
MEN ZONE	30PM51900000000	2020	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$76.57
MEN ZONE	30PM51900000000	2021	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$73.18
CHARMING CHARLIE LLC	30PC13540000000	2020	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$2,068.06
COLE FRANK E	30PC79900000000	2020	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$145.44
COLE FRANK E	30PC79900000000	2021	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$138.96
PURRCISION POOCH SALON & SPA LLC	30PP52800000000	2020	R1	BUSINESS CLOSED/UNABLE TO COLLECT	$37.90
PURRCISION POOCH SALON & SPA LLC	30PP52800000000	2021	R1	BUSINESS CLOSED/UNABLE TO COLLECT	$32.53
KUSTOM DESIGN TILEWORKS LLC	30PK32600000000	2020	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$14.82
KUSTOM DESIGN TILEWORKS LLC	30PK32600000000	2021	K1	BUSINESS CLOSED/UNABLE TO COLLECT	$15.19
				GRAND TOTAL	**$3,187.07**

2018 TAX YEAR TOTAL	$185.17
2019 TAX YEAR TOTAL	$110.50
2020 TAX YEAR TOTAL	$2,631.54
2021 TAX YEAR TOTAL	$259.86
GRAND TOTAL	**$3,187.07**

Exhibit "B"

KENNETH SPENCER
Benton County Treasurer
PO Box 630, Prosser, WA 99350
Prosser 509-786-2255 Fax 786-5628
509-736-3087
Kennewick 509-735-8505 Fax 736-2705
www.bentoncountytax.com

January 5, 2022

Board of Benton County Commissioners
PO Box 190
Prosser, WA 99350

RE: Cancellation of Uncollectible Personal Property Taxes. RCW 84.56.240

Dear Members of the Board:

Pursuant to RCW 84.56.240, the County Treasurer shall file with the County legislative authority, a list of uncollectible personal property taxes. The County Treasurer shall also file an Affidavit stating the Treasurer has made a diligent search and inquiry for goods and chattels wherewith to make such taxes and was unable to collect the same.

AFFIDAVIT OF UNCOLLECTIBLE PERSONAL PROPERTY TAX

I, Kenneth Spencer, Benton County Treasurer, swear under penalty of perjury under the laws of the State of Washington that every effort has been made to diligently search and inquire for goods and chattels upon which to collect such taxes. Now therefore, I request the taxes be cancelled as uncollectible personal property taxes.

Sincerely,

Kenneth Spencer
Benton County Treasurer
KS:vb
Attachments: Uncollectible Personal Property Listing, 1 page.

Subscribed and sworn to before me this 5th day of January, 2022.

VERONICA BIVINS NOTARY PUBLIC 169735 STATE OF WASHINGTON COMMISSION EXPIRES 12-29-25

Veronica Bivins
Notary Public
Appointment Expires: 12/29/25

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Intergovernmental Agreement between WA State Parks and Recreation Commission and Benton County Sheriff's Office for Boating Safety and Education Services
Presenter:	Cdr. Clarke
Prepared By:	Lisa Small
Reviewed By:	Ryan Lukson; BCSO; Purchasing Department

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

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

Summary / Background Information

The BCSO received a Letter of Award for FY2022 stating the WSPRC is awarding the BCSO the Recreational Boating Safety Federal Financial Assistance Grant in the amount of $12,173.96 through a different agreement.

The attached Intergovernmental Agreement between WSPRC and BCSO is to establish a cooperative framework between State Parks and BCSO to enhance the performance of boating safety and education, with the goal to reduce the number and severity of recreational boating casualties of all types associated with recreational boating and ensure a safe and enjoyable boating environment for all users.

WSPRC is requiring Benton County to sign the attached Intergovernmental Agreement first. They will return a fully executed copy to us for our records.

Fiscal Impact

In exchange for vessel registration fees transmitted to BCSO by WA State Treasurer, BCSO shall furnish the necessary personnel, equipment, material, and services to do all things necessary for the performance of marine law enforcement and other duties as defined in Chapter 79A.60 RCW – REGULATION OF RECREATIONAL VESSELS.

Recommendation

The Benton County Sheriff recommends approving the Intergovernmental Agreement between Washington State Parks and Recreation Commission and the Benton County Sheriff's Office with an agreement commencing upon signature of both parties and terminating September 30, 2022.

Suggested Motion

The Board of Benton County Commissioners hereby approves the Intergovernmental Agreement # LE: MLE1200 between Washington State Parks and Recreation Commission and Benton County Sheriff's Office for the performance of boating safety and education services and authorize the Benton County Sheriff to sign said Agreement.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY SHERIFF TO SIGN THE INTERGOVERNMENTAL AGREEMENT BETWEEN WASHINGTON STATE PARKS AND RECREATION COMMISSION AND BENTON COUNTY SHERIFF'S OFFICE FOR BOATING SAFETY AND EDUCATION SERVICES

WHEREAS, the Benton County Sheriff's Office (BCSO) submitted the grant application for the Washington State Parks & Recreation Commission (WSPRC) Federal Financial Assistance Grant Program for the Recreational Boating Safety Program; and

WHEREAS, the BCSO received notice stating the WSPRC is awarding the BCSO the Recreational Boating Safety Federal Financial Assistance Grant in the amount of $12,173.96 per Agreement No. MLE 123-109; and

WHEREAS, the attached Intergovernmental Agreement #LE: MLE1200 between WSPRC and BCSO is to establish a cooperative framework to enhance the performance of boating safety and education services in the state and reduce the number and severity of recreational boating casualties associated with recreational boating and ensure a safe and enjoyable boating environment for all users; and

WHEREAS, in exchange for vessel registration fees, BCSO shall furnish the necessary personnel, equipment, material, and services for the performance of marine law enforcement and other duties as defined in Chapter 79A.60 RCW – REGULATION OF RECREATIONAL VESSELS; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby approves the Intergovernmental Agreement #LE: MLE1200 between Washington State Parks and Recreation Commission and Benton County Sheriff's Office for the performance of boating safety and education services and authorize the Benton County Sheriff to sign said agreement; and

BE IT FURTHER RESOLVED, the term of the attached contract commences upon signature of both parties and terminates September 30, 2022.

Dated this _____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: BCSO
cc: Auditor, S. Godinez, Procurement, WSPRC

Prepared by: L. Small

INTERGOVERNMENTAL AGREEMENT

Between

WASHINGTON STATE PARKS AND RECREATION COMMISSION

And

Benton County Sheriff's Department

Agency Size Category: Large

Marine Lead: Brett Hansen, 509-430-0607

AGREEMENT# LE: MLE1200

THIS AGREEMENT is between the Washington State Parks and Recreation Commission, "STATE PARKS," and Benton County Sheriff's Department the "AGENCY".

THE PURPOSE OF THIS AGREEMENT is to establish a cooperative framework between STATE PARKS and the AGENCY to enhance the performance of boating safety and education services in the state per RCW 88.02650 and WAC 352-65.010. The goal is to reduce the number and severity of recreational boating casualties of all types associated with recreational boating and ensure a safe and enjoyable boating environment for all users.

THEREFORE, IT IS MUTUALLY AGREED THAT:

SUMMARY STATEMENT

In exchange for vessel registration fees, transmitted to the AGENCY by the Washington State Treasurer, AGENCY shall furnish the necessary personnel, equipment, material, and services and otherwise do all things necessary for, or incidental to, the performance of marine law enforcement and other duties as defined in Chapter 79A.60 RCW - REGULATION OF RECREATIONAL VESSELS.

PERIOD OF PERFORMANCE

The term of this agreement, once signed by STATE PARKS, shall end on September 30, 2022.

RECORDS MAINTENANCE

The parties to this agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records are subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this agreement must be retained for six years after expiration, and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties must have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. Each party shall utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

INDEPENDENT CAPACITY

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

AGREEMENT ALTERATIONS AND AMENDMENTS

This agreement may be amended by mutual agreement of the parties. Such amendments are not binding unless they are in writing.

INDEMNIFICATION

Each party is responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

TERMINATION FOR CAUSE

If STATE PARKS determines that AGENCY is not in compliance with the minimum requirements of this agreement, the State Parks Marine Law Enforcement Coordinator will notify AGENCY in writing of the deficiency. AGENCY will have forty-five days following receipt of the notice of deficiency to submit a plan satisfactory to STATE PARKS to remedy the deficiency. If, after forty-five days, AGENCY has not submitted a plan to STATE PARKS for remedying the deficiency or is unable to demonstrate its ability to meet minimum requirements, STATE PARKS will have the option to terminate this agreement. If AGENCY disagrees with STATE PARKS' decision to cancel this agreement, AGENCY may seek a hearing per chapter 34.05 RCW, the Administrative Procedure Act to contest this decision.

DISPUTES

In the event that a dispute arises under this agreement, it will be determined by a Dispute Board in the following manner: Each party to this agreement appoints one member to the Dispute Board. The members so appointed jointly appoint an additional member to the Dispute Board. The Dispute Board reviews the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board is final and binding on the parties hereto.

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 must 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 must be resolved by giving precedence in the following order:

a. Applicable state and federal statutes and rules;

b. Summary Statement; and

c. Any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this agreement, and any claim arising thereunder, 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 may not be unreasonably withheld.

WAIVER

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

SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference is held invalid, such invalidity does not affect the other provisions of this agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

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 exist or bind the parties.

CONTRACT MANAGEMENT

The contract representative for each of the parties are responsible for and are the contact person for all communications and billings regarding the performance of this agreement.

The Contact Representative for AGENCY is:

Brett Hansen, Deputy

Benton County Sheriff's Department

509-430-0607

brett.hansen@co.benton.wa.us

The Contract Representative for STATE PARKS is:

Matt Stowers, Marine Law Enforcement Coordinator

(360) 902-8835

Matt.Stowers@parks.wa.gov

IN WITNESS WHEREOF, the parties have executed this agreement.

Washington State Parks and Recreation Commission	**Benton County Sheriff's Department**
By: _____	By: _____ Tom Croskrey
Title: _____	Title: Benton County Sheriff
Date: _____	Date: _____
Approved As to Form: **Michael Young** **Asst. Attorney General** **12/21/17**	Approved as to Form: Ryan Lukson Ryan J Lukson, Civil DPA

Exhibit A

AGENCY REQUIREMENTS

Signed Agreement:

AGENCY shall sign an Approved Program Agreement with STATE PARKS that contains all qualifications and requirements necessary to establish or maintain eligibility to receive vessel registration fees as established by RCW 88.02.650. AGENCY agrees to use the A-299 Web Forms to provide information necessary to complete the annual Approved Program Agreement. AGENCY agrees to utilize the web-enabled process designated by STATE PARKS to generate the Approved Program Agreement. AGENCY agrees to complete the submission process by October 15, 2021.

Designated Marine Lead / Conference Attendance / Surveys:

AGENCY must designate a "Marine Lead" - the Deputy/Officer/or Supervisor (LT, SGT, Undersheriff) that is responsible for interacting with STATE PARKS on all issues and matters related to AGENCY's Marine Law Enforcement unit. Duties include but are not limited to:

- Ensuring all required reports are completed and submitted to STATE PARKS within document due date guidelines.
- Submitting personnel names to attend training courses and conferences.
- Attending the annual Fall Conference or designating another to attend.
- Ensuring that all commissioned officers/deputies identified in the A-299 Web Form have received Marine Law Enforcement Training.
- Ensuring that all tasks identified on the BOAT Currency Web Form are current and up to date.
- Taking proactive steps to ensure that his/her agency will have all necessary equipment and other necessary infrastructure in place so to utilize the SECTOR system for all boating related safety inspections and warnings. Inspections can be entered into SECTOR at the time of the inspections or at a later time.
- Communicating with STATE PARKS on all matters and issues that may arise around recreational boating safety and marine law enforcement and disseminating information within their agency as appropriate.
- Responding to any and all recreational boating safety surveys sent by STATE PARKS within the requested timeline.
- Ensuring that all data on their agency held by STATE PARKS is up to date and accurate.

Reporting Recreational Boating Activities and Financial Data:

Training Currency Forms: AGENCY agrees to complete a BOAT Currency Web Form for each officer/deputy identified in their A-299 Web Form by October 15 of each year. Only officers/deputies whose training qualifications are current will be considered trained.

Summary of Activity Report Web Forms: AGENCY agrees to use the Summary of Activity Report (SOAR) web form to report all required recreational boating safety (RBS) activities. AGENCY may report the activities daily, monthly, or quarterly using the SOAR Web Forms.

Utilize SOAR Web Forms: AGENCY will use the Summary of Activity Report (SOAR) web form designated by STATE PARKS to report all required RBS Activities.

Reporting Frequency: AGENCY must submit a Summary of Activity Report (SOAR) at least quarterly to STATE PARKS. However, it may report RBS Activities daily or monthly using the SOAR Web Forms.

Review and Approval of SOAR: STATE PARKS will provide AGENCY with a summary of all reported RBS Activities at the end of the quarter and provide AGENCY with the opportunity to correct, update, and/or amend their report to address any inaccuracies or omissions. If all information is correct, AGENCY will print, sign, and submit a copy of the SOAR quarterly summary to STATE PARKS by the designated deadline.

Due Dates: The SOAR is due to STATE PARKS by the 15th of the month following the end of the quarter as follows:

Quarter	Beginning Date	End Date	SOAR Due Date
First Quarter	January 1	March 31	April 15
Second Quarter	April 1	June 30	July 15
Third Quarter	July 1	September 30	October 15
Fourth Quarter	November 1	December 31	January 15

Vessel Registration Fee Expenditure Report: AGENCY will use the Vessel Registration Fee Expenditure Report Web Form to provide STATE PARKS with accounting information as directed. AGENCY agrees to submit this form by October 15 of each year.

EXHIBIT B

FUNDING REQUIREMENTS

AGENCY Financial System Report: AGENCY agrees to provide STATE PARKS with a report from the AGENCY'S financial system that demonstrates that vessel registration fees (VRFs) are deposited in a dedicated account and showing the deposit of state vessel registration funds received from the Office of State Treasurer. See Exhibit E for an example. This report may not be an Excel spreadsheet, and it must be submitted with the Vessel Registration Fee Expenditure Report.

VRF Fund Balance Report: AGENCY agrees to provide STATE PARKS a report from the AGENCY financial system showing the fund balance of the dedicated VRF account. See Exhibit E for an example. VRF fund balance on this system-generated report should match the bottom line on the VRF report ("Total Remaining Balance of State VRF funds for Fiscal Year").

Provide Local Spending: AGENCY agrees to contribute local funds to provide financial support to its marine law enforcement program to augment the funding provided through VRFs.

Limitation on Use of Funds: AGENCY agrees to use VRFs solely for recreational boating safety purposes, which include all activities or expenditures identified in the document "Allowable Costs and Expenditures for State Vessel Registration Fees and Federal Assistance Grants," as now existing or as may be updated in the future. This document can be found on the MLE Forms Website at: http://mle.parks.wa.gov/. AGENCY may charge actual, direct administrative costs to the VRF account. An example would be actual staff hours spent to fill out forms, or to maintain the dedicated account. AGENCY agrees not to charge administrative fees based on an estimated percentage of a staff person's time.

Local Ordinances, STATE PARKS notification: AGENCY agrees that if it adopts a local ordinance governing recreational boating, the ordinances will be at least as restrictive as, but may be more restrictive than, Washington State boating laws and regulations.

EXHIBIT C

OPERATIONAL REQUIREMENTS

Officer/Deputy Qualifications: AGENCY agrees to utilize officers/deputies with law enforcement certificates from the Criminal Justice Training Commission that authorize them to enforce all boating laws and regulations. Officers/deputies who have completed equivalent training may be approved by the STATE PARKS Director or designee.

Officer/Deputy Training Required: AGENCY agrees to ensure that all officers/ deputies involved in the recreational boating safety program attend the Washington State Basic Marine Law Enforcement Training course. STATE PARKS agrees to provide this training at no charge to AGENCY. Only officers/deputies that have attended this training will be considered trained. The AGENCY recognizes the National Association of Boating Law Administrators' Boating Crewmember Course or the Federal Law Enforcement Training Centers' Marine Law Enforcement Training Program as an equivalent course. Officers/deputies may attend an alternative and equivalent course with prior written STATE PARKS approval.

New Programs, Officers/Deputies, Must Acquire Training Within One Year: AGENCY agrees to acquire required training for officers/deputies within one year of becoming an approved program, and within one year for each newly assigned boating safety officer/deputy.

Training Currency: AGENCY must submit a BOAT Currency Requirements Report Web Form for all active personnel listed on the roster submitted with the A-299 Web Form by October 15 each year. These reports must be submitted at least annually but may be updated throughout the year. If AGENCY feels that they will be unable to complete all training tasks required, it shall submit a statement of explanation to the Marine Law Enforcement Coordinator.

Document Additional Training: AGENCY agrees to list on the A-299 form any additional training courses its personnel have completed.

Vessels and Equipment: AGENCY agrees to acquire and make available the necessary boating safety patrol equipment, including vessels capable of serving the minimum requirements outlined in this agreement. Patrol vessels must be properly marked and properly equipped as provided in chapter 88.02 RCW and chapter 352-60 WAC.

Vessel, Aircraft, Vehicle and Equipment Inventory Required: AGENCY agrees to supply STATE PARKS with an inventory of all vessels, aircraft, vehicles, and equipment utilized in the

recreational boating safety missions along with details of how they are equipped each year in the A-299 web form.

Information required on the A-299 includes:

- **Vessels:** STATE PARKS requires the following data on each vessel:
    - Name
    - Manufacturer
    - Radio equipped (Y/N): Radio equipped means the vessel has an agency radio installed or “hardwired”. Non-radio equipped boats are vessels that do not have radios installed. Portable radios may be carried on these boats, but they would be considered non-radio equipped. Examples include personal watercraft, drift boats, jon boats, kayaks, and inflatable rafts (motorized or non-motorized).
    - SECTOR equipped (Y/N): SECTOR equipped boats are the patrol vessels that are SECTOR equipped with a computer or tablet plus printer and scanner, including those that are permanently installed or “hardwired” OR portable cased units that are taken on an off the vessel. Non-SECTOR equipped boats are vessels that do not have a computer, tablet, printer installed or a cased kit.
    - Model
    - Length
    - Type of propulsion
    - Horsepower
    - Year purchased
    - Funds used to purchase the vessel (local, state, or federal)
    - Percent of time employed for the RBS mission

- **Aircraft:** The number of aircraft in your agency and the percentage they used for RBS activities.
    - Aircraft type
    - Manufacturer
    - SECTOR/Radio equipped
    - Model
    - Year
    - Funds Used for Purchase
    - Percent of time employed for the RBS mission

- **Vehicles**: Other Patrol Vehicles (Trucks, Cars, SUVs, ATVs) The number of other patrol vehicles assigned to the marine services unit and the percentage they are used for RBS activities
    - Vehicle Type
    - Manufacturer
    - SECTOR/Radio equipped
    - Model
    - Year
    - Funds Used for Purchase
    - Percent of time employed for the RBS mission

- **Equipment Valued at $5000.00 Dollars** (i.e., Engines, Electronics, etc.): Agencies are required to update their inventory of durable items defined as having a cost or value of $5000.00 dollars or more. Only items listed under “allowable expenses” defined in in the document “Allowable Costs and Expenditures for State Vessel Registration Fees and Federal Assistance Grants “(found on the MLE Forms Website at http://mle.parks.wa.gov/) should be purchased with vessel registration fees.
    - Equipment Type
    - Manufacturer
    - Model
    - Year purchased
    - Funds used for Purchase (local, state, federal)

Sale of Vessels Purchased with Vessel Registration Fees or STATE PARKS Provided Federal Funding: AGENCY agrees to notify STATE PARKS 60 days in advance of the sale date of any vessel purchased with federal funds provided by STATE PARKS. The sale of vessels purchased with state dollars, when sold at the end of their useful life, must be consistent with the AGENCY’s policies and procedures. AGENCY agrees to remove the vessel from the Patrol Vessel Inventory once it is sold.

Boating Accident Reports Required, Timeline to Submission: AGENCY agrees to submit accident reports to STATE PARKS (in compliance with RCW 79A.60.200, RCW 79A.60.220 and WAC 352-70) as follows:

- For any boating accident resulting in a death, or in an injury requiring hospitalization, AGENCY agrees to:
    - Notify STATE PARKS within 48 hours of becoming aware of the incident.
    - Fill out and submit a complete Boating Accident Investigation Report (BAIR – form number A-425) within ten days of the occurrence.
    - Include the results of any other investigation conducted by the agency, including but not limited to statements from witnesses or any party involved, photos, maps, or additional information.
    - Submit, within one week of completion, any coroner’s reports concerning the death of any person resulting from the boating accident.
- In addition to the requirements above, for any boating accident resulting in a death, or in an injury requiring hospitalization, OR damage to any vessel or property of two thousand dollars or more, OR a vessel is a complete loss, OR a person disappears from the vessel under circumstances that indicate death, AGENCY agrees to submit a Boating Accident Report (BAR – Form number A-440) within 10 days of the occurrence to STATE PARKS.

Boater Assistance: AGENCY agrees to create and maintain the ability to respond, or coordinate response to, boating emergencies that occur within AGENCY’s jurisdiction and document each occurrence and report it to STATE PARKS through the Summary of Activity Report (SOAR) Web Form as prescribed in this agreement. AGENCY agrees to report each incident utilizing the following definitions:

- **Search & Rescue/Recovery**: Search and rescue (SAR) is defined as a water-borne response (including aircraft) involving a person or vessel **in peril**. AGENCY agrees to only report SAR cases on the Summary of Activity Report (SOAR) Web Form that were assigned a case number by their agency or a USCG MISLE Case ID Number and an Urgent Marine Information Broadcast (UMIB) initiated by the USCG. Agencies should not report assists (defined below) as SAR cases.

- **Assist**: An "Assist" is defined as aid where there is no immediate danger to the vessel or its occupants. This includes vessels involved in boating accidents, disabled, aground, out of fuel, or otherwise unable to reach a safe mooring under its own power. Assistance may include providing a tow, jump start, re-floating, re-righting, fuel, repair, repair parts, assisting persons in the water, etc. This does NOT include the salvage of a vessel once abandoned, or commercial vessels. AGENCY agrees to report responses of this nature as assists and will report the number of vessels assisted and the number of persons assisted on the SOAR web form.

Boating Safety Patrols Required, Minimum Hours: AGENCY agrees to patrol on the waters of its jurisdiction with the intent of enforcing Washington State Boating Safety Laws and Regulations and to promote boating safety some minimum hours based on their agency size (Small – 133, Medium – 255, Large - 436) per year during peak boating hours within AGENCY's jurisdiction. Patrol hours can be a combination of hours patrolling on the water in a vessel as well as hours spent at boat launch ramps or other appropriate shore-side enforcement activities.

Enforcement of Boating Laws Required: AGENCY agrees to enforce all Washington State boating safety laws and regulations including vessel registration laws as specified in Title 88 RCW, and as specified in local codes or ordinances. In addition, AGENCY shall document and report the numbers of inspections and warnings for each type of boating violation through SECTOR either at the time of the inspection or at a later time. STATE PARKS recommends that AGENCY adopt a zero-tolerance policy in the enforcement of mandatory boater education card carriage, life jacket wear/carriage, boating under the influence, and rules of the road violations, and strongly consider issuing citations for violations of these laws, in all circumstances.

Boating Safety Inspections Required: AGENCY shall complete a minimum number of written boating safety inspections based on their agency size (Small – 92, Medium – 283, Large – 372) using the SECTOR system or Form #A-274 during enforcement and informational contacts when considered safe and appropriate to document boater compliance with state boating laws. STATE PARKS will provide boating safety inspection forms. AGENCY shall enter all inspections through SECTOR either at the time of the inspections or at a later time.

Boating Safety Education Program Required, Designated Officer or Deputy: AGENCY shall create, adopt, and/or maintain a boating safety education and information program. At a minimum AGENCY shall designate an officer/deputy to coordinate the activities of the boating safety education program. AGENCY shall ensure that the designated boating safety education officer/deputy receives training from STATE PARKS. AGENCY agrees that the designated officer or deputy will oversee AGENCY's boating safety education and outreach program including, but not limited to, coordinating activities listed in Exhibit F. AGENCY is not obligated to engage in all outreach and education activities listed in Exhibit F but it must ensure that its program is appropriate for the types of boating and primary boating accidents within AGENCY's jurisdiction.

Waterway Marking: AGENCY agrees to place and maintain Aids to Navigation (ATONs) as appropriate, within the waters of AGENCY's jurisdiction. AGENCY agrees to report to STATE PARKS the number and hours spent placing or maintaining only the ATONs that they are responsible for within its jurisdiction on the SOAR web form. AGENCY agrees to use only those waterway markers that conform to the United States Aids to Navigation System.

EXHIBIT D

NOTES AND DEFINITIONS

Washington STATE PARKS' Marine Law Enforcement Training Program is accredited through the National Association of State Boating Law Administrators Boat Operation and Training (BOAT) Program. As a term of accreditation, STATE PARKS must ensure that all active marine officers and deputies maintain proficiency in basic recreational boating safety skills. This is important because these skills are perishable but critical to operate in a marine environment. STATE PARKS recognizes that there are many different circumstances that could prevent training from being completed (wildfires, maintenance issues, staffing shortfalls, etc.). Each circumstance will be evaluated on its own merits.

Approved Program: A marine law enforcement program that has signed an Approved Program Agreement with Washington State Parks and is in good standing.

Boating Safety Patrol: The total number of hours that all agency vessels patrolled on the water. These are the actual hours as documented on the patrol vessel hour meter or logbook. Note that this is different than officer on-water patrol hours. If two officers are patrolling on a single vessel for eight hours, you would report eight boating safety patrol hours and 16 officer on-water patrol hours. The patrol hours do not include transit time to the body of water to be patrolled.

Instructor Qualified Certified Boating Education Instructors: Any officer/deputy designated as Certified Boating Education Instructors must be listed as Instructor Qualified for the Adventures in Boating course by the State Parks Education and Outreach Program Manager. STATE PARKS considers education and outreach activities a key component of preventing boating injuries and fatalities. Classroom instruction, school presentations, and participation in Community Events, along with Dealer and Rental site visits, and effective use of media are crucial to preventing boating accidents and fatalities.

Local Spending: These are funds appropriated by the city or county government used for boating safety programs. Local funds cannot include state or federal grant dollars.

Peak Boating Hours: STATE PARKS defines peak boating hours as four hours on Friday afternoon/evening and 8 hours Saturday and Sunday for weekends from Memorial Day to Labor Day, which equals approximately 332 hours per boating season. STATE PARKS also recognizes that AGENCY may be impacted by non-traditional Peak Boating seasons due to hunting and fishing activities. STATE PARKS maintains this patrol hour goal to ensure local agencies are focused on injury prevention activities. While many agencies patrol many more

hours than 332 and many agencies patrol less than 332 hours, the goal to achieve these patrol hours remains the same. While the patrol hour goal is 332 hours, STATE PARKS has collected data for patrol hours performed by all participating agencies over a period of years and has established the average boat log hours for agencies based on jurisdiction population size according to the U.S. Census. Patrol hours are considered a critical metric. It is used by STATE PARKS to determine if an agency is complying with the minimum requirements. Failing to achieve the minimum number of hours of patrol (based on size) could be a factor in determining ineligibility for vessel registration fees.

RBS Activities: AGENCY is required to report all RBS activities to STATE PARKS on the Summary of Activity Report (SOAR) web form. RBS Activities include, but are not limited to, enforcement activities, outreach and education, and administrative support.

Trained: Commissioned officer/deputy trained by the CJTC or equivalent who has attended the Basic Marine Law Enforcement Course or STATE PARKS approved equivalent and has maintained currency requirements documented on the BOAT Currency Web Form. AGENCY must have a trained officer/deputy aboard a vessel in order to use vessel registration fees to pay either the trained officer or untrained officers/deputies.

Web-enabled Forms: These are forms located on the website http://mle.parks.wa.gov/ that are the official documents used by STATE PARKS in the administration of state vessel registration fees and federal financial assistance grants. These forms replace paper versions used prior to CY 2022 and must be used as a condition of ongoing eligibility to receive state vessel registration fees.

NOTE: Paper inspection forms (Form # A-274) will not be accepted for 2022. SECTOR use is mandatory for all Approved Programs during normal operations.

EXHIBIT E

FINANCIAL REPORT EXAMPLES

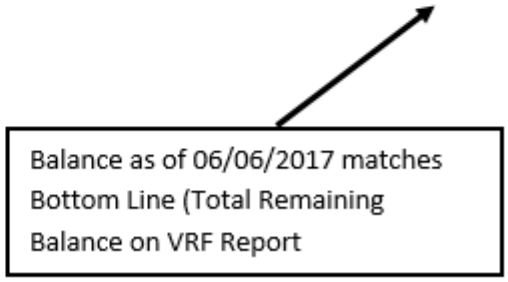
Example of a VRF Fund Balance Report

XXXXXX County

Fund Master – All Funds

Balances as of 06/06/2017

Key	Cash in Funds	Pooled Cash	Pooled Investment	Investment Funds	Cash & Investments	Total Payables	Available Funds
130-Boating Safety	57,294.64	0.00	0.00	0.00	57,294.64	7,300.64	64,595.28
	57,294.64	0.00	0.00	0.00	57,294.64	7,300.64	64,595.28



Example of a Financial System Report

XXXXXXX County
Treasurer Cash Receipt
Receipt #
EFWA12345678

Date of Transfer / Deposit

Date: 060602017
Received From: StateOfWAMonthlyEFT

Customer ID # 8910
Clerk: David Smith

Fund/Key	Revenue	Description	Amount
130	33600840	State Boating Safety	$20,744.72
		Total Receipt Amount	**$20,744.72**

Deposited Into Dedicated Account For Boating Safety

Correct Amount Received

EXHIBIT F

EDUCATION AND OUTREACH TACTICS AND SUGGESTED GOALS

- **Education Classes:** This is classroom instruction of the Adventures in Boating course sanctioned by Washington State Parks that qualifies passing students to obtain a Mandatory Boater Education Card.
    - Small Agency, 15 students, 1 Class
    - Medium Agency, 20 students, 1 Class
    - Large Agency, 50 students, 1 Class

- **Boating Safety Presentations to Groups:** These are boating safety presentations to various groups, yacht clubs, kayak clubs, anglers, and any groups that use boats on the water.
    - Small Agency, 10 hours
    - Medium Agency, 15 hours
    - Large Agency, 25 hours

- **Boating Safety Presentations to Schools:** These are presentations to local public and private schools, K-12, colleges, or universities.
    - Small Agency, 10 hours
    - Medium Agency, 15 hours
    - Large Agency, 25 hours

- **Vessel Rental Site Visits:** These are site visits to local vessel rental sites if they exist. The intent is to ensure the employees and renters are following the guidance on the Motor Vessel Rental Safety Checklist (Form number P&R A-446 - Rev 04/2017). These can also be site visits to businesses that rent out kayaks, canoes, stand-up paddleboards, or other small non-motorized craft. The intent of visits in this case is to emphasize basic safety behaviours such as encouraging renters to always wear a life jacket and encouraging boating in low hazard areas.
    - Small Agency, 2 visits
    - Medium Agency, 4 visits
    - Large Agency, 6 visits

- **Participation in Community Events**: These are events like county fairs, parades, and night outs that have the ability to reach large numbers of community members. A qualified event requires face-to-face interaction with community members. Participation on the water in regattas, races, opening days where there is little to no face-to-face interaction between officers/deputies and community members does not count as a “Community Event”. Also, maintaining a screen line or security area at an on-water event does not count for reporting event hours on the SOAR.
    - Small Agency, 40 hours
    - Medium Agency, 150 hours
    - Large Agency, 275 hours

- **Vessel Dealer Site Visits:** These are visits to vessel dealerships and brokers, where applicable, to ensure they are following dealer registration laws, educate them on any safety issues with type of vessels they sell, and checks that required safety equipment is on board during test rides and sea trials. Dealers should also be encouraged to remind their customers of the mandatory boater education requirement.

- Small Agency, 5 visits
- Medium Agency, 10 visits
- Large Agency, 15 visits

- **Professional Prevention Partners (Safe Kids, Power Squadron, USCG Auxiliary, etc.):** Engaging partners can multiply the effectiveness of a marine law enforcement program's effectiveness by increasing its area of influence and leveraging the resources of partners. Partnering activities include meetings, conference calls, event participation, and actual on-water time. Agencies should report the hours spent working with Prevention Partners conducting RBS activities in their jurisdictions as well as meetings, conference calls etc.
    - Small Agency, 1 hour
    - Medium Agency, 3 hours
    - Large Agency, 5 hours

Media Contacts: Agencies should distribute recreational boating safety content through their own social media channels, social media channels of their partners, or the news media.

- **Owned Media:** This is the number of hours spent on this activity and the number of posts or articles distributed through communication channels that are owned and managed by the agency, like the agency website, social media channels (Facebook, Twitter), newsletters, etc.
    - Small Agency, 4 hours
    - Medium Agency, 8 hours
    - Large Agency, 16 hours

- **Earned Media:** This is the number of hours spent on this activity and the number of articles broadcast through media channels that are not managed by the agency. Examples include stories in the newspaper, radio, television. Agencies should also count the number of recreational boating safety posts on the social media channels of partner organizations when the agency can show that the posts are the result of its interaction with that partner.
    - Small Agency, 4 hours
    - Medium Agency, 8 hours
    - Large Agency, 16 hours

- **Campaigns; Operation Dry Water, Spring Aboard, National Safe Boating Week, and Safe Paddling Week:** See the SOAR web form for reporting requirements, and goals for all agencies regardless of size is participation in these campaigns. The State Parks Recreational Boating Safety Communication staff will distribute content to all agencies for each of the campaigns, making participation quick and simple. These campaigns can have a powerful impact if all agencies participate.

    - The Operation Dry Water campaign is a national campaign focused on the deterrence of boating under the influence. Participation in this campaign is mandatory for all agencies that receive a federal assistance grant. It is a combination of emphasis patrols and media the weekend before the Fourth of July.
    - The Spring Aboard campaign is a national campaign designed to encourage all boaters to take a recreational boating safety class. It occurs in late March.
    - National Safe Boating Week is a nationally observed week focused on encouraging all boaters to wear their lifejackets. In addition to media posts, agencies are encouraged to

participate in “Wear IT” events. More information will be distributed in the late winter about this campaign to help agencies effectively participate. This campaign is sponsored by the National Safe Boating Council.

- Safe Paddling Week is a new campaign being sponsored by the Washington State Parks Recreational Boating Safety Program. The purpose of the week is to elevate awareness around basic paddling safety behaviours such as always wearing a PFD, obtaining training etc.

EXHIBIT G

DATA ENTERED ON THE A-299 FORM

Washington State Parks & Recreation Commission – Recreational Boating Program

Request for Boating Safety Program Approval

Application Year:

2022

AGENCY INFO	
Agency Name	**Agency Size**
Benton County Sheriff's Department	Large
Agency Signing Officer Title	**Signing Officer First Name**
Sheriff	Tom
Signing Officer Last Name	**Dedicated Account Number**
Croskrey	0127101

STAFFING

Roles	**SAW ID**	**Rank**	**First Name**	**Last Name**	**Commission**	**FT/PT**	**Email Address**	**Date of Marine L.E. Training**	**Training Current?**	**Non-WA Parks Courses**
Supervisor, Fiscal Lead		UnderSheriff	Jon	Law	Regular	Full time	jon.law@co.benton.wa.us		N/A for this position	
Lead Accident Investigator, Boating	bretthansen	Deputy	Brett	Hansen	Regular	Full time	brett.hansen@co.benton.wa.us	4/14/2013	Yes	Certified Boater Ed Instructor, Advanced

Safety Officer,Coordinator of Boating Education,Certified Boating Ed Instructor,Marine Lead										Vessel Operations
Lead Accident Investigator, Boating Safety Officer,Coordinator of Boating Education,Certified Boating Ed Instructor		Deputy	Jean-Paul	Benitez	Regular	Part time/Seasonal	Jean-paul.benitez@co.benton.wa.us	3/31/2013	Yes	BOSAR #1, Advanced Vessel Operations
Boating Safety Officer	bsurplus	Deputy	Bruce	Surplus	Regular	Part time/Seasonal	bruce.surplus@co.benton.wa.us	4/5/2015	No	
Boating Safety Officer	mhinkle22	Deputy	Michael	Hinkle	Regular	Part time/Seasonal	michael.hinkle@co.benton.wa.us	4/5/2015	No	
Boating Safety Officer		Deputy	Brian	Tungsevik	Regular	Part time/Seasonal	brian.tungesvik@co.benton.wa.us	4/5/2015	Yes	
Boating Safety Officer		Deputy	Brian	Ohler	Regular	Part time/Seasonal	brian.ohler@co.benton.wa.us	4/9/2017	No	
Boating Safety Officer		Deputy	Michael	Ramos	Regular	Part time/Seasonal	michael.denoma-ramos@co.benton.wa.us	4/12/2015	No	
Boating Safety Officer		Deputy	Natalie	Griffin	Regular	Part time/Seasonal	natalie.griffin@co.benton.wa.us	4/5/2015	No	
Boating Safety Officer		Deputy	Doug	Hollenbeck	Regular	Part time/Seasonal	doug.hollenbeck@co.benton.wa.us	4/2/2017	No	

Boating Safety Officer		Deputy	Adam	Flohr	Regular	Part time/Seasonal	adam.flohr@co.benton.wa.us	4/14/2013	No	
Boating Safety Officer,Supervisor		Deputy	Jon	Schwarder	Regular	Part time/Seasonal	jonathan.schwarder@co.benton.wa.us	4/12/2015	No	
Supervisor		Lieutenant	Mathew	Clarke	Regular	Part time/Seasonal	mathew.clarke@co.benton.wa.us	4/13/2008	N/A for this position	
Boating Safety Officer		Deputy	Brad	Klippert	Regular	Full time	brad.klippert@co.benton.wa.us		Yes	
Boating Safety Officer		Deputy	Zach	Donovan	Regular	Part time/Seasonal	zachary.donovan@co.benton.wa.us	4/15/2021	Yes	
Boating Safety Officer		Deputy	Luke	Forsberg	Regular	Part time/Seasonal	lucas.forsberg@co.benton.wa.us	4/15/2021	Yes	
Boating Safety Officer		Deputy	Cameron	Boehning	Regular	Part time/Seasonal	cameron.boehning@co.benton.wa.us	4/15/2021	Yes	
Boating Safety Officer		Deputy	Kenton	Childers	Regular	Part time/Seasonal	kenton.childers@co.benton.wa.us	4/15/2021	Yes	

Number of Full Time RBS Officer	**Number of Part Time/Seasonal RBS Officers**
3.00	13.00
Number of Other RBS Officers	**Marine Lead Mobile Phone**
0.00	509-430-0607

BOAT PATROL SCHEDULE

Patrol Season Begins	Patrol Season Ends
5/24/2022	9/2/2022

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Patrol Hours	12.00	0.00	0.00	0.00	0.00	12.00	12.00
Number of Officers	2.00	0.00	0.00	0.00	0.00	2.00	2.00
Number of Vessels	1.00	0.00	0.00	0.00	0.00	1.00	1.00

Total Planned Patrol Hours
840.00

Total Planned Inspections
200.00

RBS EQUIPMENT, VESSELS, AIRCRAFT AND VEHICLES

Type	Vessel Name	Vehicle/ Aircraft/ Equipment Type	Manufacturer	Sector/ Radio	Model	Length	Propulsion Type	Horsepower	Year	Funds Used for Purchase	% Time Used for RBS
Vessels	Safeboat		Safeboat	SECTOR equipped,Radio equipped,	2008	23.00	Outboard	400.00	2,008		100.00
Vessels	Wind River		Wind River	Radio equipped	1997	24.00	Jet	350.00	1,997		100.00
Vessels	NW Jet		NW Jet	SECTOR equipped,Radio equipped,	2008	25.00	Jet	375.00	2,008		100.00
Vessels	Safeboat		Safeboat	SECTOR equipped,Radio equipped,	2019	27.00	Outboard	600.00	2,019	Local,	100.00
Vehicles		Dually Pickup	Ford		F-350				2,013		100.00
Equipment		2-Outboard Engines with Rigging	Mercury		Verado 200xl/xcl				2,008		
Equipment		Boat Trailer	E-Z Loader						2,019	Local,	
Equipment		Boat Trailer	E-Z Loader						2,008		
Equipment		10.4" Chart Plotter/Radar/ Navigation Console w/ 18" 2.2kw Radome	Foruno		1824C/ NT				2,008		
Equipment		2-Outboard Engines	Mercury		Sea Pro 300				2,019	Local,	

Equipment		FLIR	FLIR		M625S				2,019	Local,	
Equipment		12" Foruno Chart Plotter	Foruno		Navnet Tztouch				2,019	Local,	

Number of Radio Equipped Boats	**Number of Non-Radio Equipped Boats**
4.00	0.00
Number of Aircraft	**Number of Other Patrol Vehicles**
0.00	1.00
Number of Vessels SECTOR Equipped	**Number of Vessels Non-SECTOR Equipped**
3.00	1.00

LOCAL ORDINANCES

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Subrecipient Grant Agreement between WA State Parks and Recreation Commission and Benton County Sheriff's Office for Boating Safety Program
Presenter:	Cdr. Clarke
Prepared By:	Lisa Small
Reviewed By:	Ryan Lukson; BCSO; Purchasing Department

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

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

Summary / Background Information

The Benton County Sheriff's Office (BCSO) submitted the grant application for the Washington State Parks & Recreation Commission (WSPRC) 2022 Federal Financial Assistance Grant Program for the Recreational Boating Safety Program. The BCSO received a Letter of Award for FY2022 stating the WSPRC is awarding the BCSO the Recreational Boating Safety Federal Financial Assistance Grant in the amount of $12,173.96.

This is the first year that WSPRC issued a formal contract between the Federal Financial Assistance Grant (at the Federal level) and Benton County Sheriff's Office as a Subrecipient. A different Intergovernmental Agreement will be issued to outline the relationship between the State Parks and BCSO for this same grant.

WSPRC is requiring Benton County to sign the attached Subrecipient Grant agreement first. They will return a fully executed copy to us for our records.

Fiscal Impact

Grant Amount: $12,173.96

Required Match: WSPRC requires a $3,043.49 match requirement during year 2022 from BCSO.

The grant and projected expenditures were approved during the 2021-2022 budget process; therefore, no budget adjustment consideration is needed.

Recommendation

The BCSO recommends approving the grant award in the amount of $12,173.96 to be used for marine enforcement, vessel safety inspections, education, training, and equipment for recreational boating safety.

Suggested Motion

The Board of Benton County Commissioners hereby approves the Recreational Boating Safety Federal Financial Assistance Grant Award from the Washington State Parks and Recreation Commission in the amount of $12,173.96, for the use of marine enforcement, vessel safety inspections, education, training, and equipment for recreational boating safety, and hereby authorizes the Benton County Sheriff to sign the attached Agreement No. MLE 123-109.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING GRANT FUNDING FROM WASHINGTON STATE PARKS AND RECREATION COMMISSION FOR THE 2022 FEDERAL FINANCIAL ASSISTANCE GRANT PROGRAM AND BOATING SAFETY PROGRAM AND AUTHORIZE THE BENTON COUNTY SHERIFF TO SIGN THE SUBRECIPIENT GRANT AGREEMENT NO. MLE 123-109

WHEREAS, the Benton County Sheriff's Office (BCSO) submitted the grant application for the Washington State Parks & Recreation Commission Federal Financial Assistance Grant Program for the Recreational Boating Safety Program; and

WHEREAS, the BCSO received a Letter of Award stating the Washington State Parks and Recreation Commission is awarding the BCSO the Recreational Boating Safety Federal Financial Assistance Grant in the amount of $12,173.96; and

WHEREAS, the grant funds are to be used for marine enforcement, vessel safety inspections, education, training, and equipment for recreational boating safety; and

WHEREAS, the projected expenditures for 2022 Benton County Marine Program exceeds the match requirement of $3,043.49; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby approves the Recreational Boating Safety Federal Financial Assistance Grant Award from the Washington State Parks and Recreation Commission in the amount of $12,173.96 for the use of marine enforcement, vessel safety inspections, education, training, and equipment for recreational boating safety; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Benton County Sheriff to sign the attached Federal Financial Assistance Grant Agreement No. MLE 123-109; and

BE IT FURTHER RESOLVED, the term of the attached contract commences upon signature of both parties and terminates September 30, 2022.

Dated this _____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: BCSO
cc: Auditor, S. Godinez, Procurement, WSPRC

Prepared by: L. Small

Agreement No. MLE 123-109

This Agreement is between the State of Washington, Washington State Parks and Recreation Commission (WSPRC) acting by and through its Marine Law Enforcement Program ("MLE or "Recipient") and **Benton County Sheriff's Office** ("Subrecipient"), each a "Party" and, together, the "Parties".

SECTION 1: AUTHORITY

Per 2 Code of Federal Regulations 200 (2CFR200), WSPRC has determined this to be a "Subrecipient" relationship under 2 CFR 200.330. This subrecipient agreement is authorized by 2 CFR 200 and 50 CFR 80. MLE is authorized to provide grants for recreational boating enforcement and education activities and has sufficient grant funds available within its current biennial budget and has authorized expenditure on the Subrecipient's Project as defined below, and the Subrecipient agrees to comply with 2 CFR 200, MLE rules and other MLE adopted policies and procedures, and this Subrecipient Grant Agreement.

SECTION 2: PURPOSE

The purpose of this Agreement is to set forth the obligations of both Parties in the awarding of funds for recreational boating enforcement and education and to set forth the deliverables under the Federal Financial Assistance Grant, hereinafter called the "Project."

SECTION 3: COURTESY INFORMATION & REMINDER

Very important information is located throughout this document. The onus is on the Subrecipient to read the entire document which may include Attachments, Exhibits, or other information incorporated by reference.

Experience has shown that the following information seems to have the most interest for the Subrecipient. As such, MLE is providing this nonexclusive list but cautions that other important information does not appear in the Courtesy List.

- **Term**: See *Section 5.1 – Term*
- **Project Completion**: See *Section 5.2 – Project Completion*
- **Subrecipient's Authorized Representative***: See Section 6.2 – Subrecipient's Authorized Representative.*
- **Project completion date**: See *Section 7.1.1 – Project Timeline*
- **Reimbursement Total:** See *Section 8.3.c [not titled].*
- **Grant Funds:** See *Section 9.2 – Grant Funds.*
- **Accident Report:** See *Section 12.7 – Accident Report*
- **Information required for Federal Subawards *(2 CFR §200.331(A) (1))*:** See *Exhibit B*

- **Subrecipient's Completed FFA Grant Application:** See *Attachment A.*
- **Subrecipient's Completed Budget Form:** See *Attachment B.*

SECTION 4: DEFINITIONS

4.1 Attachment: A document provided by the Subrecipient (application, budget plan, etc.) that is also made part of this agreement and incorporated by reference. See also Exhibit.

4.2 MLE: The federally funded Marine Law Enforcement Program administered by Washington State Parks and Recreation Commission (WSPRC). For purposes of this agreement MLE represents the State of Washington. If MLE ceases to exist or is no longer the state program designated to administer this federal program, then references to MLE will be understood to be the State of Washington.

4.3 Equipment. Equipment means tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000.

4.4 Exhibit: A document provided by the MLE Program that is also a part of this agreement and incorporated by reference. See also Attachment.

4.5 RBS Officer: Recreational Boating Safety Officer is a fully commissioned law enforcement officer in Washington State and has the authority to enforce the laws of the state of Washington and local ordinances. The RBS Officer must have attended the Washington state Basic Marine Law Enforcement Academy or an equivalent recognized by MLE.

4.6 Boating Safety Inspection: A full inspection for all safety equipment, vessel registration when required and mandatory boater education compliance when required. The results of the inspection shall be documented through Washington states Statewide Electronic Collision and Ticket Online Records (SECTOR). This may be done at the time of the inspection or when SECTOR is available to the RBS Officer.

4.7 Law Enforcement Vessel: A vessel used by a law enforcement agency and shall be equipped with proper markings showing it to be an official law enforcement vessel.

4.8 Recreational Vessel: Defined in federal regulation 50 CFR 85.11 as a vessel owned and operated primarily for pleasure; or a vessel leased, rented, or chartered to another for recreational use.

4.9 Subrecipient: A Non-Federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. In this agreement, the subrecipient is the successful applicant with whom Washington MLE awards a Federal Financial Assistance Grant (See 2 CFR 200.93).

4.10 Subrecipient Grant Agreement: Also known as a subaward. Defined in federal regulation as "an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (See 2 CFR 200.92).

4.11 Small agency: An agency which services a jurisdiction with a population below 30,000 people as determined by the latest U.S. Census.

4.12 Medium agency: An agency which services a jurisdiction with a population of 30,000 or more and below 100,000 people as determined by the latest U.S. Census.

4.13 Large agency: An agency which services a jurisdiction of over 100,000 people as determined by the latest U.S. Census.

4.14 Boating Safety Program approval: means that the county or local jurisdiction has entered into an agreement with state parks to develop and maintain a boating safety program meeting minimum requirements established by state parks.

SECTION 5: EFFECTIVE DATE AND DURATION

5.1 Term. This Agreement is effective on the date of the last signature and terminates on **September 30, 2022**, or the date of final payment issuance, whichever is later, unless terminated earlier in accordance with *Section 22 - Termination*. See also, *Section 12.3 Useful Life.*

5.2 Project Completion. The Project shall be completed, and final billing for the Project shall be submitted to MLE on or before **October 15, 2022**. Unless approved in writing, MLE shall not be obligated to disburse any payments after this date.

5.3 Closeout. (See 2 CFR § 200.343) MLE will closeout this award under this Agreement when it determines that all applicable administrative actions and all required work of this Agreement have been completed by the Subrecipient.

SECTION 6: AUTHORIZED REPRESENTATIVES

6.1 WSPRC MLE Program Authorized Representative is:

Matthew M. Stowers, Marine Law Enforcement Coordinator

Washington State Parks - Boating Program

1111 Israel Road SW

Tumwater, WA 98501-6512

Matt.Stowers@parks.wa.gov

Backup:

Rob Sendak, Boating Program Manager

Washington State Parks - Boating Program

1111 Israel Road SW

Tumwater, WA 98501-6512

Rob.Sendak@PARKS.WA.GOV

6.2 Subrecipient's Authorized Representative is:

Sheriff Tom Croskrey

Benton County Sheriff's Office 7122

W Okanogan Place Bldg B

Kennewick, WA 99336-2539

Tom.Croskrey@co.benton.wa.us

(509)735-6555

6.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 7: RESPONSIBILITIES OF EACH PARTY

7.1 Responsibilities of Subrecipient:

This project itself is the sole responsibility of Subrecipient. MLE undertakes no responsibilities to Subrecipient, or to any third party, other than as expressly set out in this document. Subrecipient shall be solely responsible for the design, development, implementation, achievement of deliverables and reporting of the project, as those phases are applicable to this project, and solely responsible for any claim or suit of any nature by any third party related in any way to the project.

7.1.1 Project Timeline. The Subrecipient is responsible for maintaining the project timeline for all dates and activities outlined as the Subrecipient's responsibility as identified in the Subrecipient's FFA Grant Application Attachment "A".

The Subrecipient shall complete the approved project no later than **September 30, 2022** as a term of the acceptance of this grant award. The project timeline cannot be extended under the scope of this agreement.

MLE staff shall monitor the activities conducted under the scope of this project on a quarterly basis. Work will be considered complete, only when the following conditions are met:

- The activities described in the Scope of Work and this grant document have been achieved.
- All request for reimbursements have been submitted.
- All reporting through the MLE Statement of Activity Reporting system (SOAR) and SECTOR have been completed
- Appropriate proof of completion has been provided to MLE

If the work is not satisfactorily completed, Subrecipient will be in breach and MLE may, at its discretion, rescind the grant and require repayment of any grant funds already disbursed.

7.1.2 Design Preparation. The Subrecipient shall design a project that will have a reasonably likelihood of positively impacting the reduction of boating accidents, boating injuries, and boating fatalities. Such design shall include applicable items on the Checklist for Plans and Specifications as provided in the Subrecipient's MLE Grant Application (Attachment "A").

7.1.3 Purchase. The Subrecipient shall make no purchases in excess of $2,500.00 without prior written authorization by MLE. All purchases must be in the furtherance of recreational boating safety and must adhere to the guidelines set out in the in the Allowable Costs and Expenditures for State Vessel Registration Fees and Federal Assistance Grants manual. (Attachment "C").

7.1.4 Periodic Inspections. Subrecipient hereby grants to the Recipient, or its authorized representative, a right, equal in time to six years from the date of the last signature on this document, to enter upon Subrecipient's property as deemed necessary by the Recipient for inspection documents and any equipment. These periodic inspections are intended to ensure continued compliant use of the awarded funds toward recreational boating safety enforcement and education. materials, products, and workmanship to the original approved plans and specifications. These inspections require a 30-day advance notification to the Subrecipient of such inspection or access.

7.1.5 Commercial and Other Uses.

a. For purposes of this *Section 7 – Responsibilities of Each Party*, Commercial Use means any activity on or affecting the Project that was not described in the Subrecipient's proposal, or not approved in writing by MLE, where the Subrecipient:

   1. has financial profit as a goal,
   2. charges any fees or receives any benefit to provide services, supplies or goods, or
   3. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.

b. Subrecipient must restrict use of the Project funds to only recreational boats boating safety enforcement and education.

7.1.6 Publications & Advertising. The Subrecipient shall include the following statement if publishing any report, news release or publication regarding this project: *"Partial funding was through the Washington State Parks and Recreation Commission Marine Law Enforcement Program, and in cooperation with U.S. Recreational Boating Safety Act."*

7.1.7 Project Sign. The Subrecipient may post in a conspicuous location on the vessel, a sign identifying WSPRC, may, Federal Agency's and specific federal grant program's participation in the Project.

The Subrecipient shall include the following statement if publishing any report, news release or publication regarding this project: *"Partial funding for this project was provided by the Washington State Parks Marine Law Enforcement Program. This program is funded by the U.S. C.G. through the Sport Fish Restoration and Boating Trust Fund, which is financed by your purchase of motorboat fuels and fishing equipment."*

7.1.8 Public Access to Project. During the term of this Agreement the Subrecipient shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.

7.1.9 Payments. Subrecipient agrees to:

a. Make payment promptly as due to all contractors, subcontractors, vendors or any other persons supplying labor or materials for the Project;

b. All employers, including Subrecipient that employ subject workers shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for exemption. Subrecipient shall require and ensure that each of its subcontractors complies with these requirements (unless inapplicable as a matter of federal law); and

c. Not permit any lien or claim to be filed or prosecuted against WSPRC, due to any construction or maintenance activities at the Project.

7.1.10 Alternative Dispute Resolution. The Parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

7.1.11 Indemnification by Subrecipient's Contractors. For purposes of this Section *7.1.11 – Indemnification by Subrecipient's Contractors* the term "contractor" means actors downstream of the Subrecipient whether it be a contractor, a subcontractor, or downstream subrecipient of the Subrecipient. The Subrecipient shall take all reasonable steps to cause its contractor(s) to indemnify, defend, save and hold harmless the State of Washington and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subrecipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Subrecipient's contractors.

7.2 Responsibility of Marine Law Enforcement Program (MLE):

7.2.1 MLE shall pay Subrecipient as described in *Sections 8 – Conditions to Disbursement* and *Section 9 – Reimbursement and Payment Terms*.

SECTION 8: CONDITIONS TO DISBURSEMENT

8.1 Eligible project expenses include only those items from the list below that are in your approved project budget:

8.1.1 Grant funds may be used only for activities under WAC 352-65-040, the ten elements necessary to accomplish the Recreational Boating Safety (RBS) mission.

8.1.2 RBS salaries to include time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington state and who have completed an RBS courses acceptable to State Parks (BMLE or equal).

8.1.3 Time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington state, and who have not completed a BMLE course is acceptable **ONLY** when working with an RBS trained officer **AND** when the agency has a written "two-officer policy for officers on marine patrol for the purpose of officer safety.

8.1.4 Providing instructors for the *Adventures in Boating* course that qualifies graduates for the required mandatory boater education card. Cost may include classroom supplies, light refreshments, other goods and services necessary to promote and teach classes, and officer salaries, benefits and wages. Officer salaries will only be reimbursed for those officers who have successfully completed State Parks *Adventures in Boating Instructor* Training Class and are listed on our files.

8.1.5 RBS training as outlined in the Allowable Costs and Expenditures for State Vessel Registration Fees and Federal Assistance Grants (Attachment "C")

8.1.6 RBS Equipment as outlined in the Allowable Costs and Expenditures for State Vessel Registration Fees and Federal Assistance Grants (Attachment "C"). Any equipment expenditures over two thousand two hundred and fifty dollars ($2,250.00) must receive authorization from state parks prior to purchase.

8.1.7 Educational publications which promote RBS education that are already prepared or the creation, design and printing of publications

8.1.8 Promotion of Adventures in Boating classes, including presentation materials, light refreshments and room rental for classes.

8.1.9 Other items as deemed by MLE to be necessary to complete the project

8.1.10 Support of the Basic Marine Law Enforcement Academy by agencies who provided MLE recognized instructors

8.2 Non-Allowable Costs and Expenditures.

8.2.1 Bullet proof vests are beneficial, however, equipment of this nature is not essential for meeting the established criteria in WAC 352-65-040 nor is it related to the performance of the RBS program mission and is considered a local agency responsibility to purchase.

8.2.2 Equipment used in recover operations (dive equipment, etc.) while being used in an RBS search or investigation mode are 100% eligible. Once this equipment is used for recovery operations it must be prorated between RBS missions and recovery missions.

8.2.3 Handheld or portable night vision, FLIR or thermal imaging devices are a 100% allowable expense while in RBS patrol, search or investigation mode. Once this equipment is used for recovery operations it must be prorated. Permanently mounted and electrically wired FLIR and thermal imaging devices are 100% allowable expenses.

8.2.4 Homeland Security missions (weapons, etc.), or any other equipment determined as unrelated by the boating program is not an allowable expense.

8.2.5 Firefighting equipment is not an allowable expense.

8.2.6 Any equipment or vehicles not 100% dedicated to the RBS mission must be prorated, documenting the amount of time the equipment or vehicle was dedicated to the program.

8.2.7 Operating costs for law enforcement vessels boats (staff, fuel, fluids, repairs, maintenance) or operating costs for boats used to service floating restrooms (staff, fuel, fluids)

8.2.8 Documented staff or contract labor associated with routine custodial and non-routine maintenance and repairs, the cost of that person operating or maintaining the system.

8.2.9 Other items as deemed by MLE to be necessary to complete the project

8.3 Conditions Precedent to Any Reimbursement. MLE shall not be obligated to disburse any of the grant funds to reimburse the Subrecipient for Project costs hereunder unless MLE has received from the Subrecipient:

a. Prior to Project plans, specifications, and cost estimate(s), statement of work, request for proposal or other documentation for the Project, documents must be in form and substance satisfactory to MLE;

b. Reimbursement Requests must be submitted on the approved MLE Grant Reimbursement form along with all supporting documentation. Reimbursements shall be prorated between the Parties based on the percentage of their respective cash or in-kind contributions as set forth in *Section 7 – Responsibilities of Each Party* and *Section 9 – Reimbursement and Payment Terms*.

Supporting documents must:

- Be numbered in the upper right corner and correspond to the "Document #" column on your Reimbursement Request Form
- Be dated. The date of the invoice must be within the period of performance of this award
- Have Subrecipient's business name clearly identified
- Clearly identify the cost and the amount paid & show zero-balance due

If a receipt, invoice, or statement includes expenses not related to the MLE project, those costs must be highlighted and noted as "ineligible costs".

c. MLE will reimburse Subrecipient for eligible activities only after MLE has accepted the work as complete–expenditure as an allowable cost and all proper documents have been submitted with the reimbursement request. Reimbursement requests must be submitted on a quarter basis and during the quarter that the expenditure has taken place. Reimbursement from MLE shall not exceed fifty percent (50%) of the total project cost from eligible grant expenses. Total reimbursement under this grant agreement shall not exceed the award amount of **Twelve Thousand, One Hundred Seventy-Three and 96/100ths dollars ($12,173.96).**

d. MLE will reimburse Subrecipient up to an additional $5,000.00 who supply a recognized BMLE instructor for 80 hours. For instructor services less than 80 hours, a sum of $500.00 per day will be awarded. The additional award is available for use commencing on **June 1, 2022**.

e. The Subrecipient may not exceed the approved budget which was proposed by the Subrecipient as part of the Subrecipient's Subrecipient Grant Application that was accepted by MLE. The Subrecipient's budget is attached to this agreement (Attachment "B"). If the Subrecipient would like to change the allocations of funds to the original budget, a budget amendment request must be sent in writing via email to MLE in advance of the expense being incurred.

f. If a boat, a vehicle, or equipment is used partially for other purposes, costs must be pro-rated for that portion of their use that is for Recreational Boating Safety Act purposes.

8.4 Conditions Precedent to Partial Progress Payment(s). MLE shall not be obligated to make partial progress reimbursement payment(s) hereunder until the appropriate supporting documentation and reimbursement form has been submitted no less than on a quarterly basis of the percentage of Project completion has have been received, reviewed and approved by MLE. In no event shall MLE disburse more than fifty percent (50%) of the amount indicated in *Section 9.2 – Grant Funds* as progress payments.

8.5 Conditions Precedent to Final Payment. MLE shall not be obligated to make final payment hereunder until the following have been completed or supplied:

a. Supporting documentation in form and content determined by MLE, has been received reviewed and approved by MLE; and

b. Subrecipient provides summary of work achieved pursuant to the SOW as provided with the grant application to MLE with funding the Project; and

c. Inspection and approval of the Project by MLE Program staff.

SECTION 9: REIMBURSEMENT AND PAYMENT TERMS

9.1 Federal Fund Approval. MLE has received a grant from the United States Department of Homeland Security, United States Coast Guard as described pursuant to 2 CFR 200.331 on Exhibit B. In accordance with 2 CFR 200.330, MLE's determination is that the other party to this contract is a subrecipient and is therefore a subrecipient of federal funds.

9.2 Grant Funds. Upon approval by its governing body or bodies, MLE shall provide federal grant funds in the amount of of **Twelve Thousand, One Hundred Seventy-Three and 96/100ths dollars ($12,173.96)** to the Subrecipient to fund the Project.

9.3 Match. The Subrecipient shall contribute at least twenty-five (25%)of the total project cost as cost sharing or non-federal match as described in the approved project budget. Such cost sharing or match may be provided as cash costs or in-kind services provided such services are reasonable and necessary for grant purposes. Vessel Registration Fees cannot be used as match. These are non-reimbursable items. Allowability of any cost

sharing or match shall be determined in accordance with 50 CFR Part 85; and 2 CFR Part 200 as applicable and as adopted in regulation by 2 CFR 1402.100.

The Subrecipient shall maintain records that adequately document the valuation of non-federal match/in-kind services in accordance with 50 CFR Part 85; and 2 CFR Part 200 as applicable and as adopted in regulation by 2 CFR 1402.100. The Subrecipient shall submit a summary of the valuation to MLE. Further instruction on adequate valuation of match expenses can be provided by contacting the Marine Law Enforcement Coordinator or the Program Manager.

9.3.1 Matching Cash Funds. The Subrecipient shall contribute the total sum of **Three Thousand, Forty-three and 49/100ths dollars** (**$3,043.49)** in cash or in-kind match. It is understood that match cannot be from another federal source and are non-reimbursable costs. In addition, **Vessel Registration Fee funds cannot be used as match**; however, in-kind match as reported in the VRF Expenditure Report can.

9.3.2 Matching Non-cash Resources. Non-cash resources, in-kind; match is allowable under the FFA grant. Any expenditure the subrecipient incurs in support of their recreational boating safety program can be used as non-cash match.

9.4 Allowable Costs. All costs charged by the Subrecipient must be eligible, necessary, and reasonable for performing the tasks outlined in the approved project work plan. The costs, including match, must be incurred during the period of performance of the project and submitted for reimbursement during the quarter which the costs are incurred. The costs also must be allowable and well documented, in conformance with specific federal requirements (50 CFR Part 85; and 2 CFR Part 200 as applicable and as adopted in regulation by 2 CFR 1402.100.

9.5 Payments. After the Subrecipient awards the contract for the Project, and activities commence, MLE shall, upon receipt of the Subrecipient's request for reimbursement and appropriate documentation all in form and substance satisfactory to MLE, disburse funds to the Subrecipient in accordance with *Section 8 - Conditions to Disbursement*.

Subrecipient may request reimbursements no less than on a quarterly basis and during the quarter for which the expenditures have been incurred for project expenses. Reimbursement shall take place after Subrecipient submits a properly completed Reimbursement Request Form (provided by MLE), along with required supporting documentation. Requests shall only be allowed when requested on the proper forms provided by MLE, reference this agreement number and accompanied with appropriate supporting documentation.

Subrecipient shall be reimbursed for the actual project costs incurred, up to the total reimbursement amount defined above as long as grant funds remain available. Accounting procedures must provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and of unexpended balances. Controls must be established which are adequate to ensure that expenditures are for allowable purposes and that documentation is readily available to verify that such charges are accurate. The burden of proof lies with the subrecipient to provide clear information as to the expense and form of payment.

9.6 Cost Overruns. Cost overruns are the responsibility of Subrecipient and must be borne by Subrecipient.

9.7 Overpayment. In the event that the aggregate amount of MLE's interim progress payments to the Subrecipient exceeds the allowable reimbursable costs of the Subrecipient for the Project, the Subrecipient agrees to refund to MLE the amount paid in excess of such allowable expenses within thirty (30) days of **September 30, 2022**.

9.8 Offset or Reduction. The Subrecipient agrees that payment(s) made by MLE under this Agreement shall be subject to offset or reduction for any amounts previously paid hereunder that are found by MLE not to constitute allowable costs under this Agreement based on the results of an audit examination. If such disallowed amount exceeds the payment(s), the Subrecipient shall pay MLE the amount of such excess within 30 days after written notice of disallowed costs is provided by MLE.

9.8.1 Entertainment Costs. In accordance with 2 CFR 200, the cost of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, gratuities and alcoholic beverages are not allowable expenses.

9.8.2 Prior Costs. MLE will not reimburse Subrecipient for any costs incurred prior to the effective date of this agreement **October 1, 2021**.

SECTION 10: REPRESENTATIONS AND WARRANTIES

Subrecipient represents and warrants to MLE that:

10.1 Subrecipient is a law enforcement agency, duly organized and validly existing. Subrecipient has the power and authority to enter into and perform this Agreement.

10.2 The making and performance by Subrecipient of this Agreement (a) have been duly authorized by Subrecipient, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is party or by which Subrecipient may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement, other than those that have already been obtained.

10.3 This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient enforceable in accordance with its terms.

10.4 Subrecipient has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Subrecipient will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and

10.5 Subrecipient shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement. The representations and warranties set forth in this *Section 10- Representation and Warranties* are in addition to, and not in lieu of, any other representations or warranties provided by Subrecipient.

SECTION 11: GOVERNING LAW AND CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between MLE or any other agency or department of the State of Washington, or both, and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Superior Court for Thurston County, State of Washington; provided, however, if a Claim MUST be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Western District of Washington. In no event shall this *Section 11 – Governing Law and Consent to Jurisdiction* be construed as a waiver by the State of Washington of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. SUBRECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 12: EQUIPMENT: OWNERSHIP, MAINTENANCE, USEFUL LIFE & DISPOSAL

12.1 **Ownership Of Equipment.** Except as otherwise provided herein, Subrecipient shall retain ownership of equipment purchased pursuant to the terms of the grant. Subrecipient may not, during the term of the grant, transfer or convey its ownership interest in the equipment. Subrecipient shall not at any time during the term of the grant convert any facility equipment which was acquired pursuant to the grant to a use other than those for which the assistance was originally approved.

Equipment purchased with Recreational Boating Safety Act funds shall be used only for the purpose for which it was purchased and no other purpose, whether or not the Subrecipient continues to be supported by Recreational Boating Safety Act grant funds.

Observed/reported incidents of unauthorized use of MLE equipment shall be addressed by the following:

1) Any observed/reported incident of unauthorized use of MLE funded vessels will be followed-up by MLE communication with the Subrecipient. MLE may conduct site visits or contact area boaters for supplemental information as necessary.
2) In those instances where the MLE determines that an unauthorized use of a MLE funded vessel has occurred, the MLE will provide written notification to the operator of its determination with a warning that continued misuse or abuse of MLE-funded vessels and equipment may result in:
   a) the removal of misused equipment from the facility; and/or
   b) an assessment against the operator for reimbursement of the federal contribution against the current market value of the vessel.

12.2 Title. Title to equipment purchased under this Agreement shall vest in the Subrecipient. If the Subrecipient determines that it cannot use the equipment for the stated grant purposes at any point prior to the end of the equipment's useful life, but after the end of this award period and any extensions thereof, the Subrecipient shall inform MLE in writing within 30 days of such determination. Such equipment shall be transferred by the Subrecipient to a third party approved by MLE for use for grant purposes in accordance with applicable provisions of state and federal law. Should the equipment not be transferred to another state parks RBS approved law enforcement agency in accordance with this provision, the equipment shall either be returned to MLE for use for grant purposes, or it shall be disposed in accordance with 50 CFR Part 85; and 2 CFR Part 200.

12.3 Useful Life. Beyond the acquisition grant period of performance and throughout the duration of the equipment's useful life, the equipment must continue to be used in the program or project for which it was acquired, as Recreational Boating Safety Act Program. When no longer needed for the original program or project, equipment may be used in other activities in the following order of priority:

a. Activities supported under a Federal award from the Federal awarding agency which funded the original program or project; then
b. Activities under Federal awards from other Federal awarding agencies; then
c. Any activities consistent with the administration of the Washington State Parks and Recreation Commission.

12.4 Special Survivorship Note: Ownership is not absolute. Regardless of agreement's expiration, anything tangible, intangible, or intellectual property that was purchased or created from federal funds or funded with federal funds maintains federal and state MLE entanglements, requirements, or conditions (conditional ownership) unless/until released by the MLE or federal government in writing. While other conditions may apply, typically a release would occur upon the MLE or federal government being completely satisfied that the item in question has reached the end of its useful life which is usually a dollar value. Determination of value is solely at the discretion of the MLE or federal government. Should professional appraisal services be needed to determine value, these costs shall be borne by the Subrecipient. Selection of an appraisal services firm is subject to the written approval of the MLE or federal government.

12.5 Use and Maintenance. The Subrecipient shall operate and maintain the equipment, purchased, constructed, installed, renovated, operated, repaired, or maintained with MLE grant funds to function as intended for the full period of their useful life and in a manner that provides adequate service, promotes use, and protects public health. Such conditions include:

12.5.1 Subrecipient shall operate and maintain grant funded equipment in accordance with all applicable Federal, State and local laws, orders, regulations and permits.

12.5.2 Operation shall include having trained personnel available to facilitate operation of the equipment and a schedule for maintenance.

12.5.3 Law Enforcement vessels shall be operated by trained personnel with a valid State of Washington Boater Education Card or equivalent and be a graduate of state parks Basic Marine Law Enforcement Academy or equivalent.

12.5.4 Law Enforcement vessels shall be equipped with all federally required safety equipment

and provide and ensure appropriate personal flotation devices are worn at all times when on the vessel or dock.

12.5.5 All law enforcement vessels shall have a routine schedule for maintenance.

12.5.6 As a condition of receiving the grant funds, Subrecipient shall actively maintain the vessel for the **full design life** of the equipment provided from this grant.

12.5.7 Subrecipient shall be responsible for all operation, maintenance, and repair of all vessels and equipment provided from this grant.

12.6 Equipment Replacement.

When original or replacement equipment acquired under this award is no longer needed or the Subrecipient is no longer able to support the RBS mission and the disposition occurs during the grant period, disposition of the equipment shall be made as follows:

- The equipment may be transferred at no cost to another law enforcement agency with a state parks approved marine law enforcement program (e.g., city or county law enforcement agency) if such equipment will remain in use and be dedicated to the MLE program. The conditions for such transfer shall be stipulated by the MLE and shall include the same requirements as those imposed in the original grant. Any cash or in-kind match paid when the equipment was originally purchased will be forfeited in total.
- If the equipment cannot be transferred to another law enforcement agency with a state approved marine law enforcement program, it must be sold at the discretion of the MLE, and the Subrecipient shall pay MLE the proceeds of the sale or the fair market value of the equipment, whichever is the greatest.

12.6.1 Equipment Breakdown

In the event an equipment breakdown occurs during the grant period, Subrecipient shall notify MLE within ten (10) working days of breakdown. The equipment must be repaired and fully operational within thirty (30) working days after the breakdown where the breakdown can be remedied with normal expected repairs for one thousand dollars ($1000) or less. For repairs greater than one thousand dollars ($1000) the equipment must be fully operational within sixty (60) days after the breakdown. A written report for all breakdowns must be submitted via email to MLE within two (2) weeks of the breakdown describing the problem(s), repair(s), and the cost(s).

A failure to notify MLE of an equipment breakdown and plan for repairs may result in the withholding of grant funds.

12.7 Accident Report

Subrecipients or Subrecipient's staff involved in an accident must remain at the scene and assist any other vessel or person involved, if possible, without endangering their safety, their own vessel or the people aboard.

SECTION 13: OWNERSHIP OF WORK PRODUCT

13.1 As used in this Section 13 – Ownership of Work Product and elsewhere in this Agreement, the following terms have the meanings set forth below:

13.1.1 Project Ownership. MLE acknowledges and agrees that the Project is the exclusive property of the Subrecipient. MLE is neither responsible nor liable in any manner for the construction, operation or maintenance of the Project.

13.1.2 Special Survivorship Note: Ownership is not absolute. Regardless of agreement's expiration, anything tangible, intangible, or intellectual property that was purchased or created from federal funds or funded with federal funds maintains federal and state MLE entanglements, requirements, or conditions (conditional ownership), unless/until released by MLE or federal government in writing. While other conditions may apply, typically a release would occur upon the MLE or federal government being completely satisfied that the item in question has reached the end of its useful life which is usually a dollar value. Determination of value is solely at the discretion of the MLE or federal government. Should professional appraisal services be needed to determine value, these costs shall be borne by the Subrecipient. Selection of an appraisal services firm is subject to the written approval of the MLE or federal government.

SECTION 14: NO DUPLICATE PAYMENT

The Subrecipient shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Washington, including, but not limited to the Washington State Parks Recreation Commission, or the United States of America or any other party.

SECTION 15: CONTRIBUTION ON THIRD PARTY CLAIMS

15.1 If any third party makes any claim or brings any action, suit or proceeding alleging against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this *Section 15 – Contribution on Third Party Claims* and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this *Section 13 – Ownership of Work Product* with respect to the Third-Party Claim.

15.2 With respect to a Third Party Claim for which MLE is jointly liable with Subrecipient (or would be if joined in the Third Party Claim), MLE shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Subrecipient in such proportion as is appropriate to reflect the relative fault of MLE on the one hand and of Subrecipient on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of MLE on the one hand and of Subrecipient on the other hand shall be determined

by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. MLE's contribution amount in any instance is capped to the same extent it would have been capped under Washington law if the State had sole liability in the proceeding.

15.3 With respect to a Third Party Claim for which Subrecipient is jointly liable with MLE (or would be if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by MLE in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of MLE on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subrecipient on the one hand and of MLE on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Washington law if it had sole liability in the proceeding.

SECTION 16: SUBRECIPIENT DEFAULT

Subrecipient will be in default under this Agreement upon the occurrence of any of the following events:

16.1 Subrecipient fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

16.2 Any representation, warranty or statement made by Subrecipient in this Agreement or in any documents or reports relied upon by MLE to measure the delivery of services, the expenditure of funds or the performance by Subrecipient is untrue in any material respect when made;

16.3 Subrecipient (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

16.4 A proceeding or case is commenced, without the application or consent of Subrecipient, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Subrecipient, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Subrecipient or of all or any substantial part of its assets, or (c) similar relief in respect to Subrecipient under any law relating to

bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Subrecipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 17: INDEMNIFICATION

Subrecipient shall hold harmless, save harmless, indemnify, and defend at the Subrecipient's expense the State of Washington, Commission, it officers, employees, successors and assigns against any and all damages and/or losses arising out of Subrecipient's use of, or presence or activity in, the facilities, including those arising out of the use or operation of equipment or facilities or as a result of the conduct of Subrecipient's programs, or from the conduct of Subrecipient's employees or agents, or damages or vandalism to facilities by third-parties, contracted or participating in Subrecipient's programs, events or activities.

SECTION 18: LIABILITY INSURANCE

18.1 LIABILITY INSURANCE—If required in the special terms and conditions subrecipient shall obtain and keep in force during the term of this Agreement, a combined single limit bodily injury and property damage insurance policy in the minimum amount of $1,000,000 naming Washington State Parks Commission as an additional insured against any liability arising out of Subrecipient's or its agents, employees, or assigns. Subrecipient shall provide to Commission, a certificate evidencing such insurance coverage and shall provide 30 days written notice prior to any changes in the amount or cancellation of said policy.

- Subrecipient shall buy and maintain property insurance covering all real property and fixtures, equipment, and tenant improvements and betterments. Such insurance shall be written on an all-risks basis and, at a minimum, cover the perils insured under ISO special causes of loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles.
- Any coinsurance requirement in the policy shall be waived.
- State shall be included as an insured and a loss payee under the property insurance policy.

18.2 AUTOMOBILE INSURANCE-- Subrecipient shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than $1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. Subrecipient waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

18.3 INDUSTRIAL INSURANCE COVERAGE-- Subrecipient shall provide or purchase industrial insurance coverage for themselves their employees as required by Labor and Industries prior to performing work under this Agreement. Commission will not be responsible for payment of industrial premiums or for any other claim or benefit for Subrecipient, or any subcontractor or employee of Subrecipient, which might arise under

the industrial insurance laws during the performance of duties and services under this agreement. Subrecipient, its employees and agents performing under this contract, are not employees of Commission.

18.4 CERTIFICATE OF INSURANCE / NAMING WASHINGTON STATE AS ADDITIONAL INSURED: A current Certificate of Insurance must be submitted with the grant application form. The certificate must name Washington State Parks and Recreation Commission as an additional insured, and the Certificate Holder and contain a provision that the insurance will not be canceled for any reason except after thirty (30) days written notice. Facilities must be insured by carriers licensed in or eligible to do business in Washington, and must maintain applicable Commercial General Liability, Automobile Liability, and Worker's Compensation coverage. Government entities will need to include a letter from their Chief Financial Officer stating if they are self-insured or provide a certificate of insurance as stated below."

SECTION 19: REMEDIES

19.1 In the event Subrecipient is in default under *Section 16 – Subrecipient Default* MLE may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under *Section 22 - Termination*, (b) reducing or withholding payment for work or Work Product that Subrecipient has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Subrecipient to perform, at Subrecipient's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under *Section 20 – Recovery of Overpayments* (which is in addition to the remedies provided in *Section 9.7 - Overpayment*), of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and MLE may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

19.2 In the event MLE terminates this Agreement under *Section 22.1 – Termination for Convenience*, *Section 22.2 Termination for Inefficiency*, *Section 22.3 – Termination Because of Non-Appropriation or Project Ineligibility*, or *Section 22.4 – Termination for Default*, Subrecipient's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by MLE, for work completed and accepted by MLE within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, less any claims MLE has against Subrecipient, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by MLE, for authorized expenses incurred, less previous amounts paid for the deliverable and any claims that MLE has against Subrecipient. In no event will MLE be liable to Subrecipient for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Subrecipient exceed the amount due to Subrecipient under this *Section 19.2*, Subrecipient shall promptly pay any excess to MLE.

SECTION 20: RECOVERY OF OVERPAYMENTS

In addition to the remedies provided in *Section 9.7 - Overpayment*, if payments to Subrecipient under this Agreement, or any other agreement between MLE and Subrecipient, exceed the amount to which Subrecipient is entitled, MLE will not reimburse any further claims. In addition, MLE will require repayment of any over payments as reflected in Section 9.7 of this agreement. may, after notifying Subrecipient in writing, withhold from payments due Subrecipient under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 21: LIABILITY

THE SUBRECIPIENT SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION, EXPIRATION, OR SUSPENSION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 22: TERMINATION

22.1 Termination for Convenience. The Subrecipient may terminate this Agreement at any time upon thirty (30) days prior written notice to MLE; provided, however, that the Subrecipient shall, within thirty (30) days of such termination, reimburse MLE for all funds contributed by MLE to the Project; provided further that until the Subrecipient has fully reimbursed MLE for such funds, the Subrecipient shall comply with the terms hereof. Delinquent payments shall bear interest at the rate of 12 percent (12%) per annum, if such rate shall exceed the maximum rate allowed by law, then as such maximum rate, and shall be payable on demand. After ninety (90) days MLE may turn any delinquent debt over for collection.

22.2 Termination Because of Inefficiency. Use of federal funds demands good stewardship. MLE in an ongoing basis will be monitoring the performance of the subrecipient through the subrecipient's reporting into the MLE Statement of Activity Reporting system. If in MLE's opinion, these metrics demonstrate poor stewardship the Agreement will be terminated. If feasible, MLE may work with the Subrecipient and give the Subrecipient an opportunity to improve the metrics to what MLE believes is a healthy metric.

22.3 Termination Because of Non-Appropriation or Project Ineligibility. MLE, as provided in *Section 33 - Force Majeure*, may modify or terminate this Agreement and at any time upon 30 days prior written notice to the Subrecipient, may modify or terminate this Agreement if:

a. MLE fails to receive funding or allotments, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded hereunder or should any state law, regulation or guideline be modified, changed or interpreted in such a way that the Project, or any portion of the Project, is no longer eligible for facility grant funds.

b. In the event insufficient funds are appropriated for the payments under this Agreement and the Subrecipient has no other lawfully available funds, then the Subrecipient may terminate this Agreement at the end of its current federal fiscal year, with no further liability to MLE. The Subrecipient shall deliver written notice to MLE of such termination no later than 30 days from the determination by the Subrecipient of the event of non-appropriation. MLE shall pay for all authorized Project costs expended up to the date of written notice of termination.

22.4 Termination for Default. MLE, at any time upon 30 days prior written notice of default to the Subrecipient, may modify or terminate this Agreement if:

a. The design and implementation, of the Project is not pursued with due diligence; or

b. The Project is not permissible under federal, state, or local law; or

c. The Subrecipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or

d. The Subrecipient, without the prior written approval of MLE uses the funds provided by MLE hereunder to pursue any project other than the Project described in the final project approved by MLE; or

e. During the term of this Agreement, the Subrecipient fails to perform any obligation or requirement of this Agreement.

f. The Subrecipient defaults under any other agreement between the Parties.

22.5 Rights and Remedies.

a. The Subrecipient shall, within 30 days of its receipt of a notice of default, reimburse MLE for all funds contributed by MLE to the Project. Further, MLE shall have any and all rights and remedies available at law or in equity.

b. In the event that Subrecipient has materially failed to comply with this Agreement and such non-compliance has resulted in the Federal Funding Agency terminating MLE's grant or cause or requires MLE to return funds to the Federal Funding Agency, Subrecipient will return to MLE an amount equal to the funds which MLE is not reimbursed for or is required to return to Federal Funding Agency.

SECTION 23: NONAPPROPRIATION

MLE's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon MLE receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow MLE, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement.

SECTION 24: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

This agreement may be amended only by mutual agreement of the parties in writing. Formal written amendment of the contract is required for changing the terms and conditions specifically stated in the original agreement and any prior amendments, including but not limited to:

- Budget revisions
- Scope of work
- Change in due dates
- Extensions of the period of performance
- Any other revisions determined material by MLE

SECTION 25: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address or to such other addresses as either Party may indicate pursuant to this *Section 24 - Amendments*. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered.

SECTION 26: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under *Section 11 – Governing Law and Consent to Jurisdiction*, *Section 13 – Ownership of Work Product*, *Section 20 – Recovery of Overpayments*, *Section 21 – Limitation of Liability*, and *Section 26 - Survival* hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 27: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 28: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 29: COMPLIANCE WITH LAW

29.1 Compliance with Law Generally. Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Subrecipient and the Agreement.

29.2 Penalty of Perjury. By its execution of this Agreement, Subrecipient certifies under penalty of perjury under the laws of the state of Washington the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement.

29.3 Tax Compliance. Subrecipient has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Subrecipient shall, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this *Section 29.3 – Tax Compliance*, "tax laws" includes: (i) All tax laws of this state; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Subrecipient, to Subrecipient's property, operations, receipts, or income, or to Subrecipient's performance of or compensation for any work performed by Subrecipient; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Subrecipient, or to goods, services, or property, whether tangible or intangible, provided by Subrecipient; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any failure to comply with the provisions of this *Section 29 – Compliance With Law* constitutes a material breach of this Agreement. Any failure to comply with Subrecipient's certifications shall constitute a material breach of this Agreement. Any failure to comply shall entitle MLE to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

29.3.1 Termination of this Agreement, in whole or in part, this is in addition to any remedies available under *Section 22 - Termination*.

29.3.2 Offsetting against any amount owed to Subrecipient, and withholding of amounts otherwise due and owing to Subrecipient, in an amount equal to State's setoff right, without penalty; and

29.3.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. MLE may recover any and all damages suffered as the result of Subrecipient's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

The state of Washington may take any and all actions permitted by law relative to the collection of taxes due to the state of Washington or a political subdivision, including (i) garnishing the Subrecipient's compensation under this Agreement or (ii) exercising a right of setoff against Subrecipient's compensation under this Agreement for any amounts that may be due and unpaid to the state of Washington.

These remedies are cumulative to the extent the remedies are not inconsistent, and MLE may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

SECTION 30: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Subrecipient is not an officer, employee, or agent of the state of Washington.

SECTION 31: PERSONS NOT TO BENEFIT

No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Washington Legislative Assembly, elected official of the state of Washington, or official, agent, or employee of the state of Washington, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the state of Washington shall be admitted to any share or part of this Agreement or derive any financial benefit that may arise therefrom.

SECTION 32: INTENDED BENEFICIARIES

MLE and Subrecipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 33: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. MLE may terminate this Agreement upon written notice to Subrecipient after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 34: ASSIGNMENT AND SUCCESSORS IN INTEREST

Subrecipient may not assign or transfer its interest in this Agreement and any attempt by Subrecipient to assign or transfer its interest in this Agreement will be void and of no force or effect. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors. Any sub grant entered into under this Agreement shall contain terms and conditions substantially similar to this Agreement, including Federal provisions contained in Exhibit A and the sub grant shall:

a. If the contract is not to a unit of Washington State government, the contract shall require the Subrecipient to indemnify, defend, save and hold harmless the state of Washington and its officers, employees, and agents (“indemnitee”) from and against any and all claims, actions, liabilities, damages, losses or expenses arising from a tort, caused or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subrecipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“claims”). It is the specific intentions of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

SECTION 35: SUBCONTRACTS & SUB-AWARDS

Subrecipient shall not, without MLE's prior written consent, enter into any subcontracts or follow-on sub-recipient sub-awards (work carried out by parties other than the Subrecipient) for any of the work required of Subrecipient under this Agreement. Subrecipient's consent to any contract, subcontract, sub-award will not relieve Subrecipient of any of its duties or obligations under this Agreement.

SECTION 36: TIME IS OF THE ESSENCE

Time is of the essence in Subrecipient's performance of its obligations under this Agreement.

SECTION 37: MERGER AND WAIVER

This Agreement and all Exhibits and Attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

Failure by MLE to insist upon the strict performance of any provision of this agreement shall not affect MLE's right to require strict performance of the same provision in the future or any other provision. Failure by MLE to exercise any right based upon a breach, or acceptance by MLE of performance during such breach, shall not constitute a waiver of any of its rights or remedies with respect to such breach.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 38: RECORDS MAINTENANCE AND ACCESS

Subrecipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Subrecipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Subrecipient, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Subrecipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Subrecipient, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Subrecipient acknowledges and agrees that Washington State Parks and Recreation Commission and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Subrecipient shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

SECTION 39: HEADINGS

The headings and captions to sections or subsections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 40: INCORPORATION BY REFERENCES AND ORDER OF PRECEDENCE

The table below reflects the documents that are incorporated by reference (whether attached or not) and the order of precedence should there be a conflict between the parts of document or other documents incorporated by reference. The lower the number, the higher the precedence. Where two or more documents address a point or concept but are not in conflict, they should be read as supplemental, additive, and/or cumulative.

Precedence	Document
1 (highest)	United State of America Laws or Rules AND Washington State Laws and Rules
2	Amendments to any of the documents listed below shall control over the earlier version of that same document or earlier amendment to that same document.
3	EXHIBIT A - FEDERAL COMPLIANCE TERMS
4	EXHIBIT B - INFORMATION REQUIRED BY 2 CFR §200.331(A) (1)
5	EXHIBIT C – 2 CFR 200, Appendix II - TERMS
6	ATTACHMENT A - SUBRECIPIENT'S MLE GRANT APPLICATION & BUDGET FORM
7	ATTACHMENT B - SUBRECIPIENT'S COMPLETED BUDGET FORM
8	ATTACHMENT C – ALLOWABLE COSTS & EXPENDITURES FOR STATE VESSEL REGISTRATION FEES AND FEDERAL ASSISTANCE GRANTS
9	ATTACHMENT D – VESSEL REGISTRATION FEE PROGRAM GUIDANCE FOR MARINE LAW ENFORCEMENT PROGRAMS

SECTION 41: SIGNATURES

This Agreement, which includes incorporated documents, is executed by the persons signing below who warrant under penalty of perjury under the laws of the State of Washington that they have read and understood the document and find it to be legal, valid, and a binding obligation, enforceable according to its terms, and have the authority to execute the contract.

Benton County Sheriff's Office 7122 W Okanogan Pl., Suite A120 Kennewick, WA 99336-2539	**Washington State** **Parks and Recreation Commission** PO Box 42650 Olympia, WA 98504-2650
Print: Tom Croskrey	**Print:**
Sign:	**Sign:**
Title: Benton County Sheriff	**Title:** Contracts, Grants, Procurement Manager
Email: Tom.Croskrey@co.benton.wa.us	**Email:** ContractsAndProcurement@parks.wa.gov
Date:	**Date:**
Place: Kennewick, WA	**Place:** Tumwater, WA

Approved as to Form:

Ryan J Lukson, Civil DPA

EXHIBIT A: FEDERAL COMPLIANCE TERMS

I. Grant Subrecipient Compliance Requirements:

A. Subrecipient is responsible to ensure compliance with the federal implementing regulations for (Clean Vessel Act 50 CFR Part 85 or Boating Infrastructure Grant Program 50 CFR Part 86).

B. Subrecipient to comply with Assurances – Construction Programs (Standard Form 424D)

C. Pursuant to 2 CFR Part 170, MLE will enter grant information into the Federal Funding Accountability and Transparency Act (FFATA).

II. Federal Terms and Conditions:

Subrecipient is responsible to comply with the following Federal Terms and Conditions, as applicable:

A. Uniform Administrative Requirements, 2 CFR Part 200, Subparts A through D or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B. including but not limited to the following:

1. Property Standards. 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

2. Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit. These are, to the extent applicable, obligations of Subrecipient, and Subrecipient shall also include these contract provisions in its contracts with non-Federal entities.

3. Audits. Subrecipient shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law. If Subrecipient expends $750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to MLE within 30 days of completion.

B. Cost Principles 2 CFR Part 200, Subpart E

C. Central Service Cost Allocation Plans Appendix V to Part 200

D. Indirect Cost Proposals Appendix VII to Part 200

E. Audit Requirements 2 CFR Part 200, Subpart F

F. Federal Non-discrimination Statutes. Subrecipient is responsible to comply with all federal statutes relating to non-discrimination, including but not limited to: Title VI of the

Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; Title IX of the Education Amendments of 1972 (20 USC §§ 1681-1683; 1685-1686) which prohibits discrimination on the basis of gender; Section 504 of the Rehabilitation Act of 1973 (29 USC § 794) which prohibits discrimination on the basis of handicaps; Age Discrimination Act of 1975 (42 USC §§ 6101-6107) which prohibits discrimination on the basis of age; Drug Abuse Office and Treatment Act of 1972 (PL 92-255) which prohibits discrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616) regarding non-discrimination on basis of alcohol abuse or alcoholism; Sections 523 and 527 of the Public Health Services Act of 1912 as amended (42 USC §§ 290 dd-3 and 290 ee-3) regarding confidentiality of alcohol and drug abuse patient records; Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.) regarding nondiscrimination in the sale, rental or financing of housing; any other nondiscrimination provisions of the specific statutes under which this agreement is being made; and the requirements of any other nondiscrimination statute(s) which apply to the federal financial assistance award received by MLE.

G. Eligible Workers. Subrecipient shall ensure that all employees complete the I-9 Form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Subrecipient shall comply with regulations regarding certification and retention of the completed forms.

H. To the extent applicable to this award, Subrecipient is responsible to comply with

1. National Environmental Policy Act; E.O. 11514 (which requires the Subrecipient to comply with environmental standards which may be prescribed pursuant to institution of environmental quality control measures under the National Environmental Policy Act of 1969 (42 USC Chapter 55, [Pub. L. 91-190]) and Executive Order 11514.

2. E.O. 11990: Protection of Wetlands (which requires the Subrecipient to comply with environmental standards for the protection of wetlands)

3. E.O. 11988: Floodplain Management; E.O. 11988 (which requires the Subrecipient to comply with environmental standards for the evaluation of flood hazards in floodplains)

4. Coastal Zone Management Act (which requires Subrecipient to ensure that the work performed will not violate State management programs developed under the Coastal Zone Management Act of 1972) (16 USC Chapter 33, Sections 1451 et seq.).'

5. Wild and Scenic Rivers Act (which requires the Subrecipient to protect components or potential components of the national wild and scenic rivers system). (16 USC Chapter 28, Sections 1271 et seq.)

6. Historic Preservation Act, E.O. 11593 (which requires Subrecipient to assist the awarding agency in assuring compliance with Section 106 of the National Historic

Preservation Act of 1966, as amended (16 USC 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC Sec. 469a-1 et seq.).

7. Endangered Species Act (which requires the Subrecipient to comply with environmental standards for the protection of endangered species) 16 USC Chapter 35, Sections 1531ff [Pub. L. 93-205]).

8. Marine Mammal Protection Act (which Requires permits and reports for research projects that will involve the taking or importation of protected marine mammals or marine mammal products) (16 U.S.C. Chapter 31, Subchapter I, Sections 1361ff).

I. Other Requirements (USFWS specific)

1. Universal Identifier and Central Contractor Registration 2 CFR Part 25

2. Reporting Sub-awards and Executive Compensation 2 CFR Part 170

3. Award Term for Trafficking in Persons (applicable to private entity subrecipients) 2 CFR Part 175

4. Government-wide Debarment and Suspension (Non-procurement) 2 CFR Part 1400

5. Requirements for Drug-Free Workplace (Financial Assistance) 2 CFR Part 1401

6. 43 CFR 18 New Restrictions on Lobbying: Submission of an application also represents the applicant's certification of the statements in 43 CFR Part 18, Appendix A, Certification Regarding Lobbying.

7. 41 U.S.C. 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:

a. This award, related sub-awards, and related contracts over the simplified acquisition threshold and all employees working on this award, related sub-awards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC 4712b. Subrecipient, Subrecipient's contractor, or Subrecipient's sub-recipient(s) (however many levels), and their contractors award contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

c. The Subrecipient shall insert this clause, including this paragraph (c), in all sub awards and in contracts over the simplified acquisition threshold related to this award.

8. Prohibition on Members of Congress Making Contracts with Federal Government: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a

corporation for the public's general benefit 41 USC § 6306.

9. Federal Leadership on Reducing Text Messaging while Driving: Subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in Section 3(a) of the Order Executive Order 13513.

EXHIBIT B: INFORMATION REQUIRED BY 2 CFR §200.331(A) (1)

Federal Award Identification:

(i) Subrecipient name (which must match registered name in DUNS): **Benton County Sheriff's Office**

(ii) Subrecipient's DUNS number: 083738997

(iii) Federal Award Identification Number (FAIN): 3321FAS21053

(iv) Federal Award Date: 10/1/2021

(v) Sub-award Period of Performance Start and End Date: From 10/1/2021 to 9/30/2022

(vi) Total Amount of Federal Funds Obligated by this Agreement: **$12,173.96**

(vii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: **$12,173.96**

(viii) Federal award project description: Marine Law Enforcement Federal Financial Assistance Grant

(ix) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:

(a) Name of Federal awarding agency: United States Coast Guard

(b) Name of pass-through entity: Washington State Parks and Recreation Commission

(c) Contact information for awarding official of the pass-through entity: boatingprogram@parks.wa.gov

(x) CFDA Number and Name: Federal Boat Safety Act 92-75

(xi) Is Award R&D? No

(xii) Indirect cost rate for the Federal award: NA %

**For the purposes of this Attachment, the term "pass-through entity" refers to Washington MLE Grant Program.*

EXHIBIT C: 2 CFR 200, APPENDIX II - TERMS

Provisions for Non-Federal Entity Contracts Under Federal Awards (current as of 20200717)

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United

States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014

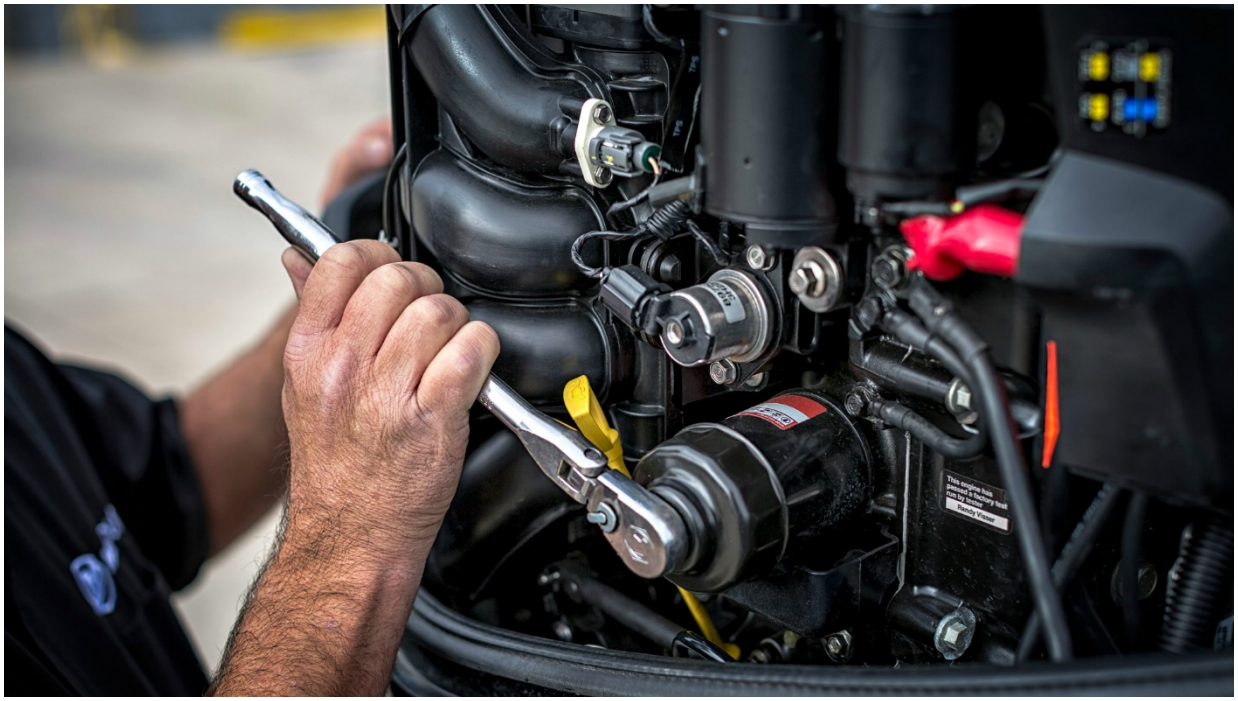
ATTACHMENT "A": SUBRECIPIENT'S FFA GRANT APPLICATION

ATTACHMENT "B": SUBRECIPIENT'S COMPLETED BUDGET FORM
(NOT REQUIRED FOR THIS GRANT)

ATTACHMENT C – ALLOWABLE COSTS & EXPENDITURES FOR STATE VESSEL REGISTRATION FEES & FEDERAL ASSISTANCE GRANTS

Allowable Costs & Expenditures For State Vessel Registration Fees & Federal Assistance Grants

Updated June 2021









Contents

VESSEL REGISTRATION FEES & GRANT FUNDING 39

UNIT COST APPROVAL 39

COST PRORATION 39

ADMINISTRATIVE COSTS 39

ALLOWABLE EXPENDITURES 39

RBS SALARIES 39

RBS EDUCATION AND INSTRUCTION 40

RBS TRAINING 40

RBS EQUIPMENT: 41

PATROL VESSELS 41

ASSOCIATED EQUIPMENT FOR PATROL VESSELS 42

PATROL VESSEL TRAILERS 43

BOAT EQUIPMENT 44

NAVIGATION AIDS & BUOYS 44

EDUCATION 44

NON-ALLOWABLE COSTS AND EXPENDITURES 45

VESSEL REGISTRATION FEES & GRANT FUNDING

Any item not listed below must be reviewed and found acceptable by the Washington State Parks Boating Program (Boating Program) before it is considered a valid Recreational Boating Safety (RBS) expenditure.

UNIT COST APPROVAL

Items with a unit cost of $5,000 or more under the VRF funds and $2500 or more under the FFA grant must have the prior written approval of Washington State Parks and Recreation Commission Marine Law Enforcement (MLE) Coordinator.

COST PRORATION

If a cost benefits both your RBS program and other work of your agency, the cost should be allocated to the RBS Program based on the proportional benefit to the program. The costs may be allocated using any reasonable documented method.

ADMINISTRATIVE COSTS

Agencies that receive Vessel Registration Fees (VRF) are not allowed to charge flat administrative costs for the administration of the VRF funds as is often done with federal grants. However, agencies may charge the salaries and benefits costs of actual hours worked by staff associated with the administration of their dedicated VRF account.

Agencies that receive federal assistance grants from the Boating Program are allowed to charge indirect (administrative) costs for those funds. If the agency has a federally negotiated indirect cost rate, they are permitted to charge that against the total salaries + benefits charged to the federal assistance grants. They must first provide a copy of their current rate agreement to Parks. If not, then they may charge a *de minimums* flat rate of 10% or elect not to charge indirect at all (2 CFR 200.414(f)).

ALLOWABLE EXPENDITURES

Grant funds may be used only for activities under WAC 352-65-040, the ten elements necessary to accomplish the Recreational Boating Safety (RBS) mission. If it is unclear if an expense meets these criteria, contact State Parks at (360) 902-8845 or cheri.peel@parks.wa.gov to discuss the item before proceeding.

Allowable expenses include but are not limited to:

- **RBS SALARIES**
    - Time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington State and who have completed an RBS course acceptable to State Parks (BMLE or equal).

- Time, salaries, benefits and wages for officers or deputies who possess a Washington State Peace Officers Certification, are fully commissioned to enforce the laws of Washington State, and who have not completed a BMLE course is acceptable ONLY when working with an RBS trained officer AND when the agency has a written 'two-officer' policy for officers on marine patrol for the purpose of officer safety.

- **RBS EDUCATION AND INSTRUCTION**

  Providing instructors for the *Adventures in Boating* course that qualifies graduates for the required mandatory boater education card. Costs may include classroom supplies, light refreshments, other goods and services necessary to promote and teach classes, and officer salaries, benefits and wages. Officer salaries will only be reimbursed for those officers who have successfully completed a State Parks *Adventures in Boating* Instructor Training class and are listed on our files.

  Life jackets (USCG approved only) for the state *Adventures in Boating* course and other RBS presentations, such as: throw rings or cushions for loaners and the cost to print only the agency's name or RBS safety messages.

- **RBS TRAINING**

  Grant or VRF funds can be used to pay for full-time and reserve officers who are fully commissioned to enforce the laws of the State of Washington to attend training provided by the Boating Program or courses approved by the Boating Program. **Note: Approval from State Parks is mandatory if an officer or deputy is applying for a non-Washington RBS course.** Examples of approved courses include:

  - MLE Instructor Meeting
  - Basic Marine Law Enforcement/Boat Crew Member or equivalent (BMLE)
  - Boat Operator Search and Rescue (BOSAR)
  - Boating Under the Influence – Basic (BUI-Basic)
  - Boating Under the Influence-Advanced (BUI-Adv)
  - Personal Watercraft for Law Enforcement (PWCLE)
  - Enhanced Vessel Operator Course (EVOC)
  - Fall Marine Law Enforcement Conference
  - Boating Accident Investigation-Level 1
  - Officer Water Survival
  - Boater Education Instructor Training (BEIT)
  - Designated Education Officer Training (DEOT)

- Adventures in Boating Instructor Training
- RBS Related Local In-Service Training
- Other USCG training courses with prior approval
- Other NASBLA training courses with prior approval

Per Diem travel expenses at **state per diem rate** in effect for the destination RBS training, conferences, and meetings. Cost is prorated for percentage of travel /per diem for RBS purposes /missions only.

RBS EQUIPMENT

Allowable expenses may include the purchase, maintenance and operation of patrol boats and patrol boat equipment to perform the RBS mission as defined in WAC 352-65-040 only. **Any purchase exceeding $5,000 under the VRF funds must receive prior approval from the Boating Program. Any purchases exceeding $2,500 under the FFA grant must receive prior approval from the Boating Program.** All decisions by the Boating Program for equipment purchases are final.

PATROL VESSELS

- Motors and hardware
- Props
- Trailers and maintenance of trailers (repair, tires, winch, cables, power take-off)
- Patrol vessel and engine drive system repairs
- Repair and replacement of equipment on boat (includes de-watering pumps which can also be used as fire-fighting equipment)
- Tow vehicles (dedicated for 100% RBS use, or prorated for the percentage of time used for RBS activities)
- Hitch assemblies and installation cost for tow vehicles that are dedicated for 100% RBS use, or prorated for the percentage of time used for RBS activities
- Anti-freeze fluid
- Batteries and fluid; maintenance and replacement
- Costs related to the maintenance and repair of the vessel
- Costs related to marking and identifying patrol vessels as government owned, which includes painting, decals and cost of removal and application
- Vessel electrical system repairs and replacement
    - Electronic devices: parts and labor for maintenance, repairs to maintain, or replacement when devices fail, or are no longer serviceable, or when upgrades are required to meet customary and current standards for law enforcement work

  - Devices dedicated to the program such as agency & VHF radios
  - Radar units
  - Sirens
  - Blue lighting equipment
  - Hailers
  - Global positioning system (GPS) units
  - Personal breath testers (PBT)
  - Cell phones used 100% RBS only, or prorated for a percentage of time used on boat
  - Battery chargers and computers dedicated to program use
  - Includes brackets and fittings for installation and use
- Fluids for hydraulic system
- Fuel, fuel additives and filters; associated disposal fees
- Gear oil for lower units
- Glass replacement and costs to install, associated disposal fees
- Grease and lubricants
- Oil and oil filters; associated disposal fees
- Parts and labor for regular scheduled maintenance and scheduled replacement
- Parts for replacement on the vessel when failure occurs or when damaged and labor, which includes engine, lower unit and cooling system repairs and replacement
- Vessel canvas tops and side covers; includes repairs and replacement of canvas/vinyl/plastic material and framing structures
- Vessel hull and structural repairs/replacement of railings, pilot house, decks, cleats, ladders, swim platforms, Sampson posts, fittings, towing equipment, davits, anchors, chain, and associated hardware and fittings

ASSOCIATED EQUIPMENT FOR PATROL VESSELS

- Cost of emergency response and rescue equipment repair, replacement and maintenance, including: stretchers, first aid/first responder kits and materials, fire suppression equipment and supplies.
- Cost of fees related to cell phone charges, annual registration charges, renewal fees, and insurance are prorated for percentage of time used performing RBS missions.
- Cost of haul-outs and associated costs with cleaning and maintenance of hull, fixtures and drive systems, and associated disposal fees.
- Costs related to moorage, including cost of water/electricity associated with maintenance and moorage.

- Cost of required safety equipment on the vessel when replacement, repair, or regular maintenance is needed to meet state/federal regulations and maintain USCG standards. For example:
    - Life jackets, replacement parts (clips, hooks, CO2 cartridges and re-arm kits) and stenciling/screening of agency name or law enforcement
    - Exposures suits
    - Fire extinguishers/extinguishing systems
    - Visual distress signals
    - Navigation lights
    - Sounding devices
    - Ventilation systems
    - Backfire flame arrestor
- Cost of replacement, repair, or regular maintenance of equipment used during operation and moorage. For example:
    - Fenders
    - Lines for towing and mooring
    - Chafing gear
    - Boat hooks
    - Towing equipment
    - Bilge pumps
    - Batteries
    - Navigation charts
    - Piloting equipment
    - Helm fixtures and seats
    - Logbooks
    - Depth sounders & radar, does not include FLIR systems
    - Portable fuel tanks and hoses

PATROL VESSEL TRAILERS

- Costs related to maintenance and repair of patrol vessel trailer(s)
- Cost of tires and wheels, including: installation, repair, and balancing; associated disposal fees
- Electrical system maintenance, repair and replacement
- Hitch and ball repair or replacement
- Hydraulic or electric brake system maintenance, repair and replacement
- Oil, grease and lubricants, and associated disposal fees

- Winch maintenance, repair and replacement

BOAT EQUIPMENT

- Anchors
- Line for towing and mooring
- Chain or shackles and attachment hardware
- Carabineers
- Boat hooks
- Fire extinguishers (only USCG approved)
- Fenders
- Depth finders
- Radar units, does not include FLIR systems
- Radios and computers, dedicated for 100% RBS use or prorated for the percentage of time used for RBS activities
- Lines for tie up
- Light bars – blue lights only (no red, white or yellow lights)
- Search lights dedicated for 100% RBS use or prorated for the percentage of time used for RBS activities
- FLIR System (mounted on and wired to the vessel)
- Sirens
- Cost of installation and servicing of electronic components
- Canvas and siding for weather protection
- Haul out for cleaning/painting/servicing patrol vessels
- First-aid kits dedicated for 100% RBS use or prorated for the percentage of time used for RBS activities
- Rescue throw bags for use on boats only

NAVIGATION AIDS & BUOYS

- Navigation signs & markers (to meet RCW 79A.60.500 and WAC 352)
- Decals for buoys
- Chain
- Cable and connectors
- Weights
- Equipment to maintain buoys and signs to remain effective

EDUCATION

- Publications to promote RBS education that are already prepared or the creation, design and printing of publications
- Education equipment related to required boating safety equipment for recreational boats
- Promotion of *Adventures in Boating* classes (including presentation materials, light refreshments and room rental for classes)

NON-ALLOWABLE COSTS AND EXPENDITURES

- Bullet proof vests are beneficial, however equipment of this nature is not essential for meeting the established criteria in WAC 352-65-040 nor is it related to the performance of an RBS program mission and is considered a local agency responsibility to purchase.
- Equipment used in recovery operations (dive equipment, etc.) while being used in an RBS search or investigation mode are 100% eligible. Once this equipment is used for recovery operations it must be prorated between RBS missions and recovery missions.
- Handheld or portable night vision, FLIR or thermal imaging devices are a 100% allowable expense while in RBS patrol, search or investigation mode. Once this equipment is used for recovery operations it must be prorated. Permanently mounted and electrically wired FLIR and thermal Imaging devices are 100% allowable expenses.
- Homeland security missions (weapons, etc.), or any other equipment determined as unrelated by the Boating Program is not an allowable expense.
- Firefighting equipment is not an allowable expense.

EXHIBIT D – VESSEL REGISTRATION FEE PROGRAM GUIDANCE FOR MARINE LAW ENFORCEMENT PROGRAMS

Vessel Registration Fee Program Guidance for Marine Law Enforcement Programs

Updated January 2021













Introduction

The purpose of the Vessel Registration Fee (VRF) program is to focus local jurisdiction marine programs on injury prevention activities around recreational boating safety. These activities include enforcing RCW 79A.60: Regulation of Recreational Vessels and providing emergency response to boating accidents. Each marine patrol unit should strive to serve and protect the lives and property of Washington's recreational boaters. All VRF Funds are awarded based on the potential success and ability of the local agency to provide such service to the boating community. Recreational Boating Safety (RBS) programs are evaluated using the criteria published in this document, as well as its ability to meet the requirements and assurances of WAC 352-65: Boating Safety Program Approval.

This guidance document is intended to help local marine law enforcement programs understand the minimum qualifications and requirements to receive vessel registration fees. The document has been laid out to explain this as simply as possible. The beginning section provides a brief list of the qualifications and requirements, and the remainder of the document explains each component in more depth.

The Washington State Parks Boating Program (State Parks) has established different operational goals for agencies dependent on the population within their jurisdiction (based on 2019 census data).

- **Small Agencies –** Under 30,000 population
- **Medium Agencies –** Population between 30,000 and 100,00
- **Large Agencies –** Populations exceed 100,000.

State Parks Boating Program Contacts

Washington State Boating Law Administrator
Rob Sendak
Office: 360-902-8836
Mobile: 360-628-1876
Rob.Sendak@parks.wa.gov

Education & Outreach Coordinator
Derek Van Dyke
Office: 360-902-8842
Mobile: 360-628-3260
Derek.VanDyke@parks.wa.gov

Communications Consultant
Christina Fremont
Office: 360- 902-8837
Mobile: 360-522-0744
Christina.Fremont@parks.wa.gov

Fiscal Analyst
Corey Tolar
Office: 360-902-8843
Corey.Tolar@parks.wa.gov

Administrative Assistant
Kendra Harris
Office: 360-902-8832
Kendralee.Harris@parks.wa.gov

Customer Service Specialist
Nick Walsh
Office: 360-902-8849
Mobile: 360-890-2908
Nick.Walsh@parks.wa.gov

Marine Law Enforcement Coordinator
Matt Stower
Office: 360-902-8835
Mobile: 360-791-4668
Matt.Stowers@parks.wa.gov

Accidents & Reporting
Sherri Sweeney
Office: 360-902-8845
Sherri.Sweeney@parks.wa.gov

MLE Program Coordinator & SOAR Reports
Cheri Peel
Office: 360-902-8846
Cheri.Peel@parks.wa.gov

Mailing Address
Washington State Parks Boating Program
Attn: MLE Program
1111 Israel Rd SW
P.O. Box 42650
Olympia, WA 98504-2650

Physical Address
11834 Tilley Road South
Olympia, WA 98512

Phone: 360-902-8555
Fax: 360-586-6602
Website: GoBoatingWA.com

Table of Contents

Introduction **48**

State Parks Boating Program Contacts **49**

Overview of Agency Eligibility Requirements and Qualifications **51**

Summary of Required Documents and Due Dates 52

Administrative and Financial Requirements **53**

Annual Agreement – The A-299 Application Form 53

Designated Marine Lead / Conference Attendance / Surveys 53

Reporting Recreational Boating Activities and Financial Data 54

SOAR – Summary of Activity Reports 54

Vessel Registration Fee Expenditure Report 54

Supporting Financial Documents 54

Dedicated Account / Limitations on the Use of Funds / Accountability 54

Links to local ordinances 55

Operational Requirements **55**

Officer / Deputy Qualifications / Training / Training Currency 55

Vessels and Equipment 56

Boating Accident Reporting 57

Boater Assistance 58

Boat Patrol (Boat Log Hours) 58

Minimum Patrol Hour Goals Based on Agency Size 59

Enforcement 59

Boating Safety Inspections 60

Suggested Written Inspections – Minimum Goals 60

Boating Safety Education / Designated Education Officer / Deputy 60

Education and Outreach Tactics and Suggested Goals 61

Waterway Marking 63

Accountability **63**

Audits 63

Compliance 64

Overview of Agency Eligibility Requirements and Qualifications

Only counties or local public agencies having jurisdiction over waters used for recreational boating and possessing the authority to enforce the Revised Code of Washington and the Washington Administrative Code are eligible to apply to receive vessel registration fees. Participating agencies must:

Administrative & Financial Requirements

1. Sign an annual agreement with State Parks.
2. Designate a "Marine Lead": A single point of contact that oversees the day-to-day program operations, commits to attend the annual marine law enforcement conference, and responds to surveys sent by State Parks.
3. Designate a "Marine Supervisor": A single point of contact that has administrative authority over the marine program for the agency.
4. Report recreational boating safety activities and certain financial data to State Parks.
5. Place all vessel registration fees into a dedicated account, agree to spend them only on eligible expenses and agree to accountability requirements.
6. Provide digital links to all local ordinances regulating recreational boating.

Operational Requirements

7. Employ Officers / Deputies commissioned to enforce Washington state law.
8. Send all marine Officers / Deputies through the Washington State Parks Basic Marine Law Enforcement Academy.
9. Maintain annual training qualification currency for each participating Officer / Deputy.
10. Provide the appropriate vessels and equipment to carry out the operational requirements.
11. Report all boating accidents that occur within the jurisdiction (that meet minimum criteria) pursuant to RCW 79A.60.200, RCW 79A.60.220 and WAC 352-70.
12. Respond and provide assistance to boaters for on-water emergencies, complaints, and accidents.
13. Commit to a minimum number of hours patrolling the waters used by recreational boaters during peak boating season.
14. Actively enforce Washington's boating safety laws and regulations.
15. Conduct vessel safety inspections for recreational boaters.
16. Provide a boating safety education and outreach program and designate at least one Officer / Deputy to receive the Adventures in Boating Instructor training and to manage the program.
17. Place and maintain aids to navigation as legislated buy local ordinances.

Summary of Required Documents and Due Dates

Document Name	Form Number	Date Due
Request for Boating Program Approval	A-299 / Web form	15 Oct each year
Federal Financial Assistance Grant Application (If applying)	A-300/Web form	15 Oct each year
B.O.A.T Currency Report	Web form	15 Oct each year
Summary of Activity Report (SOAR)	Web form	Quarterly *
Boating Accident Report (BAR)	A-440	10 days following accident
Boating Accident Investigation Report (BAIR)	A-425 (Rev 08/2009)	10 days following accident / fatality meeting report criteria
Washington State Vessel Inspection	P&R A-274	Quarterly*
VRF Expenditure Report	Web form	1 Nov each year
Financial System Report	Agency generated	1 Nov each year
VRF Fund Balance Report	Agency generated	1 Nov each year
Boating Safety Surveys	N/A	Varies

***** *Document is due quarterly and must be submitted by the 15th of the month following the last month of the quarter (1st Qtr-04/15, 2nd Qtr-07/15, 3rd Qtr-10/15, 4th Qtr. 01/16*).

Administrative & Financial Requirements

Annual Agreement – The A-299 Application Form

Each agency is required sign an agreement with State Parks by submitting a complete A-299 application form. The A-299 contains several informational fields that must be filled out completely to be considered and aids in the continued approval of the agency's program. These forms are due each year by October 15. Agencies must provide information on their current staff, training, an inventory of vessels, and the anticipated patrol schedule. The form also defines the specific requirements your agency is committing to in exchange for vessel registration fees. This form, and instructions on how to fill it out, is located at http://mle.parks.wa.gov/.

Designated Marine Lead / Conference Attendance / Surveys

Each agency has a unique and different operational environment that offer a variety of solutions to ensure Marine Law Enforcement (MLE) unit operations, enforcement, fiscal and administrative functions are conducted according to best practices. Some agencies may have a Lieutenant serving the MLE Unit Supervisor and crew member conducting vessel operations and patrols. Other agencies may have a Sergeant as a supervisor and different crew member conducting vessel operations.

Recognizing this, State Parks requires each agency to designate a "Marine Lead", which is the person responsible for the day-to-day operations of its marine program and acts as the point-of-contact with State Parks on all issues and matters related to that agency's MLE unit. While the Sheriff or Chief of Police is ultimately responsible for ensuring their agency is meeting all the program requirements, the Marine Lead is the person implementing their guidance and communicating that to other Marine Unit members, State Parks, and the public.

The Marine Lead is responsible to:

- Ensure all required reports are completed and submitted to State Parks within due date guidelines.
- Submit personnel names to attend training courses and conferences.
- Attend the annual fall conference.
- Ensure that B.O.A.T. Currency training is conducted and reported to State Parks.
- Utilize Marine SECTOR within their agency.
- Communicate with State Parks on all matters and issues which may arise around recreational boating safety and marine law enforcement.
- Respond to surveys from State Parks.

State Parks also requires the agency to designate a "Marine Supervisor", which is the person with administrative supervision of the agency's MLE program.

Reporting Recreational Boating Activities and Financial Data

SOAR – Summary of Activity Reports

A Summary of Activities Report (SOAR) form must be submitted at least quarterly to State Parks. However, agencies are invited to report activities daily, weekly, or monthly. This form, and instructions on how to fill it out, is located at http://mle.parks.wa.gov/.

Vessel Registration Fee Expenditure Report

This annual report form must be submitted by October 15 each year to State Parks. The form fulfills the requirements of **WAC 352-65-040(9)** which requires each participating agency to submit an annual account of program expenditures showing the amount of vessel registration fees received, spent, and remaining in their dedicated account. They must also show the amount of "local spending" on recreational boating safety activities. "Local spending" is the amount agencies spend on the RBS mission and cannot come from other grant sources. Local spending is required because RCW 88.02.650 specifies that "[VRF] Funds may not supplant local funds used for boating safety programs". This form, and instructions on how to fill it out, is located at http://mle.parks.wa.gov/.

Supporting Financial Documents

Every Vessel Registration Fee (VRF) Expenditure Report must be accompanied with the following reports:

- Financial System Report: A report from the agency financial system (not Excel) showing a dedicated account for the deposit of state VRF funds received from the Office of State Treasurer (Enclosure 4).
- VRF Fund Balance Report: A report showing the fund balance of the dedicated account (Enclosure 5). The VRF fund balance on this system-generated report should match the bottom line on the VRF report ("Total Remaining Balance of State VRF funds for Fiscal Year").

Dedicated Account / Limitations on the Use of Funds / Accountability

Participating agencies must deposit VRF funds allocated by the state treasurer, under RCW 88.02.650, into an account dedicated solely for boating safety purposes, which include all activities or expenditures identified in this section. See the document "Allowable Costs & Expenditures for State Vessel Registration Fees & Federal Assistance Grants" for a thorough explanation of eligible expenses located at http://mle.parks.wa.gov/.

Vessel Registration Fees are intended to increase the education and enforcement efforts of local agencies and stimulate greater local participation in boating safety. They cannot be used to fund any activities except those that are part of the recreational boating safety mission.

Agencies may charge actual, direct administrative costs to the VRF account - such as staff hours it takes to fill out forms, or to maintain the dedicated account - but may not charge administrative fees based on an estimated percentage.

Participating agencies must maintain accurate annual records of activities and expenditures of their boating safety programs. Those records must be provided to State Parks consistent with their agreement, or upon request. The agency must also permit State Parks to audit the use of funds in accordance with generally accepted audit practices and standards.

Links to local ordinances

When the local jurisdiction adopts ordinances governing recreational boating, the ordinances must be at least as restrictive, but may be more restrictive than Washington state boating laws and regulations. Participating agencies must submit a web link to all such ordinances to State Parks using the designated field in the A-299 Form.

Operational Requirements

Officer / Deputy Qualifications / Training / Training Currency

Participating agencies must provide Officers / Deputies with law enforcement certificates from the Criminal Justice Training Commission which authorizes them to enforce all boating laws and regulations. All Officers / Deputies must maintain a current Washington State Peace Officers Certification.

Participating agencies are responsible for acquiring the required training for all RBS Officers / Deputies. Washington State Parks provides two or more Basic Marine Law Enforcement Academies each year to help agencies fulfill this requirement. These courses are provided at no charge. They are taught in the spring - usually one in Western Washington and one in Eastern Washington. Officers / Deputies may attend other basic boating safety training, if approved by State Parks. Those approved courses are the Federal Law Enforcement Training Center's (FLETC), Marine Law Enforcement Training Program (MLETP), or National Association of Boating Law Administrator's (NASBLA) Boat Crewman course (BCM).

Such training must be acquired within one year of initiating a new boating safety program and within one year for each newly assigned boating safety Officer / Deputy.

Washington State Parks' Marine Law Enforcement Training Academy is accredited through the NASBLA's Boat Operation and Training (BOAT) Program. As a term of accreditation, State Parks must ensure that all active marine Officers / Deputies maintain proficiency in basic RBS skills. This is important because these skills are perishable but critical to operate in a marine environment. All agencies must submit a BOAT Currency Requirements Report Form for all active personnel listed in the A-299. These reports are

submitted at least annually with the A-299 but may be updated throughout the year. This form, and instructions on how to fill it out, is located at http://mle.parks.wa.gov/.

Agencies which have not completed all currency training tasks required may submit a statement of explanation and attach it to the A-299 form. State Parks recognizes that many different circumstances could prevent training from being completed (wildfires, maintenance issues, staffing shortfalls, etc.). Each circumstance will be evaluated on its own merits.

Agencies are required to list any additional training courses their personnel have completed on the A-299 web form. This helps State Parks in maintaining an up-to-date database of marine law enforcement capabilities across the state and helps identify training subjects and courses that are needed, but not offered within the state.

Vessels and Equipment

Agencies must supply the necessary boating safety patrol equipment, including vessels capable of serving the minimum requirements outlined in this guidance. Patrol vessels must be properly marked and properly equipped as provided in chapter 88.02 RCW and chapter 352-60 WAC. Agencies are also required to provide State Parks with an inventory of all vessels along with details for how they are equipped each year by filling out the A-299 form. Information required on that form includes:

- **Vessels**: State Parks requires the following data on each vessel:
    - Vessel name
    - Manufacturer
    - Radio equipped (Y/N): Radio equipped means the vessel has an agency **radio installed or "hardwired".** Non-radio equipped boats are vessels that do not have radios installed. Portable radios may be carried on these boats, but they would be considered non-radio equipped. Examples include personal watercraft, drift boats, Jon boats, kayaks, and inflatable rafts (motorized or non-motorized).
    - SECTOR equipped (Y/N): SECTOR equipped boats are the patrol vessels in your agency that are SECTOR equipped with a computer or tablet plus printer and scanner (**installed or "hardwired" to include portable cased units**). Non-SECTOR equipped boats are vessels that do not have a computer, tablet, printer installed or if these are not carried aboard as a cased kit.
    - Model
    - Length
    - Propulsion type
    - Horsepower
    - Year
    - Funds used to purchase the vessel (local, state, or federal)
    - Percent of time employed for the RBS mission.

NOTE: Vessels purchased with state or federal dollars must be sold at the end of their useful life, consistent with the local agency's policies and procedures. Once a vessel is sold it should be removed from the Patrol Vessel list as quickly as possible. **If the agency is selling a vessel that was purchased with federal grant dollars provided by State Parks, you must notify State Parks 60 days in advance of the sale date**.

- **Vehicles** (trucks, cars, SUVs, ATVs): The number of other patrol vehicles assigned to the marine services unit **and the percentage they are used for RBS activities**.
    - Vehicle type
    - Manufacturer
    - SECTOR/Radio equipped
    - Model
    - Year
    - Funds used for purchase.
    - Percent of time employed for the RBS mission.

- **Aircraft:** The number of aircraft in your agency **and the percentage they are used for RBS activities.**
    - Aircraft type
    - Manufacturer
    - SECTOR/Radio equipped
    - Model
    - Year
    - Funds used for purchase.
    - Percent of time employed for the RBS mission.

- **Equipment valued at $5000.00** (i.e., engines, electronics, etc.): Agencies are required to update their inventory of durable items defined as having a cost or value of $5000.00 or more. Only items listed under "allowable expenses" are permitted (see "Allowable Expense Guidance" document for full details).
    - Type of equipment
    - Manufacturer
    - Model
    - Year
    - Funds used for purchase (local, state, federal)

Boating Accident Reporting

Participating agencies are required to submit accident reports to State Parks in compliance with RCW 79A.60.200, RCW 79A.60.220 and WAC 352-70.

For any boating accident resulting in a death or injury requiring hospitalization, each participating agency must:

- Notify State Parks **within 48 hours** of becoming aware it.
- Fill out and submit a complete Boating Accident Investigation Report (BAIR – form number A-425) within ten days of the occurrence.
- Include the results of any other investigation conducted by the agency.
- Submit any coroner's reports concerning the death of any person resulting from the boating accident, within one week of completion.

Participating agencies must also submit a Boating Accident Report (BAR – form number A-440) within **10 days** of the occurrence to State Parks for any boating accident:

- Resulting in a death, OR
- An injury requiring hospitalization, OR
- Damage to any vessel or property of two thousand dollars or more, OR
- A vessel is a complete loss, OR
- A person disappears from the vessel under circumstances that indicate death.

Boater Assistance

The local municipality will have the ability to respond or coordinate response to boating emergencies which occur within their jurisdiction. Furthermore, agencies must document each occurrence and report it to State Parks through the Summary of Activity Report (SOAR) at least quarterly using the following definitions:

- **Search and Rescue/Recovery** – Search and rescue (SAR) is defined as a water-borne response (including aircraft) involving a person or vessel **in peril**. Agencies should only report SAR cases on the Summary of Activity Report (SOAR) that were assigned a case number by their agency or a USCG MISLE Case ID Number and an Urgent Marine Information Broadcast (UMIB) initiated by the USCG. Agencies should not report assists (defined below) as SAR cases.

- **Assist** – An "Assist" is defined as aid where there is no immediate danger to the vessel or its occupants. This includes vessels involved in boating accidents, disabled, aground, out of fuel, or otherwise unable to reach a safe mooring under their own power. Assistance may include providing a tow, jump start, re-floating, re-righting, fuel, repair, repair parts, assisting persons in the water, etc. This does NOT include the salvage of a vessel once abandoned or commercial vessels. Report the number of vessels assisted and the number of persons assisted on the SOAR report.

Boat Patrol (Boat Log Hours)

Boat patrol (Boat Log Hours) are those hours that the patrol vessel was actually on the water patrolling. Participating agencies must submit a patrol schedule (with the A-299) that demonstrates they are patrolling waters within their jurisdiction during peak recreational hours. They must also patrol a

minimum number of hours per year. See the note below.

Minimum Patrol Hour Goals Based on Agency Size

- Small agencies - 133 hours
- Medium agencies - 255 hours
- Large agencies - 436 hours

NOTE: State Parks recognizes that Washington State experiences a diverse boating season. Various areas of the state have increased boating activities due to recreation fishing, hunting and pleasure crafting. Because of its diverse landscapes and seasons, State Parks acknowledges that the traditional peak boating season remains during the time between Memorial Day and Labor Day but is not exclusive to that time frame. State Parks has collected data for patrol hours performed by all participating over a period of years and has established the average boat log hours for agencies based on jurisdiction population size according to the U.S. Census. Patrol hours can be a combination of Boat Log and Ramp-side hours.



Patrol hours is considered a critical metric. It is used by State Parks to determine if an agency is complying with the minimum requirements. Failing to achieve the minimum number of hours of patrol (based on size) could be a factor in determining ineligibility for vessel registration fees.

Example patrol schedule

Boat Patrol Schedule							
	Mon	Tue	Wed	Thur	Fri	Sat	Sun
Patrol Hours							
# of Officers / Deputies							
# of Vessels							
Patrol Season Beginning Date				Patrol Season Ending Date			

Enforcement

Participating agencies must enforce safety equipment, vessel operation, noise level, navigation, harbor improvements (as authorized and placed through local ordinances), and registration laws as specified in Title 88 RCW, and as specified in local codes or ordinances. Agencies must also document and report the numbers of warnings and citations they issue for each type of boating violation in the Summary of Activity Report – **except those issued through SECTOR**.

State Parks recommends zero tolerance policy in the enforcement of mandatory boater education card carriage, life jacket wear/carriage, boating under the influence and rules of the road violations. Officers / Deputies should strongly consider issuing citations for violations of these laws in all circumstances.

The SECTOR system should be used to issue boating citations and warnings. State Parks will no longer accept mailed-in paper inspection forms, although State Parks will continue to provide paper inspection forms to agencies for internal use.

Boating Safety Inspections

Participating agencies must complete written boating safety inspections during enforcement and informational contacts when considered safe and appropriate to document boater compliance with state boating laws. State Parks will provide boating safety inspection forms. Copies of the completed inspections must be submitted to State Parks for statistical purposes. Inspections conducted in SECTOR do not have to be reported to State Parks.

NOTE: We will not accept paper inspection forms after January 1, 2019. All inspections must be submitted using SECTOR.

State Parks has calculated suggested minimum goals for the number of boating safety inspections an agency performs in a boating season based on size.

Suggested Written Inspections – Minimum Goals

- Small, 92
- Medium, 283
- Large, 372

Boating Safety Education / Designated Education Officer / Deputy

Participating agencies must have a boating safety education and information program. At a minimum, they must designate an Officer / Deputy, trained by State Parks, to coordinate the activities of boating safety education instructors, act as liaison to boating education organizations and to coordinate:

- Boating safety presentations, which may include presentations to primary and secondary school children, boating organizations, or youth groups.
- Boating safety instruction meaning a public course of instruction using the Adventures in Boating materials from State Parks, or other state or nationally recognized curriculum approved by State Parks.
- Distribution of boating safety information, including materials provided by State Parks, to boating and outdoor recreation organizations, the boating public, public agencies, and local media.

NOTES

- Any Officers / Deputies designated as Certified Boating Education Instructors must be listed as Instructors qualified for the Adventures in Boating course by the State Parks Education and Outreach coordinator.
- State Parks considers education and outreach activities a key component of preventing boating injuries and fatalities. Classroom instruction, school presentations and participation in community events, Dealer and Rental site visits, and effective use of media are crucial to preventing boating accidents and fatalities. Agencies are not required to engage in all education and outreach activities described below but should pursue a mix of tactics appropriate for their area of operation.

Education and Outreach Tactics and Suggested Goals

- **Education Classes:** Classroom instruction of the Adventures in Boating course sanctioned by Washington State Parks that qualifies passing students to obtain a Mandatory Boater Education Card.
    - Small = 15 students, 1 Class
    - Medium = 20 students, 1 Class
    - Large = 50 students, 1 Class

- **Boating Safety Presentations to Groups:** Presentations to various groups such as yacht clubs, kayak clubs, anglers, and any groups that use boats on the water.
    - Small = 10 hours
    - Medium = 15 hours
    - Large = 25 hours

- **Boating Safety Presentations to Schools:** Presentations to local public and or private schools K-12, and colleges / universities.
    - Small = 10 hours
    - Medium = 15 hours
    - Large = 25 hours

- **Vessel Rental Site Visits:** Visits to local vessel rental sites intended to ensure employees and renters are following guidance on the Motor Vessel Rental Safety Checklist. These can also be site visits to businesses that rent out kayaks, canoes, stand-up paddleboards, or other small non-motorized craft. The intent of visits in this case is to emphasize basic safety behaviors such as encouraging renters to always wear a life jacket and encouraging boating in low hazard areas.
    - Small = 2
    - Medium = 4

- Large = 6

- **Participation in Community Events**: Events like county fairs, parades, and night outs that reach large numbers of community members. A qualified event requires face-to-face interaction with community members. Participation in regattas, races, or opening days where there is little or no face-to-face interaction between Officers / Deputies and community members does not count as a "Community Event". Also, maintaining a screen line or security area at an on-water event does not count for reporting event hours on the SOAR.
  - Small = 40 hours
  - Medium = 150 hours
  - Large = 275 hours

- **Vessel Dealer Site Visits:** Visits to vessel dealerships and brokers to ensure they are following dealer registration laws, educate them on any safety issues with type of vessels they sell, and checks that required safety equipment is on board during test rides and sea trials. Dealers should also be encouraged to remind their customers of the mandatory boater education requirement.
  - Small = 5
  - Medium = 10
  - Large = 15

- **Professional Prevention Partners (Safe Kids, Power Squadron, USCG Auxiliary, etc.)**: Engaging partners can multiply the effectiveness of a marine law enforcement program's by increasing their area of influence and leveraging the resources of partners. Partnering activities include meetings, conference calls, event participation, and actual on-water time. Agencies should report the hours that Prevention Partners spend conducting RBS activities.
  - Small = 1
  - Medium = 3
  - Large = 5

Media Contacts: (This section only applies to Federal Financial Assistant Grant recipients). The intent is for agencies to distribute recreational boating safety content through their own social media channels, the social media channels of their partners, or the news media.

- **Owned Media:** This is the number of hours spent on this activity and the number of posts or articles distributed through communication channels that are owned and managed by the agency like the agency website, social media channels (Facebook, Twitter), newsletters, etc.
  - Small = 4
  - Medium = 8
  - Large = 16

- **Earned Media:** This is the number of hours spent on this activity and the number of articles broadcast through media channels that are not managed by the agency. Examples include

stories in the newspaper, radio, and television. Agencies should also count the number of recreational boating safety posts on the social media channels of partner organizations when the agency can show that the posts are the result of interaction with that partner.

- Small = 4
- Medium = 8
- Large = 16

Campaigns: See SOAR for reporting requirements. Goals for all agencies, regardless of size, is participation in these campaigns. The State Parks Recreational Boating Safety communications staff will distribute content to all agencies for each of the campaigns making participation quick and simple. These campaigns can have a powerful impact if all agencies participate.

- Operation Dry Water campaign is a national campaign focused on the deterrence of boating under the influence. Participation in this campaign is mandatory for all agencies that receive a federal assistance grant. It is a combination of emphasis patrols and media the weekend before the Fourth of July.
- Spring Aboard Campaign was a national campaign but is now a state campaign designed to encourage all boaters to take a recreational boating safety class. It occurs in late March.
- National Safe Boating Week is a nationally observed week focused on encouraging all boaters to wear their lifejackets and other best practices for optimal safety. In addition to media posts, agencies are encouraged to participate in "Wear IT" events. This campaign is sponsored by the National Safe Boating Council.
- Safe Paddling Week is a campaign sponsored by the Washington State Parks Recreational Boating Safety Program. The purpose of the week is to elevate awareness around basic paddling safety behaviors such as always wearing a PFD, obtaining training, etc.

Waterway Marking

Participating agencies should report the total number of Aids to Navigation (ATONs) that they are responsible for within their jurisdiction on the SOAR. Do not count ATON's emplaced / maintained by the USCG, Corps of Engineers or other Federal agencies. The county or local jurisdiction will use only those waterway markers which conform to the uniform state waterway marking system as identified, found in chapter 352-66 WAC.

Accountability

Audits

All agencies will be audited on a periodic rotating basis. When your agency is slated for an audit, the State Parks Marine Law Enforcement Coordinator will contact your agency to schedule a time. You will

be sent a list of documents and questions that you will need to prepare before the audit. Audits are a review of the performance and accomplishments to measure and evaluate compliance with the terms of the agreement with State Parks.

Compliance

If it is determined that a participating agency is not in compliance with the minimum requirements of the agreement, the State Parks Marine Law Enforcement Coordinator will notify the agency through a Non-Compliance Warning Letter and cite the wording of the agreement. The letter will request the agency responds with a plan to remedy the deficiency per **WAC 352-64-060 (3)**: Revocation of approval **"*Those counties or local jurisdictions unable to demonstrate compliance with minimum approval requirements will have forty-five days to submit a plan satisfactory to state parks to remedy the deficiencies. If, after forty-five days, a county or local jurisdiction is unable to demonstrate its ability to meet minimum requirements, state parks may revoke the program approval after the county or local jurisdiction has had an opportunity for a hearing under chapter 34.05 RCW, the Administrative Procedure Act.*"**

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Interagency Agreement between Benton County Sheriff's Office and Washington Traffic Safety Commission for Tri-Cities Walker Safety Project
Presenter:	Cdr. Clarke
Prepared By:	Lisa Small
Reviewed By:	BCSO; Ryan Lukson; Purchasing Dept

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

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

Summary / Background Information

The Benton County Sheriff's Office (BCSO) received the attached Interagency Agreement between Benton County Sheriff's Office and Washington Traffic Safety Commission (WTSC) outlining grant funding for traffic safety grant project 2022-AG-4410-Tri-Cities Walker Safety Project, to conduct overtime high-visibility enforcement traffic safety emphasis with the goal of reducing traffic crashes.

Said patrol emphasis shall be conducted on specific dates from October 1, 2021 through September 30, 2022, as further outline in the attached Interagency Agreement, with an overall Region 14 Funding of $30,000 amongst Region 14 agencies, with Benton County's estimated budget grant funding set at an amount not to exceed $1,500.

WTSC is requesting Benton County to sign the document first. They will return a fully executed copy back to us for our records.

Fiscal Impact

Said grant and expenditures were considered in the budget process. No budget adjustment will be necessary.

Recommendation

Approve the attached Resolution and Interlocal Agreement between Benton County Sheriff's Office and Washington Traffic Safety Commission and authorize the Benton County Sheriff to sign said Agreement.

Suggested Motion

The Board hereby approves the attached Interlocal Agreement between BCSO and WTSC and authorizes the Benton County Sheriff to sign Agreement 2022-AG-4410-Tri-Cities Walker Safety Project.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY SHERIFF TO SIGN THE INTERAGENCY AGREEMENT BETWEEN BENTON COUNTY SHERIFF'S OFFICE AND WASHINGTON TRAFFIC SAFETY COMMISSION PROVIDING GRANT FUNDING FOR TRI-CITIES WALKER SAFETY PROJECT

WHEREAS, the Benton County Sheriff's Office received the attached Interagency Agreement between Benton County Sheriff's Office (BCSO) and Washington Traffic Safety Commission (WTSC) outlining grant funding for traffic safety grant project 2022-AG-4410-Tri-Cities Walker Safety Project for Region 14 Target Zero Task Force, to conduct overtime high-visibility enforcement (HVE) traffic safety emphasis with the goal of reducing traffic crashes; and

WHEREAS, said patrol emphasis shall be conducted on specific dates from October 1, 2021 through September 30, 2022, as further outlined in the attached Interagency Agreement with an overall funding of $30,000 amongst Region 14 agencies, with Benton County's estimated budget grant funding set at an amount not to exceed $1,500 and the Region 14 agencies breakdown as follows:

Franklin County	$2,000	Prosser	$0.00
West Richland	$1,500	Benton County	$1,500
Richland	$1,000	WSP	TBD $8,000
Pasco	$4,000	TZM	$6,000
Kennewick	$6,000		

WHEREAS, the Benton County Sheriff recognizes the importance to conduct education and HVE activities to positively change walker, roller, and motor vehicle driver behaviors through law enforcement patrols and media efforts and recommends approving the grant funding for a total amount of $1,500; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the recommendation and hereby authorizes the Benton County Sheriff to sign the attached Interagency Agreement between Benton County Sheriff's Office and Washington Traffic Safety Commission in the amount not to exceed $1,500 to conduct over-time visibility enforcement patrols as outlined in the attached traffic safety grant project 2022-AG-4410-Tri-Cities Walker Safety Project; and

BE IT FURTHER RESOLVED, the term of this Interagency Agreement is October 1, 2021 – September 30, 2022.

Dated this_____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

Orig: Sheriff's Office
cc: Auditor; PA; WTSC; Procurement

Prepared by: L. Small

INTERAGENCY AGREEMENT

BETWEEN THE

Washington Traffic Safety Commission

AND

Benton County Sheriff's Office

THIS AGREEMENT is made and entered into by and between the Washington Traffic Safety Commission, hereinafter referred to as "WTSC," and Benton County Sheriff's Office , hereinafter referred to as "SUB-RECIPIENT."

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the Parties mutually agree as follows:

1. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to provide funding, provided by the United States Department of Transportation (USDOT) National Highway Traffic Safety Administration (NHTSA) and allowed under the Assistance Listings Catalog of Federal Domestic Assistance (CFDA) number 20.616, for traffic safety grant project **2022-AG-4410-Tri-Cities Walker Safety Project**, specifically to provide funding for the law enforcement agencies in **WTSC Region 14** to conduct overtime high-visibility enforcement (HVE) traffic safety emphasis patrols as outlined in the Statement of Work (SOW), in support of Target Zero priorities. The Target Zero Manager (TZM) and/or the Law Enforcement Liaison (LEL) shall coordinate the SOW with the SUB-RECIPIENT with the goal of reducing traffic crashes.

Grant **2022-AG-4410-Tri-Cities Walker Safety Project** was awarded to **Region 14** to conduct education and HVE activities. By signing this agreement, the SUB-RECIPIENT is able to seek reimbursement for approved overtime expenses incurred as a participant in the region's grant.

2. PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence upon the date of execution by both Parties, but not earlier than October 1, 2021, and remain in effect until September 30, 2022 unless terminated sooner, as provided herein.

3. STATEMENT OF WORK

SCOPE OF WORK:

Problem ID and Opportunity

Over a six-year period from 2015-2020 in Benton County, there were 16 fatalities resulting from crashes involving walkers (pedestrians) and vehicles, an average of about three per year. During that same time period in Benton County, there were 32 serious injury crashes of walkers vs. vehicles. In 2020, The City of Kennewick (Benton County) had the 14th worst rating among all Washington cities for risk of walker vs. vehicle crashes. Additionally, bicycle vs. vehicle crashes are also a concern as more than 30 bicyclists each year were involved in crashes with vehicles in Benton and Franklin counties. Many of the major thoroughfares in Richland and Pasco (Franklin County) and Kennewick are very wide roadways with multiple lanes with few crossing opportunities. The roadway design encourages speeding. There are few roads in cities in the counties where traffic calming or active speed reduction strategies are currently being employed.

Goals

Positively change walker, roller, and motor vehicle driver behaviors through law enforcement patrols and media efforts.

Increase social media engagement and followers during the project period.

Engage multiple law enforcement agencies in the design and implementation of enforcement, community outreach, and education activities for the project period.

Strategies

Implement a public education and outreach campaign about safety for people walking and bicycling in the Tri-Cities.
Use paid and earned media and multi-jurisdictional law enforcement agency efforts to enforce state laws regarding legal and safe street crossings for walkers, yielding to pedestrians, and aggressive yellow light-running behavior for drivers.

Objectives

Work with the Target Zero Manager and Tri-Cities Walker Safety Project Team to complete the following:

Develop baselines for all enforcement efforts by observing walker and driver habits at intersections at least one week prior to an enforcement effort.
Implement follow-up observations on intersections at least one week after an enforcement effort has been implemented to determine effect of the enforcement and media emphasis.
Implement a minimum of five (5) enforcement events in the identified intersections focused on increasing safety for walkers by September 30, 2022.
Utilize archival and key informant data to Identify higher-risk intersections in Benton-Franklin Counties by November 30, 2021.
Develop a media outreach and public awareness effort focused on walker safety to be implemented in conjunction with each enforcement events. Review data regarding higher risk intersections in the Tri-Cities

and plan enforcement and media efforts to focus on those – and similar – intersections.

All participating law enforcement agencies will submit their completed digital activity logs through the Washington Enterprise Management System (WEMS) as provided by WTSC.

Other Considerations, Exceptions, And Notes Regarding HVE Patrols

Maximizing contacts: Participating law enforcement officers should make as many contacts as they can during these patrols to positively influence driving behavior.

Process Measures

Number of enforcement patrols completed during the project period.
Activity logs and enforcement data of participating officers during enforcement patrols.
Observational studies of walker, roller, and driver behaviors at intersections before and after enforcement patrols.
Reach and frequency results of media outreach and public awareness campaigns.

Short Term Outcomes:

Increased number of drivers with knowledge of bike and pedestrian laws.
Increased awareness by drivers and walker/rollers at intersections where enforcement events are focused as measured by observational studies.
Increased awareness and positive community norming by drivers towards walkers and rollers to include yielding to walkers and rollers in the intersections.
Increased number of police officers trained to understand and enforce current state laws designed to protect vulnerable roadway users.
Increased public awareness of safety issues faced by walkers and rollers and other vulnerable roadway users.
Walkers and rollers demonstrate best safety practices on all roadways.

Intermediate Outcomes:

Increased compliance of safety issues faced by walkers and rollers and other vulnerable roadway users.
Increased compliance of state laws designed to protect walkers and rollers and other vulnerable roadway users.
Increased number of drivers who park safely and legally when dropping off or picking up their children from school.
Increased number of drivers yielding to pedestrians in crosswalks.
Increased number of pedestrians using marked crosswalks when available.
Decreased number of pedestrians crossing mid-block and not in crosswalks.
Increased compliance with safe and legal speeds in school zones.

Long Term Outcomes:

Decreased number of crashes involving both motor vehicles and vulnerable road users (walkers and rollers).

3.2. COMPENSATION

3.2.1. Compensation for the overtime work provided in accordance with this Agreement has been established under the terms of RCW 39.34. The cost of accomplishing the work described in the SOW will not exceed dollar total from amounts listed below. Payment for satisfactory performance of the overtime work shall not exceed this amount unless the WTSC and SUB-RECIPIENT mutually agree to a higher amount in a written Amendment to this Agreement executed by both the WTSC and SUB-RECIPIENT. Comp-time is not considered overtime and will not be approved for payment. All law enforcement agencies who are active members of the traffic safety task force with a fully executed grant agreement are eligible to participate in this grant.

3.2.2. WTSC will reimburse for personnel overtime expenses at 150 percent of the officer's normal salary rate plus SUB-RECIPIENT's contributions to employee benefits, limited to the following:

- FICA
- Medicare
- Any portion of L & I that is paid by the employer (SUB-RECIPIENT)
- Retirement contributions paid by the employer (SUB-RECIPIENT) can be included if the contribution is based on a percentage of their hours worked

Health insurance, or any other benefits not listed above, are not eligible for reimbursement.

The SUB-RECIPIENT will provide law enforcement officers with appropriate equipment (e.g., vehicles, radars, portable breath testers, etc.) to participate in the emphasis patrols.

3.2.3. Funding alterations are permitted as follows: Upon agreement by the regional TZM and all other parties impacted by a proposed budget alteration, the allocation amounts may be increased or decreased without amending this agreement. HVE grant funds should be managed collaboratively by the SUB-RECIPIENT and the TZM.

These alterations must be requested through email communication among all involved parties, including the TZM, and the WTSC Fiscal Analyst. This communication shall include an HVE Allocation Adjustment form, which details the funding alterations.

Funds within the same HVE campaign budget category only, can be increased and decreased across parties, so long as the modified total does not exceed the regional total allocation per funding category.

3.2.4. These funds, designated for salaries and benefits, are intended to pay for the hourly overtime costs and proportional amounts of fringe benefits of commissioned staff pursuing the activities described in the

statement of work. These funds may not be used for any other purpose for example any work required to maintain a law enforcement commission including recertification trainings like firearm qualification.

3.2.5. Dispatch: WTSC will reimburse communications officers/dispatch personnel for work on this project providing SUB-RECIPIENT has received prior approval from their region's TZM. This activity must be overtime and only the expenses listed in section 3.2 and its subsections will be reimbursed.

3.2.6. Transport Officers: WTSC will reimburse transport officers for their work on this project providing SUB-RECIPIENT has received approval from their regions TZM. The TZM will work with the regional LEL to determine if need is warranted for the type of HVE activity. This activity must be overtime and only the expenses listed in section 3.2 and its subsections will be reimbursed.

3.2.7. The law enforcement agency involved will not schedule individual officer overtime shifts for longer than eight hours. WTSC understands there may be instances when more than eight hours are billed due to DUI processing or other reasons and an explanation should be provided on the WEMS Officer Activity Log.

3.2.8. The law enforcement agency involved will ensure that any reserve officer for whom reimbursement is claimed has exceeded his/her normal weekly working hours when participating in an emphasis patrol and is authorized to be paid at the amount requested. Reserve officers may only be paid at the normal hourly rate and not at the 150 percent overtime rate.

3.3. SUMMARY OF PROJECT COSTS

The WTSC has awarded $25,000 to the **Region 14 Target Zero Task Force** for the purpose of conducting coordinated walker roller safety overtime HVE patrols. **The Region 14 Target Zero Task Force Coordinator** will distribute the funding allotment to the participating and eligible law enforcement agencies. By signing this agreement, the SUB-RECIPIENT is able to seek reimbursement for approved overtime expenses incurred as a participant in this grant.

APPLICABLE STATE AND FEDERAL TERMS AND CONDITIONS:

4. ACTIVITY REPORTS

The SUB-RECIPIENT agrees to have all personnel who work HVE patrols submit a WEMS Officer Activity Log within 24 hours of the end of all shifts worked. These same logs will be associated with invoices as detailed in the "BILLING PROCEDURE" section. Use of the Officer Activity Log in the WTSC's online grant management system, WEMS, is required. Supervisor review and accuracy certification will also be done in WEMS.

5. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by the WTSC.

6. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties in the form of a written request to amend this Agreement. Such amendments shall only be binding if they are in writing and signed by personnel authorized to bind each of the Parties. Changes to the budget, SUB-RECIPIENT'S Primary Contact, and WTSC Program Manager can be made through email communication and signatures are not required.

7. ALL WRITINGS CONTAINED HEREIN

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 deemed to exist or to bind any of the Parties hereto.

8. ASSIGNMENT

The SUB-RECIPIENT may not assign the work to be provided under this Agreement, in whole or in part, without the express prior written consent of the WTSC, which consent shall not be unreasonably withheld. The SUB-RECIPIENT shall provide the WTSC a copy of all third-party contracts and agreements entered into for purposes of fulfilling the SOW. Such third-party contracts and agreements must follow applicable federal, state, and local law, including but not limited to procurement law, rules, and procedures. If any of the funds provided under this Agreement include funds from NHTSA, such third-party contracts and agreements must include the federal provisions set forth in this Agreement in sections 34 through 42.

9. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the Agreement terms, each Party agrees to bear its own attorney fees and costs.

10. BILLING PROCEDURE

All invoices for reimbursement of HVE activities will be done using WTSC's Enterprise Management System (WEMS). WEMS Officer Activity logs will be attached to invoices, directly linking the cost of the activity to the invoice. Because the activity, approval, and invoicing are all done within WEMS, no back up documentation is required in most cases.

Once submitted by the SUB-RECIPIENT, invoices are routed to the regional TZM for review and approval. The TZM will submit all approved invoices to the WTSC via WEMS within 10 days of receipt.

Payment to the SUB-RECIPIENT for approved and completed work will be made by warrant or account transfer by WTSC within 30 days of receipt of such properly documented invoices acceptable to WTSC. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 45 days after the expiration date of this Agreement. All invoices for goods received or services performed on or prior to June 30, 2022, **must be received by WTSC no later than August 10, 2022.** All invoices for goods received or services performed between July 1, 2022 and September 30, 2022, **must be received by WTSC no later than November 15, 2022.**

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The SUB-RECIPIENT shall not use or disclose any information concerning the WTSC, or information which

may be classified as confidential, for any purpose not directly connected with the administration of this Agreement, except with prior written consent of the WTSC, or as may be required by law.

12. COST PRINCIPLES

Costs incurred under this Agreement shall adhere to provisions of 2 CFR Part 200 Subpart E.

13. COVENANT AGAINST CONTINGENT FEES

The SUB-RECIPIENT warrants that it has not paid, and agrees not to pay, any bonus, commission, brokerage, or contingent fee to solicit or secure this Agreement or to obtain approval of any application for federal financial assistance for this Agreement. The WTSC shall have the right, in the event of breach of this section by the SUB-RECIPIENT, to annul this Agreement without liability.

14. DISPUTES

14.1. Disputes arising in the performance of this Agreement, which are not resolved by agreement of the Parties, shall be decided in writing by the WTSC Deputy Director or designee. This decision shall be final and conclusive, unless within 10 days from the date of the SUB-RECIPIENT's receipt of WTSC's written decision, the SUB-RECIPIENT furnishes a written appeal to the WTSC Director. The SUB-RECIPIENT's appeal shall be decided in writing by the Director or designee within 30 days of receipt of the appeal by the Director. The decision shall be binding upon the SUB-RECIPIENT and the SUB-RECIPIENT shall abide by the decision.

14.2. Performance During Dispute. Unless otherwise directed by WTSC, the SUB-RECIPIENT shall continue performance under this Agreement while matters in dispute are being resolved.

15. GOVERNANCE

15.1. 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.

15.2. 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:

15.2.1. Applicable federal and state statutes and rules
15.2.2. Terms and Conditions of this Agreement
15.2.3. Any Amendment executed under this Agreement
15.2.4. Any SOW executed under this Agreement
15.2.5. Any other provisions of the Agreement, including materials incorporated by reference

16. INCOME

Any income earned by the SUB-RECIPIENT from the conduct of the SOW (e.g., sale of publications, registration fees, or service charges) must be accounted for, and that income must be applied to project purposes or used to reduce project costs.

17. INDEMNIFICATION

17.1. To the fullest extent permitted by law, the SUB-RECIPIENT shall indemnify and hold harmless the

WTSC, its officers, employees, and agents, and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs of whatsoever kind ("claims") brought against WTSC arising out of or in connection with this Agreement and/or the SUB-RECIPIENT's performance or failure to perform any aspect of the Agreement. This indemnity provision applies to all claims against WTSC, its officers, employees, and agents arising out of, in connection with, or incident to the acts or omissions of the SUB-RECIPIENT, its officers, employees, agents, contractors, and subcontractors. Provided, however, that nothing herein shall require the SUB-RECIPIENT to indemnify and hold harmless or defend the WTSC, its agents, employees, or officers to the extent that claims are caused by the negligent acts or omissions of the WTSC, its officers, employees or agents; and provided further that if such claims result from the concurrent negligence of (a) the SUB-RECIPIENT, its officers, employees, agents, contractors, or subcontractors, and (b) the WTSC, its officers, employees, or agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the SUB-RECIPIENT, its officers, employees, agents, contractors, or subcontractors.

17.2. The SUB-RECIPIENT waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the WTSC, its officers, employees, or agents.

17.3. The indemnification and hold harmless provision shall survive termination of this Agreement.

18. 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.

19. INSURANCE COVERAGE

19.1. The SUB-RECIPIENT shall comply with the provisions of Title 51 RCW, Industrial Insurance, if required by law.

19.2. If the SUB-RECIPIENT is not required to maintain insurance in accordance with Title 51 RCW, prior to the start of any performance of work under this Agreement, the SUB-RECIPIENT shall provide WTSC with proof of insurance coverage (e.g., vehicle liability insurance, private property liability insurance, or commercial property liability insurance), as determined appropriate by WTSC, which protects the SUB-RECIPIENT and WTSC from risks associated with executing the SOW associated with this Agreement.

20. LICENSING, ACCREDITATION, AND REGISTRATION

The SUB-RECIPIENT shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of this Agreement. The SUB-RECIPIENT shall complete registration with the Washington State Department of Revenue, if required, and be responsible for payment of all taxes due on payments made under this Agreement.

21. RECORDS MAINTENANCE

21.1. During the term of this Agreement and for six years thereafter, the SUB-RECIPIENT shall maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect

costs expended in the performance of the services described herein. These records shall be subject to inspection, review, or audit by authorized personnel of the WTSC, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration. The Office of the State Auditor, federal auditors, the WTSC, and any duly authorized representatives shall have full access and the right to examine any of these materials during this period.

21.2. Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. The receiving Party will not disclose or make available this material to any third Parties without first giving notice to the furnishing Party and giving them a reasonable opportunity to respond. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party are not erroneously disclosed to third Parties.

22. RIGHT OF INSPECTION

The SUB-RECIPIENT shall provide right of access to its facilities to the WTSC 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. The SUB-RECIPIENT shall make available information necessary for WTSC to comply with the right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The SUB-RECIPIENT shall upon request make available to the WTSC and the United States Secretary of the Department of Health and Human Services all internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this Agreement.

23. RIGHTS IN DATA

23.1. WTSC and SUB-RECIPIENT agree that all data and work products (collectively called "Work Product") pursuant to this Agreement shall be considered works made for hire under the U.S. Copyright Act, 17 USC §101 et seq., and shall be owned by the state of Washington. Work Product includes, but is not limited to, reports, documents, pamphlets, advertisement, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, designs, plans, diagrams, drawings, software, and/or databases to the extent provided by law. Ownership includes the right to copyright, register the copyright, distribute, prepare derivative works, publicly perform, publicly display, and the ability to otherwise use and transfer these rights.

23.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, the SUB-RECIPIENT assigns and transfers to WTSC the entire right, title, and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

23.3. The SUB-RECIPIENT may publish, at its own expense, the results of project activities without prior review by the WTSC, provided that any publications (written, visual, or sound) contain acknowledgment of

the support provided by NHTSA and the WTSC. Any discovery or invention derived from work performed under this project shall be referred to the WTSC, who will determine through NHTSA whether patent protections will be sought, how any rights will be administered, and other actions required to protect the public interest.

24. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to completion of the SOW under this Agreement, the WTSC may terminate the Agreement under the "TERMINATION FOR CONVENIENCE" clause, without the 30-day notice requirement. The Agreement is subject to renegotiation at the WTSC's discretion under any new funding limitations or conditions.

25. 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, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

26. SITE SECURITY

While on WTSC premises, the SUB-RECIPIENT, its agents, employees, or sub-contractors shall conform in all respects with all WTSC physical, fire, or other security policies and applicable regulations.

27. TAXES

All payments of payroll taxes, unemployment contributions, any other taxes, insurance, or other such expenses for the SUB-RECIPIENT or its staff shall be the sole responsibility of the SUB-RECIPIENT.

28. TERMINATION FOR CAUSE

If the SUB-RECIPIENT does not fulfill in a timely and proper manner its obligations under this Agreement or violates any of these terms and conditions, the WTSC will give the SUB-RECIPIENT written notice of such failure or violation and may terminate this Agreement immediately. At the WTSC's discretion, the SUB-RECIPIENT may be given 15 days to correct the violation or failure. In the event that the SUB-RECIPIENT is given the opportunity to correct the violation and the violation is not corrected within the 15-day period, this Agreement may be terminated at the end of that period by written notice of the WTSC.

29. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, either Party may terminate this Agreement, without cause or reason, with 30 days written notice to the other Party. If this Agreement is so terminated, the WTSC shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

30. TREATMENT OF ASSETS

30.1. Title to all property furnished by the WTSC shall remain property of the WTSC. Title to all property furnished by the SUB-RECIPIENT for the cost of which the SUB-RECIPIENT is entitled to be reimbursed as a

direct item of cost under this Agreement shall pass to and vest in the WTSC upon delivery of such property by the SUB-RECIPIENT. Title to other property, the cost of which is reimbursable to the SUB-RECIPIENT under this Agreement, shall pass to and vest in the WTSC upon (i) issuance for use of such property in the performance of this Agreement, or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the WTSC in whole or in part, whichever first occurs.

30.2. Any property of the WTSC furnished to the SUB-RECIPIENT shall, unless otherwise provided herein or approved by the WTSC, be used only for the performance of this Agreement.

30.3. The SUB-RECIPIENT shall be responsible for any loss or damage to property of the WTSC which results from the negligence of the SUB-RECIPIENT or which results from the failure on the part of the SUB-RECIPIENT to maintain and administer that property in accordance with sound management practices.

30.4. If any WTSC property is lost, destroyed, or damaged, the SUB-RECIPIENT shall immediately notify the WTSC and shall take all reasonable steps to protect the property from further damage.

30.5. The SUB-RECIPIENT shall surrender to the WTSC all property of the WTSC upon completion, termination, or cancellation of this Agreement.

30.6. All reference to the SUB-RECIPIENT under this clause shall also include SUB-RECIPIENT's employees, agents, or sub-contractors.

31. 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.

APPLICABLE CERTIFICATIONS AND ASSURANCES FOR HIGHWAY SAFETY GRANTS (23 CFR PART 1300 APPENDIX A):

32. BUY AMERICA ACT

The SUB-RECIPIENT will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using federal funds. Buy America requires the SUB-RECIPIENT to purchase only steel, iron, and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use federal funds to purchase foreign produced items, the WTSC must submit a waiver request that provides an adequate basis and justification, and which is approved by the Secretary of Transportation.

33. DEBARMENT AND SUSPENSION

Instructions for Lower Tier Certification

33.1. By signing this Agreement, the SUB-RECIPIENT (hereinafter in this section referred to as the "lower tier participant") is providing the certification set out below and agrees to comply with the requirements of 2 CFR part 180 and 23 CFR part 1300.

33.2. The certification in this section is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

33.3. The lower tier participant shall provide immediate written notice to the WTSC if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

33.4. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Covered Transactions sections of 2 CFR part 180.

33.5. The lower tier participant agrees by signing this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

33.6. The lower tier participant further agrees by signing this Agreement that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions, and will require lower tier participants to comply with 2 CFR part 180 and 23 CFR part 1300.

33.7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

33.8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

33.9. Except for transactions authorized under paragraph 35.5. of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded

from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

33.10. The lower tier participant certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

33.11. Where the lower tier participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Agreement.

34. THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

34.1. The SUB-RECIPIENT shall:

34.1.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and shall specify the actions that will be taken against employees for violation of such prohibition.

34.1.2. Establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the SUB-RECIPIENT's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations occurring in the workplace.

34.1.3. Make it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph 36.1.1. of this section.

34.1.4. Notify the employee in the statement required by paragraph 36.1.1. of this section that, as a condition of employment under the grant, the employee will abide by the terms of the statement, notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction, and notify the WTSC within 10 days after receiving notice from an employee or otherwise receiving actual notice of such conviction.

34.1.5. Take one of the following actions within 30 days of receiving notice under paragraph 36.1.3. of this section, with respect to any employee who is so convicted: take appropriate personnel action against such an employee, up to and including termination, and/or require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

34.1.6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

35. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

In accordance with FFATA, the SUB-RECIPIENT shall, upon request, provide WTSC the names and total compensation of the five most highly compensated officers of the entity, if the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in federal awards, received $25,000,000 or more in annual gross revenues from federal awards, and if the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986.

36. FEDERAL LOBBYING

36.1. The undersigned certifies, to the best of his or her knowledge and belief, that:

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

36.1.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

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

36.2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

37. NONDISCRIMINATION (Title VI, 42 U.S.C. § 2000d et seq.)

37.1. During the performance of this Agreement, the SUB-RECIPIENT agrees:

37.1.1. To comply with all federal nondiscrimination laws and regulations, as may be amended from time to time.

37.1.2. Not to participate directly or indirectly in the discrimination prohibited by any federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR Part 21 and herein.

37.1.3. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the WTSC, USDOT, or NHTSA.

37.1.4. That, in the event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding Agreement, the WTSC will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies, and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part.

37.1.5. To insert this clause, including all paragraphs, in every sub-contract and sub-agreement and in every solicitation for a sub-contract or sub-agreement that receives federal funds under this program.

38. POLITICAL ACTIVITY (HATCH ACT)

The SUB-RECIPIENT will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

39. PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

The SUB-RECIPIENT will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists. This Agreement does not include any aspects or elements of helmet usage or checkpoints, and so fully complies with this requirement.

40. STATE LOBBYING

None of the funds under this Agreement will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a state official whose salary is supported with NHTSA funds from engaging in direct communications with state or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

41. DESIGNATED CONTACTS

The following named individuals will serve as designated contacts for each of the Parties for all communications, notices, and reimbursement regarding this Agreement:

The Contact for the SUB-RECIPIENT is:	**The Target Zero Manager for Region 14 is:**	**The Contact for WTSC is:**
Katie Gillies, CFO 7122 W Okanogan Pl. Suite A110 Kennewick, WA 99336 Katie.Gillies@co.benton.wa.us	Jennifer Dorsett Region 14 Target Zero Manager Tzm14@wtscwa.com 509-851-1348	Mark Medalen WTSC Program Manager mmedalen@wtsc.wa.gov 360-725-9878

42. AUTHORITY TO SIGN

The undersigned acknowledges that they are authorized to execute this Agreement and bind their respective agencies or entities to the obligation set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement.

BENTON COUNTY SHERIFF'S OFFICE	**WASHINGTON TRAFFIC SAFETY COMMISSION**
_____	_____
Signature	Signature
Tom Croskrey	_____
Printed Name	Printed Name
Benton County Sheriff	_____
Title	Title
_____	_____
Date	Date

Approved as to Form:

Ryan J Lukson, Civil DPA

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Amending the Social Media Policy & Procedures; Rescinding resolution 2017-589
Presenter:	Shyanne Palmus, Communications Coordinator
Prepared By:	Shyanne Palmus, Communications Coordinator
Reviewed By:	Matt Rasmussen, Deputy County Administrator

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 attached Resolution and amended Social Media Policy & Procedures are intended to address the need for technology to be available to Benton County employees and departments to communicate with the public and further define the policy of the County. The County encourages the use of social media to communicate with residents, taxpayers, and the public. This policy establishes guidelines for the use of social media on behalf of the County and the retention of public records created because of such use.

A revision to the original policy, approved per Resolution 2017-589, was necessary to include additional definitions, clarify professional use, and expand upon the guidelines for removing comments and/or blocking.

Fiscal Impact

None.

Recommendation

Approve the Resolution and Social Media Policy, as presented.

Suggested Motion

"I move to approve the Benton County Social Media Policy & Procedures as presented."

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE BENTON COUNTY SOCIAL MEDIA POLICY & PROCEDURES; RESCINDING RESOLUTION 2017-589

WHEREAS, the use of social media presents both opportunity and risk to the County and individual County offices and departments and, in general, the County supports the use of social media to further County and departmental missions and goals; and

WHEREAS, the County endorses the use of social media to enhance communication, collaboration, and the exchange of information to the residents, taxpayers, and general public while ensuring that communications made on behalf of the County are properly authorized and in correct form; and

WHEREAS, an amendment to this policy is necessary to include additional definitions, clarify professional use, and expand upon the guidelines for removing comments and/or blocking; **NOW THEREFORE,**

BE IT RESOLVED, by the Board of County Commissioners that the attached *Benton County Social Media Policy & Procedures* is hereby adopted, and that Resolution 2017-589 is hereby rescinded; and

BE IT FURTHER RESOLVED, that copies of this resolution and policy shall be provided to all employees of Benton County, and that all employees hired after implementation of this policy shall be advised of this policy at the time of hiring or orientation.

Dated this 25th day of January 2022.

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Attest: ……
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig: Commissioners S. Palmus
Cc: All Employees, HR

BENTON COUNTY: SOCIAL MEDIA POLICY & PROCEDURES

Adopted August 29, 2017
Revised 2022

Policy and procedure for Benton County social media accounts.

TABLE OF CONTENTS

CONTENTS

POLICY 1

Purpose 1

Definitions 1

Applicability 2

Acceptable Use 2

Personal Use 3

Professional Use 3

Personal Responsibility 3

Identify Yourself Clearly 4

Terms of Service 4

Content Management, Oversight, and Enforcement 4

Public Comment and Reviews 4

County Social Media Public Comment Policy 5

Facebook Page Messenger 6

Copyright Law, Intellectual Property, and Privacy Rights 6

Public Records Law and Applicable Records Retention Schedules 6

Amendment & Implementation of Policy 7

PROCEDURE FOR NEW ACCOUNT CREATION 8

New Social Media Accounts 8

POLICY

PURPOSE

Benton County recognizes that technology, particularly in the area of computer and internet applications, is advancing at a phenomenal pace, making it difficult for any written policy to develop at the same rate of emerging trends and capabilities. The County recognizes that such technology should be made available to its employees and departments to provide opportunities to communicate with the public. With this in mind, the County recognizes that the nature and Content of the message itself should be used to determine its appropriateness and applicability to social media use.

This document defines the Social Media Policy (the "Policy") for Benton County, Washington (the "County"). To address the fast-changing landscape of the internet and the way residents of Benton County communicate and obtain information online, County departments and elected offices may want to consider using social media tools to reach a broader audience. The County encourages the use of social media to further the goals of the County and the missions of its departments and elected offices, where appropriate. This policy establishes guidelines for the use of social media on behalf of the County and the retention of public records created as a result of such use.

DEFINITIONS

Account Administrator: Any individual who has access to editing, creating, or deleting Content on any Official County Social Media Account. Account Administrators can add or remove other individuals from Page editing.

Account Editor: Account Editors are present on Facebook, and are similar to administrators, but cannot add or remove individuals from Page editing.

Authorized Agent: A Benton County employee or third-party contractor who has been authorized by an elected official or department manager to Post Content on behalf of a County Agency on Official County Social Media Accounts.

Block: The act of preventing a person from participating on an Official County Social Media Account

Brand and Style Guide Standards: Refers to the design standards that govern the use of Benton County, Washington logos, nameplates, color schemes, and visual identities. The County Brand Guide can be found here: https://www.co.benton.wa.us/pview.aspx?id=21117&catid=45

Comments: A response often provided as an answer or reaction to a Post or previous Comments on a Social Media Site.

Content: All text, images, videos, website hyperlinks, and any other information published, Posted, and/or distributed through Official County Social Media Accounts by the public. This includes but is not limited to micro-blogs, status updates, direct messages, and tweets.

County Agency: Any department reporting to the County Administrator's Office, the Benton and Franklin Counties Department of Human Services, the Benton-Franklin Counties Superior Court, Benton-Franklin Counties Juvenile Justice Center, and the elected Benton County offices of

Assessor, Auditor, Clerk, Commissioners, Coroner, District Court, Prosecuting Attorney, Sheriff, and Treasurer.

Hide: Making a comment on an Official County Social Media Account inaccessible from public view, while preserving the comment.

Official County Social Media Account*:* Any form of electronic communication through which users create online communities to share information, ideas, messages, and other Content. This includes Facebook, Twitter, LinkedIn, YouTube, Instagram, Snapchat, TikTok and/or any other Official County Social Media Account created using an official County email address.

Official County Business: Any communications related to the functions, operations, or messages of a County Agency.

Post: The County's addition of information, photos, video, and other Content to any Official County Social Media Account Page.

Page: A particular portion of a social media website where user-added content is displayed.

Social Media Site*:* A dedicated website or other application that enables users to communicate with each other by Posting information, Comments, messages, images, videos, etc.

APPLICABILITY

These guidelines are applicable to all County Agencies and third-party contractors who create or contribute to Official County Social Media Accounts. If a County Agency has an addendum that supplements this Policy, employees in said County Agency shall abide by the rules and regulations of that County Agency's addendum in addition to this Policy.

The Benton-Franklin Counties Superior Court has implemented a separate *Benton-Franklin Counties Superior Court Social Media Policy & Procedure*, which is consistent with the goals and intent of this County Policy.

The Benton County Sheriff's Office (BCSO) has implemented General Order 54.1.6 related to social media that is consistent with the content of this policy, with the exception of the removal of public comment from its Official County Social Media Account, which shall be dictated by the terms of said General Order and not this policy.

ACCEPTABLE USE

All use of Official County Social Media Accounts by County Agencies shall be consistent with applicable state, federal, and local laws, regulations, and policies, including but not limited to:

- Board of Benton County Commissioners' policies and/or Elected Officials' policies and/or General Orders, whichever is applicable;
- First Amendment rights;
- Terms of Service applicable to individual Social Media Sites;

- Applicable records retention schedules or policies; and
- This Policy.

PERSONAL USE

While nothing prohibits County employees from having personal social media accounts, such accounts must remain personal in nature and shall not be tied to County email addresses or passwords. This principle helps to ensure a distinction between sharing personal and County views.

PROFESSIONAL USE

All Official County Social Media Accounts shall remain professional in nature and be conducted in accordance with Benton County's policies, procedures, and expectations. Authorized Agents shall not use Official County Social Media Accounts for personal use, political purposes, to conduct private commercial transactions, or to engage in private business activities.

Authorized Agents may not Post any of the following information on Official County Social Media Accounts:

- Confidential information;
- Violations of copyright, intellectual property or privacy rights;
- Profanity, racist, sexist, or derogatory Content or Comments;
- Partisan political views; and
- Commercial endorsements or spam.

Social media posts made on behalf of Benton County should include no form of profanity, obscenity, or threatening language. Social media posts should be news-worthy, informative, timely, and direct the reader to more information. Be mindful of the images and content you use on social media, and do not violate another's copyright or trademark restrictions.

PERSONAL RESPONSIBILITY

It is integral that each Authorized Agent be thoughtful about how he/she presents him/herself in online Social Media Sites, where there are often blurred lines between what is public, private, personal, and professional. The following policy will assist Authorized Agents in appropriately presenting him/herself and the County online:

Confidentiality: Authorized Agents shall not Post to an Official County Social Media Account any information or documentation the release of which would be prohibited by:

- Federal, state or local law;
- County confidential information policy; or

- The confidentiality policy of the employee's department or elected office.

IDENTIFY YOURSELF CLEARLY

Posting or responding to third party Content on Official County Social Media Accounts may necessitate providing individual identification, such that Authorized Agents should use their full name. However, using your actual name can come with risks, including not assuming privacy. Only Post information that you are comfortable disclosing to the public.

TERMS OF SERVICE

All Authorized Agents should be aware of the Terms of Service (TOS) of the particular form of social media they are utilizing. Each Social Media Site has its own unique TOS that regulate how users interact in that Site. Any Authorized Agent using social media on behalf of the County must consult the most recent Social Media Site TOS in order to avoid violations.

CONTENT MANAGEMENT, OVERSIGHT, AND ENFORCEMENT

Authorized Agents representing the County through Official County Social Media Accounts or participating in social media features on the County website must maintain a high level of ethical conduct and professional decorum. Information must be presented following professional standards for good grammar, spelling, brevity, clarity, and accuracy, and should avoid jargon, obscure terminology, or acronyms.

Authorized Agents should recognize that the Content and messages Posted on Official County Social Media Accounts are public and may be cited, rightfully or wrongfully, as official County statements. Social Media should not be used in place of other County communication channels, including news media policy requirements or newspaper publication.

PUBLIC COMMENT AND REVIEWS

All Official County Social Media Accounts must allow Comments on Posts, and the account must not restrict public comment by deleting or hiding Comments or Posts that are not in violation of this policy, the First Amendment, or the Social Media Sites' Terms of Service. Comments should be addressed directly and promptly by answering questions where applicable or encouraging commenters to call the phone number associated with that Official County Social Media Account.

All Official County Social Media Accounts must set the profanity filter to "strong," or the highest possible degree available. This profanity filter will allow the Social Media Site to determine what to block by using the most commonly reported words and phrases marked offensive by the Social Media Site, without the Account Administrator or Account Editor needing to remove content.

No Comments or public feedback may be removed by County Social Media Account Administrators or Account Editors without prior consultation with County legal counsel. Prohibited comments of the type mentioned below (in the "County Social Media Public Comment Policy") may be removed (hidden or deleted). When a comment is removed, the Authorized Agent removing it will explain that it was removed because it did not comply with our posting guidelines. Any Comments that are removed (hidden or deleted) must be archived in accordance with records retention standards.

If an Authorized Agent believes it is necessary to block an individual from further interactions with an Official County Social Media Account, the Authorized Agent must first consult with County legal counsel. An individual may be blocked from an Official County Social Media Account if he/she continually violates this Policy after repeated warnings from the Authorized Agent. If an individual is blocked, documentation must be kept (such as screenshots of the data/comments that prompted the restriction and the reason for the restriction).

Facebook has the option for Pages to allow the public to review their organization on a scale of zero to five stars. This feature may be enabled or disabled at the Department Manager or Elected Official's discretion.

Twitter Comments or Posts are not able to be directly removed by the Account Administrator or Account Editor but may be reported to Twitter after consultation with County legal counsel for violation of their Terms of Service.

Elected Officials and members of boards whom participate in online discussions are responsible for ensuring that their participation does not violate the Open Public Meetings Act (RCW 42.30). The County reserves the right to restrict or remove any Content that is in violation of this social media policy.

COUNTY SOCIAL MEDIA PUBLIC COMMENT POLICY

All Official County Social Media Accounts must include the following County Social Media Policy disclaimer:

> *The purpose of this site is to present matters of public interest in Benton County to its many residents, businesses and visitors. We encourage you to submit your questions, comments, and concerns, but please note this is a limited public forum and will be monitored by County staff. An individual may be blocked from an Official County Social Media Account if he/she/they continually violate this Policy after repeated warnings.*
>
> *As such, under the Benton County Social Media Policy, the County reserves the right to remove inappropriate Content including but not limited to those that:*
>
> - *Have obscene language or sexual Content;*
> - *Threaten or defame any person or organization;*
> - *Violate the legal ownership interest of another party;*
> - *Support or oppose political candidates or ballot positions;*
> - *Promote violence or illegal activity;*
> - *Discriminate on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation; or*
> - *Contain personally identifiable or sensitive information, including medical information.*

FACEBOOK PAGE MESSENGER

All Official County Facebook Accounts must remove Page Messenger permissions, thus removing the ability to "private message" the Page, unless pertinent need can be identified.

COPYRIGHT LAW, INTELLECTUAL PROPERTY, AND PRIVACY RIGHTS

It is critical that Official County Social Media Accounts comply with federal, state and local laws governing copyright, other intellectual property rights, and privacy rights.

PUBLIC RECORDS LAW AND APPLICABLE RECORDS RETENTION SCHEDULES

Official County Social Media Accounts may contain communications sent to and received by the County and its employees, and are therefore public records and subject to public disclosure (RCW 40.14) under the Washington State Public Records Act (RCW 42.56.010).

As such, all communications on Official County Social Media Accounts must be retained in accordance with Washington State records retention requirements.

Benton County utilizes an automated archiving service, approved by the Board of Benton County Commissioners, to comply with applicable public records laws and to fulfill the above record retention requirements. All Official County Social Media Account communications are archived, including but not limited to:

- Posts on the main account Page, including any Posts that may be deleted or hidden after original Posting;
- Comments on all Posts, including any Comments deleted or otherwise removed by the Social Media Site due to profane, obscene, or racist language or any other Content deemed inappropriate by the Social Media Site or pursuant to this Policy; and
- All other photos, videos, and audio Content, deleted, hidden, or remaining on the Page.

County communications on Official County Social Media Accounts are subject to applicable retention schedules as outlined by the Washington State Local Government Common Records Retention Schedule (CORE). While it will not always be the case, Content on Official County Social Media Accounts should be treated as Governing/Executive/Advisory Communications and be retained as outlined by Washington State CORE to ensure compliance with retention requirements.

All Content on Official County Social Media Accounts shall be retained for two (2) years after the communication is received or Posted, whichever is later, and then transferred to Washington State Archives for appraisal and selective retention. The County Information Technology (IT) Department must log a record of transference to the state and will then be responsible for proper destruction of the records from the County's third-party vendor's storage media.

Once records have been sent to State Archives, the County is no longer legally required to retain those records and they may be destroyed. The IT Department will contact its service provider to request destruction of archived records after receiving confirmation that records have been received

by State Archives, and shall record when records are sent, duration of the retained records, and when the records were destroyed.

AMENDMENT & IMPLEMENTATION OF POLICY

The County reserves the right to amend this Policy. All existing employees subject to this Policy shall be advised of their rights and responsibilities under the current policy, upon its implementation. If this Policy is changed, they will be notified of any changes to those rights and responsibilities. All new employees shall be advised of this Policy at the time of hiring or orientation, depending on the preference of the hiring Elected Official or Department Manager.

# # #

PROCEDURE FOR NEW ACCOUNT CREATION

NEW SOCIAL MEDIA ACCOUNTS

All County employees must fill out an Authorization for Social Media Account form, attached hereto, signed by their elected official/department manager and signed by the County's Communications Coordinator prior to creating a new Official County Social Media Account. In addition, departments that report directly to the County Administrator will need written approval by the County Administrator and/or Deputy County Administrator before filling out the Authorization for Social Media Account form.

For approval of a new Official County Social Media Account, there must be reasoning provided that explains the purpose, need, and goal of the department having a separate account. If such reasoning cannot be provided, it will be recommended by the Communications Coordinator that the department have someone added as an Account Editor to the Benton County, WA Government (main) account to provide Content rather than creating a separate Page, or send the desired Content to the Communications Coordinator to Post on the County Page.

The Communications Coordinator will set up the new Official County Social Media Accounts upon completion of the Authorization Social Media Account form. The department-approved Authorized Agent will be added as an Account Administrator or Account Editor once the Official County Social Media Account is created.

# # #

This Social Media Policy is hereby approved and accepted by the undersigned Benton County Elected Officials.

Bill Spencer
Assessor

Brenda Chilton
Auditor

Josie Delvin
Clerk

Shon Small
Chairman, Board of Commissioners

Will McKay
Chairman Pro Tem, Board of Commissioners

Jerome Delvin
Member, Board of Commissioners

William Leach
Coroner

Hon. John Ziobro
District Court, Presiding Judge

Andy Miller
Prosecuting Attorney

Tom Croskrey
Sheriff

Hon. Jacqueline Shea-Brown
Superior Court, Presiding Judge

Ken Spencer
Treasurer

Approved as to form:

Ryan Lukson
Benton County Deputy Prosecuting Attorney

EXHIBIT A

AUTHORIZATION FOR SOCIAL MEDIA ACCOUNT

COUNTY DEPARTMENT:	
AUTHORIZED EMPLOYEE:	

The above-named employee is authorized to use the following County services and technologies:

- ☐ Facebook
- ☐ Twitter
- ☐ LinkedIn
- ☐ Other _____

Account Username/Email: _____

Account Password: _____

Social Media Cancellation (Requires Elected Official and/or County Administrator approval)

SIGNATURE OF ELECTED OFFICIAL AND/OR COUNTY ADMINISTRATOR _____ DATE _____

I hereby acknowledge that I have received and read the attached Benton County Social Media Policy, and that I understand that policy.

SIGNATURE OF ELECTED OFFICIAL AND/OR COUNTY ADMINISTRATOR _____ DATE _____

SIGNATURE OF AUTHORIZED EMPLOYEE _____ DATE _____

SIGNATURE OF COMMUNICATIONS COORDINATOR _____ DATE _____

Original: *Communications Coordinator*
Cc: *Employee, Information Technology Department, Human Resources Department – Employee File*

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	January 25, 2022
Subject:	Benton County 2022 Federal Legislative Agenda
Presenter:	Shyanne Palmus, Communications Coordinator
Prepared By:	Shyanne Palmus, Communications Coordinator
Reviewed By:	Adam Fyall, Sustainable Development Manager

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

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

Summary / Background Information

Benton County's 2022 Federal Legislative Agenda outlines and articulates the primary policies, projects, and programs that the County will emphasize during the upcoming 2022 federal legislative session and throughout the year. This document represents the County's top legislative priorities and was compiled with input from County staff and our federal-level consultants from Gordon Thomas Honeywell Governmental Affairs.

Fiscal Impact

No fiscal impact for this project.

Recommendation

Staff recommends approval of the attached Resolution and the Benton County 2022 Federal Legislative Agenda.

Suggested Motion

"I move to approve the Resolution adopting the Benton County 2022 Federal Legislative Agenda as presented."

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ADOPTING THE BENTON COUNTY 2022 FEDERAL LEGISLATIVE AGENDA

WHEREAS, the Board of Benton County Commissioners wishes to outline and articulate its primary policies, projects, and programs to emphasize during the upcoming 2022 Federal Legislative Session in order to focus the resources of the Commission, staff, and the County's legislative consultant; and

WHEREAS, the attached Legislative Agenda document represents the County's top legislative priorities, compiled with input from County staff and the County's federal-level consultants at Gordon Thomas Honeywell Governmental Affairs; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners hereby adopts the attached Benton County 2022 Federal Legislative Agenda as presented; and

BE IT FURTHER RESOLVED, that the establishment of these legislative priorities does not limit the County's advocacy in support or opposition to legislation that conforms to the positions the County has taken in the past or new positions to be taken on matters of importance to the County.

Dated this 25th 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

Cc: Sustainable Development, Gordon Thomas Honeywell Governmental Affairs S. Palmus

BENTON COUNTY, WASHINGTON

2022 FEDERAL LEGISLATIVE AGENDA

PRIORITY CAPITAL PROJECTS

Federal funding for priority capital projects in Benton County (County) is critical to ensure we can meet current needs and promote future growth. Our short-term and near-term federal capital project requests include:

- **Three Rivers Behavioral Health Recovery Center –** This project proposes to build a 50 bed, with the ability to expand, comprehensive behavioral health center to serve persons in mental health crisis or suffering from substance use disorder with or without co-occurring mental health disorders. Total project cost of $23 million which can be separated into phases.
- **Juvenile Justice at Risk Youth Services Center –** As the population of Benton and Franklin Counties continues to increase, so too does the demand on the juvenile court system. New construction would address the need for increased space, security, and safety for families, volunteers, and staff working in the courts and community programming areas – no longer requiring entrance into a secured detention facility to receive critical services. The total project cost is estimated at $28 million.
- **Badger Road, Interstate 82 Roundabout and Pathway Project –** Reconstruction of four intersections along Badger Road in unincorporated Benton County south of the County of Kennewick, as well as the construction of a multi-use pathway. The project's goals are to improve safety at the interchange with an interstate highway, improve safety at intersections with a parallel railway, provide multi-use non-motorized access from a rural area to the County limits, and plan for future growth and development in the area.
- **Reata Road Project –** This road is experiencing significant traffic impacts due to residential growth in the area, and two new schools are planned for construction along the roadway. The road structure is not holding up to the current traffic load and Federal appropriation is needed to fund this project because the road budget is already covering necessary annual road maintenance or other projects that are in our 6-year STIP. Total project cost of $8.5 million.

LOCAL CONTROL

The County opposes federal policies that undermine local government regulatory authority, impose unfunded mandates, or preempt local government revenues and revenue authorities.

Local control over public rights-of-way: The County strongly supports efforts to ensure local control over public rights-of-way to balance community interests with the need for new telecommunications infrastructure. This includes:

- The ability to regulate access to County owned poles and other public facilities;
- Authority for permitting and siting processes that consider community aesthetics and concerns; and
- The ability to negotiate our own franchise agreements with cable companies.

Onerous, duplicative, and costly environmental requirements: The County supports protecting the environment, but federal environmental requirements are often incredibly complex, often substantially similar to state environmental regulations, and are very costly. The County encourages the federal government to support efforts to streamline federal environmental requirements that simplify requirements, allow for state permitting determinations to fulfill federal standards when they are the same or substantially similar, and lower costs to County governments.

BENTON COUNTY, WASHINGTON

2022 FEDERAL LEGISLATIVE AGENDA

COMMUNITY SERVICES

Federal assistance, including federal funding, to help the County address community health issues such as behavioral health and public safety are needed to improve the quality of life for our County's residents and businesses. For these reasons the County supports:

- **Mental Health Funding** – Increased federal funding for mental health services, including but not limited to additional local option tools to best meet community needs.
- **Substance Abuse Programs** – Federal efforts to ensure that funding is appropriated for substance misuse prevention, treatment, and recovery programs must be accessible to the County.
- **Housing** – Increase federal funding and programs that support development of low-income and transitional housing.

INFRASTRUCTURE NEEDS

The County supports critical federal funding for surface transportation and capital improvement projects and initiatives that reduce congestion, promote freight movement, encourage mobility, and improve the environment.

- **Electric Charging Stations** – the County is interested in Federal funding for public vehicle charging infrastructure as well as electrifying the County's fleet of vehicles. The Infrastructure Investment and Jobs Act (IIJA) provides funding through the states, transit agencies, public utilities, and local jurisdictions for charging infrastructure and the deployment of electric vehicles. the County is very interested in pursuing these funding opportunities and would encourage access to federal dollars at the County level.

ECONOMIC DEVELOPMENT

Much of the work the County does with the federal government aims to build resiliency and diversification into economy of Benton County and the Mid-Columbia region. The County supports targeted programs and initiatives that aid existing, expanding, and new businesses.

NATURAL RESOURCE MANAGEMENT

- **Yakima Basin Integrated Plan (YBIP)** – Benton County was a founding member of the YBIP working group and a core participant in the two previous iterations of YBIP's predecessors in the 1980s and 1990s. The County supports what really is an *integrated* approach to water resources management, economic stability, and environmental restoration. Benton County continues to support the full portfolio of YBIP projects and actions.
- **Wildfire** – As a county in the arid West, our residents understand very well the environmental, economic, and health impacts of wildland fires, which seem to grow more intensive, extensive, and numerous with each fire season. Benton County supports measures to improve the ecological health of natural areas; grow, improve, and integrate our wildfire response; and build more resiliency against wildfires into our communities.
- **Payments in Lieu of Taxes (PILT)** – Benton County receives critical PILT funds from the Department of Energy (DOE) that are used to support public schools, public libraries, county roads, a hospital, and a veterans' program. These PILT funds are tied to the DOE's Hanford Site, a Manhattan Project and Cold War superfund site, which constitutes 25% of Benton County's land area. The Office of Management & Budget over the course of successive administrations has tried to cut or eliminate Hanford PILT. We have relied on Congress to remedy this on each occasion and request that continued support.

PO Box 190, Prosser, WA 99350-0190 | Phone (509) 786-5600 | commissioners@co.benton.wa.us | co.benton.wa.us

ECONOMIC DEVELOPMENT PLAN







Updated and Adopted 2022

COUNTY OF BENTON EST. 1905 WASHINGTON



BENTON COUNTY ECONOMIC DEVELOPMENT PLAN

BOARD OF COMMISSIONERS

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

COUNTY ADMINISTRATOR

Jerrod MacPherson

DEPUTY COUNTY ADMINISTRATOR

Matt Rasmussen

SUSTAINABLE DEVELOPMENT MANAGER

Adam J. Fyall

CONTENTS

Introduction 3

Purpose 3

Approach 4

Policy 4

Goals 4

Investment & Resource Leveraging 4

Funding 7

Partnerships 9

Contract Partners 9

Non-Profit Partners 9

Government Partners 10

Organization 10

Projects 11

Community Development Block Grants 12

Rural County Capital Fund 12

Epilogue 14

INTRODUCTION

The *Benton County Economic Development* Plan ("Plan") is Benton County's statement about its goals, policies, and procedures relative to community and economic development. The Plan discusses the County's approach to disbursing funds for both its own projects and programs, and those sponsored or managed by other entities in the community. It also describes how the County builds partnerships in the public, private, and nonprofit sectors to leverage everyone's limited resources for maximum potential.

Benton County first adopted an economic development policy in 1996 for the purpose of guiding County activities related to sustainable economic and community development. As the policy has evolved over the past quarter-century, at its core has been the identification of the regional economic development services the County provides and emphasizing the ways in which the County works with the private sector and local, state, and federal economic development organizations to achieve shared community goals. Benton County does not have a stand-alone economic development department or full-time dedicated staff. Most economic development functions are handled by Commissioners' Office personnel, with a preference for partnering with other local governments and organizations who have the capacity and expertise to implement robust economic development.

Beginning with this 2022 edition of the Plan, the Plan will be revised biennially to coincide with the County's two-year budgeting cycle, or more often if needed.

PURPOSE

The purpose of the Economic Development Plan is to communicate a coherent and consistent message about Benton County's approach to sustainable community and economic development to its residents and other interested parties. The Plan profiles the various funds that the County uses for capital projects of its own and in the community, and it identifies the core team responsible for implementing the Plan. It also synchs with the County's *Comprehensive Plan* to deliver a consistent message on philosophy, goals, and policies related to the topic. This document also fulfills statutory requirements tied to the expenditure of certain types of funds received by the County (the "colors of money").

Specifically, the Economic Development Plan:

- Serves as the "Economic Element" of Benton County's *Comprehensive Plan*.
- Is an official record of capital projects undertaken by community partners (cities and ports) that are funded in whole or in part from Benton County's "Rural County Capital Fund".

- Is Benton County's statement of "comprehensive economic development strategy" ("CEDS"), which makes the County eligible and competitive for certain grants administered by the federal Economic Development Administration.

APPROACH

Benton County does not have an independent economic development department within its organization nor an active or staffed economic development program. There are other entities within the community which specialize in this area, and the County prefers to partner with these non-profit agencies and with the local cities and port districts which have more specific economic development missions and expertise.

Benton County's point of contact for community and economic development matters is the Sustainable Development Manager, who works within the Commissioners' Office and who reports to the County Administrator. Questions about contracts, advocacy, funding, and other technical, administrative, or political matters related to the County's interests and roles in economic development should be directed to the Sustainable Development Manager.

POLICY

Benton County first adopted an economic development policy in 1996 for the purpose of guiding existing and future County activities related to sustainable economic and community development, and over time that policy statement has evolved into this larger Plan. The underlying philosophy is still very simple though – *help, don't hinder*. The County typically does not play a leading role in economic development activities. The County more often finds itself in a support role, providing some level of facilitation, endorsement, or funding to activities and projects where other entities are the primary sponsor.

GOALS

INVESTMENT & RESOURCE LEVERAGING

One of the primary objectives of Benton County is to maximize the use of limited County resources dedicated for economic development.

Principles

The following principles guide the investment and use of County resources:

- Understanding partner and community needs is the leading principle. Assistance will only be provided when and where it is requested. Benton County is primarily a supporting partner when it comes to economic development and will aim to facilitate projects and programs rather than get in the way of them.
- Investments will assist the County in yielding a competitive advantage over other regions.
- Investments will consider increased service obligations to the County and whether any increased operating costs will be covered by direct or indirect anticipated revenue increases.
- Returns-on-Investments will be tested under several revenue projection scenarios to ensure full consideration of potential benefit and risk.

Infrastructure Development

Due to constitutional limitations, local governments in Washington, with the exception of ports, are limited to the use of infrastructure improvements as incentives to attract, recruit, and retain businesses. Benton County categorizes infrastructure improvement into three classes:

Capacity Infrastructure – Benton County prioritizes infrastructure investments which increase the capacity of public services to allow for the expansion of industrial, manufacturing, and commercial clients, though the infrastructure may also benefit residential clients secondarily (examples include highway interchanges, road improvements, and water infrastructure).

Value Infrastructure – Infrastructure which meet the needs of new industry or the retention of existing industry with the intent to provide marketable properties for commercial, manufacturing, or industrial recruitment (examples includes the development of industrial parks or access roads and utilities to appropriately zoned land).

Recruitment Infrastructure – Infrastructure which is used as part of an incentive package to retain an existing company or to recruit a new companies. Constitutional limitations on gifting of public funds require that the infrastructure serve multiple customers. Benton County generally focuses its economic development resources in five geographical areas that are largely outside of the incorporated cities, while working with the cities and ports where appropriate on activities within the incorporated areas:

- Red Mountain – The Red Mountain American Viticultural Area ("AVA") offers the County an opportunity to focus its efforts to promote the wine industry and wine-based tourism in one small particular region. The small geographical area of the AVA, combined with the high quality of grapes produced therein, creates a unique opportunity to develop a viticultural based agritourism destination. Red Mountain is also located between Benton City and West Richland, and along Interstate 82, making it accessible and also near many services. Benton County has worked with landowners, vintners, and organizations within and around the AVA since 2005 on

master planning and other related activities. The 2017 Comprehensive Plan adopted the Red Mountain AVA Master Site Plan to encourage further agritourism economic development in this region.

- South County – South Benton County – in particular, the community of Plymouth, but more generally the entire Horse Heaven Hills area – is a region that remains largely undeveloped with the exception of large-scale agriculture. There is potential for development created by the area's proximity to a natural gas trunkline, a BPA transmission line, rail access, and river access in the Plymouth area. Recent activities by Port of Benton renewed interest in this region. Benton County has worked with the Port of Benton and with local businesses to keep Crow Butte Park open in the southwestern corner of the County after it was abandoned by Washington State Parks. The County also completed an economic feasibility study for the Plymouth area in 2008, however that study did not result in any clear direction or mandate for moving forward with future development for the area. More recently, Benton County assisted with installation of a new community well for Plymouth in 2021 which vastly improved and expanded domestic water delivery for residential and smaller commercial clients.

- Hanford / Tri-Cities Research Park – The nature of the Hanford Site and the adjoining North Richland area continues to evolve. The Pacific Northwest National Laboratory ("PNNL") is expanding its current facilities and activities including staffing, physical footprint, and annual research volume. PNNL has suggested that for these expansions to occur Lab facilities must be surrounded by a vibrant science and technology park that will act as a development zone for technologies that are moved from the Lab to the private sector and allow for private sector partners to collaborate with the Lab. The Tri-Cities Research Park is filling this role, and Benton County is proud to support PNNL, the Port of Benton, and the City of Richland in this long-term endeavor. The County has also been supporting other lead partners in development of 1,641 acres ("the 1641") of adjacent former Hanford Site lands which have been transferred from federal ownership to local ownership. The 1641 offers opportunities for industrial "megasite" development – parcels up to hundreds of contiguous acres – close to city services and an urban workforce. These types of megasites can be hard to come by and appeal to specific customers such as renewable energy producers and certain types of research, development, and manufacturing. Growth of the Research Park, expansion of PNNL, and the development of the 1641 will replace a portion of the high-paying jobs which will be lost over time as Hanford cleanup progresses and eventually winds-down.

- Finley – East Benton County is an industrial hub, but access and traffic flow have long affected economic development in this area. Benton County spearheaded the creation of the "Finley Intertie" (now State Route 397) which links Finley industrial areas with Interstate 82 by bypassing the congestion of Kennewick. Benton County is also working with other corporate partners and the Port of Kennewick to keep various existing and new industries viable in the area.

- West County – This is generally considered to be the Yakima Valley west of the Tri-Cities, including the Benton City and Prosser areas as well as the Roza Slope south of the Rattlesnake Hills. The County works with the two cities and their respective nonprofit economic development organizations on a variety of projects related to water and sewer infrastructure renovation and expansion, downtown improvements, and the creation of long-distance non-motorized trails of regional significance.

FUNDING

Benton County's self-funded capital improvements and community development partnerships are financed from a variety of sources. Each County fund has specific personnel responsible for fund administration, which includes budget preparation, audit compliance, expenditure tracking, and contract compliance. Funds are administered based on the *Benton County Budget Policies & Procedures*. County-sourced finds include though are not limited to:

Current Expense Fund – This fund finances routine and operational improvement activities related to economic development. Current Expense is funded primarily through property tax and sales and use tax revenues. *Administered by the Commissioners' Office*.

County Road Fund – The County Road Fund finances the design, construction, and maintenance of County roads, and can be leveraged by local improvement districts, grants, or other matching funds. County Road revenue comes from real and personal property assessments based on the local road levy, fuel taxes, and state and federal grants. *Administered by the Public Works Department*.

Capital Projects Fund – Benton County uses Capital Projects to fund its own capital infrastructure projects, such as buildings or other facilities that the County owns. The revenue sources for this fund are a surcharge collected from US Ecology for disposal of low-level radioactive waste at the Hanford Site, Payments In Lieu of Taxes (PILT) paid the United States Department of Energy for properties expropriated from private ownership for creation of the Hanford Site, and the annual year-end operating transfer from the Current Expense Fund. *Administered by the Commissioners' Office*.

Rural County Capital Fund – The Rural County Capital Fund (RCCF) receives revenue generated by a 0.09% optional sales and use tax refunds from the State provided under circumstances defined by the Legislature. Funds may only be used to finance public facilities projects identified in the County's *Comprehensive Plan*, a city's comprehensive plan, or the County's *Economic Development Plan*; and funds are only available for such qualifying projects to the following jurisdictions: Benton County, Prosser, Benton City, West Richland, Richland, Kennewick, Port of Benton, and Port of Kennewick. The County has developed a program for the administration of these funds, including an application process for the cities and ports to request funding for qualified projects. Each city and port

have had at least one project assisted with RCCF funds in recent years (see **Projects** on Page 8), and the program is considered an across-the-board success. The RCCF sales and use tax refund is scheduled to sunset in 2023 (Benton County will hold accumulated funds for the cities and ports until 2026), and the County will be collaborating with many of its local and statewide partners to work with the Legislature to extend the program beyond the currently scheduled sunset. *Administered by the Commissioners' Office*.

Sustainable Development Fund – Replenished primarily through annual year-end operating transfers, this fund is more of an internal operating fund but does have resources for assisting with smaller, one-time community economic development projects. *Administered by the Commissioners' Office*.

Real Estate Excise Tax – Real Estate Excise Tax (REET) is used to finance a variety of capital projects, notably improvements at the Benton County Fairgrounds where a number of transformative projects are currently underway which are intended to make the Fairgrounds a more attractive year-round regional events center. *Administered by the Commissioners' Office*.

Park Development Fund – Dedicated for the continued development and improvement of the Benton County parks system, the Park Development Fund is funded primarily through the annual year-end operating transfer out of the Current Expense Fund, with additional revenues coming from donations and fees. *Administered by the Commissioners' Office in collaboration with the Benton County Park Board*.

Debt – Through bonds, loans, or other instruments, the County has additional leverage capacity that could be used for financing infrastructure and facilities with a long service life.

Contract, Grant, and Loan Funding - The County may receive some contracts, and a variety of state and federal grants and loans for study, planning, and construction of public facilities. The County actively pursues (individually or jointly with other jurisdictions) local, state, and federal grants and other funding opportunities to finance County economic development projects and initiatives. Grant and loan funding is administered by the department receiving the funding.

Other Sources - Government agencies, special purpose districts, developers, other private sector businesses, and individuals provide additional funding and services on specific projects. One relevant example is the 2021 American Rescue Plan Act (ARPA), which has made substantial federal funds available for a variety of uses by local governments. Benton County has used ARPA funds to assist with both capital infrastructure projects in the community (similar to RCCF) and business operational support.

PARTNERSHIPS

Partnerships are the cornerstone of Benton County's economic development program. The County is most effective in its roles as co-sponsor, cheerleader, and/or convenor. Benton County has historically partnered with public agencies and with the private and nonprofit sectors with regular and sustained success.

Indirectly, the County supports and conducts economic development activities largely through contracts with organizations who specialize in these fields and have the capacity and the expertise to do the work. Directly, the County works primarily with its city and port partners, but also with other agencies and companies on matters such as policy, planning, zoning, siting, utility access, and recruitment.

CONTRACT PARTNERS

Benton County currently supports three organizations in the community through annual contracts for promotion, recruitment, and development services:

Tri-Cities Development Council – TRIDEC focuses on recruitment and retention of large industrial, manufacturing, and agricultural businesses throughout the Tri-Cities metropolitan area, and also administers the Hanford Communities organization.

Visit Tri-Cities – Visit Tri-Cities promotes the Mid-Columbia region as a tourism, convention, event, and relocation destination.

Tri-City Regional Chamber of Commerce – The Chamber gives the County a strong connection to the business community and assist with outreach and business support.

NON-PROFIT PARTNERS

Benton County works with numerous organizations both generally and on specific community development endeavors. One of the County's regular partners is the Benton Franklin Council of Governments which often serves as a nexus in the community that can bring different governments to the table on complex interagency transportation or construction projects.

The Prosser Economic Development Association and the Benton City Revitalization Organization are two smaller community organizations that the County works with on various city-specific issues and also supports financially through the County's contract with TRIDEC.

The County's state and national associations of counties put the County in touch with legal and legislative expertise pertaining to county issues, as well as peer-to-peer contacts.

Trade associations and labor unions are infrequent partners but have been allies when working through specific issues or event promotion.

GOVERNMENT PARTNERS

Benton County works with fellow government partners of all levels.

Cities – Benton County works with the five cities within the county primarily in the economic development areas of joint policy advocacy, funding of capital projects, zoning, and transportation coordination.

Ports – Benton County has two port districts. The County's relationships with the ports are similar to those with the cities though economic development is more central to the ports' mission.

Counties – Benton County works with other counties primarily on policy and law, as well as on larger regional endeavors.

Tribes – The County is building its relationships with regional tribal nations, namely the Nez Perce, Umatilla, Wanapum, and Yakama confederations and tribes, primarily through memoranda of agreement which outline shared priorities and goals in economic development, the protection of cultural resources, and other issues of interest.

State – Relationships with state agencies are mostly contractual and grant related.

Federal – While the interaction with federal agencies on community development matters isn't commonplace, there are specific project examples of such arrangements, such as working with the Department of Transportation on interstate highway issues or with the Economic Development Association on grants to fund qualified projects.

ORGANIZATION

Benton County contributes directly and indirectly to community and economic development. This work improves quality of life and incentivizes businesses to locate or grow within Benton County.

As explained throughout this document, the County's role in economic development is mostly in support of community partners who have a more primary and direct role in economic development activities. The County does however have departments and personnel with specialty and responsibility in this work. In general, these include:

Commissioners' Office / Administration – The Commissioners' Office and Administration Department are the primary point of contact on economic development issues within Benton County, with the Sustainable Development Manager as lead staff person. Administration works with other County departments, economic development organizations, interested citizens, and private enterprise to ensure County activities and

resources are effectively and efficiently dedicated to accomplish community and economic development objectives and priorities. This includes coordinating with all County departments to consider service requirements for new development. Administration also ensures Benton County fulfills specific contractual obligations with its community partners. The Commissioners' Office and Administration Department updates and tracks implementation of this plan, communicates with other County departments and external organizations, and regularly reports to the Board of County Commissioners. Administration monitors economic issues which impact the County and recommends courses of action for County involvement, including coordination and preparation of grant and other funding requests, and legislative actions.

Public Works Department – Public Works supports economic development by providing well-maintained roads and associated transportation infrastructure to ensure commerce can freely occur within the county.

Community Development Department: – This department houses the Planning Division and the Building Division which lead activities related to land use planning, zoning, development reviews, and the issuance of building permits consistent with local and state regulatory requirements.

Facilities & Parks Department – The Facilities and Parks Department and the Fairgrounds support economic development by providing and maintaining the facilities that the County government needs to operate efficiently and effectively, and by providing marketable venues for recreation and special events.

Treasurer - Reviews and provides fund and business tax information, including revenue estimates for economic development activities.

Assessor - Provides recommendations for targeting areas of development, based upon assessed value analysis. Assists in calculating return on investment for county expenditures.

GIS Department – Provides graphical information and spatial analysis as it relates to locating industrial and commercial clients.

PROJECTS

The following are recently completed and ongoing projects which have been funded in whole or in part by Benton County through Community Development Block Grants or the Rural County Capital Fund.

COMMUNITY DEVELOPMENT BLOCK GRANTS

Community Development Block Grants (CDBGs) originate as federal monies which are granted to states in large tranches for general categorical purposes as opposed to project-specific earmarks. States then further regrant the funds for specific projects at the community level to address needs central to the overall purposes of the funds and per state priorities. Counties generally engage with CDBGs at the programmatic level while cities are more likely to fund capital projects with CDBG funds. However, Benton County has started to work with the Washington Department of Commerce to use CDBGs to assist rural and disadvantaged communities which are outside of incorporated cities (and therefore need a local government sponsor) with water quality issues.

Completed Project

New Community Well Plymouth Water District	$ 750,000

Current Project

New Community Well Sundance Improvement Association	$ 870,000

RURAL COUNTY CAPITAL FUND

Benton County uses the Rural County Capital Fund (RCCF) – often referred to as the "Point 09" / ".09%" – which assists the five cities and two port districts in Benton County with implementing larger capital improvement projects which benefit economic development purposes in accordance with state law and County policy. The County also uses the fund to assist with some of its own qualified projects. RCCF has developed over three phases.

The first phase, from 1998-2001, utilized funds to support community economic development projects. During the second phase, from 2001-2017, all RCCF funds were used to service debt from the construction of the new Benton County Jail in Kennewick. After the Jail debt was satisfied, the third phase which began in 2017 and is currently ongoing, seeks to continue to fund community economic development projects.

Community economic development projects from the first and third phases which have been completed as of the adoption of this edition of the Plan include (name, project, RCCF contribution):

Completed Projects ("Phase 1" – 1998-2001)

Port of Benton	Dave Ave Extension #1	$ 150,000
City of Kennewick	Okanogan Pl Extension	$ 126,995
City of Richland	Interchange Loops	$ 126,995

Port of Kennewick	Well & Water Acquisition	$ 126,995
City of West Richland	Well & Water Acquisition	$ 126,995
City of Prosser	East Prosser Industrial Park	$ 126,995
City of Prosser	North Prosser Business Park	$ 189,929
City of West Richland	Expansion of Municipal Water System	$ 189,929
Cities of WR and Kenn	Continuation of Water Acquisition	$ 189,929
City of Kennewick	Extension/Realignment of Quinault Ave #1	$ 126,995
City of Kennewick	Extension/Realignment of Quinault Ave #2	$ 189,929

Completed Projects ("Phase 3" – 2017-2022)

Port of Kennewick	Columbia Gardens	$ 1,100,000
Port of Benton	Vintner's Village II	$ 1,200,000
City of Richland	Renovation of Queensgate Dr Interchange	$ 1,800,000
Benton County	Upgrade of Amon Rd	$ 132,400
City of Richland	Swift Corridor – #1	$ 500,000
City of Richland	Swift Corridor – #2	$ 350,000
City of Richland	City Hall Demolition	$ 350,000
City of Benton City	Lift Station 7	$ 500,500
City of Benton City	Lift Station 4	$ 330,000
City of West Richland	Van Giesen Corridor	$ 1,000,000
City of Prosser	I-82 Utility Crossing – #1	$ 340,000

Community economic development projects currently under contract as of February 2022 but not yet completed, as well as recently proposed projects which are under consideration for funding but have not yet been approved or under contract (name, sponsor, RCCF contribution):

Current Projects

City of West Richland	Van Giesen Signalization	$ 500,000
Port of Kennewick	Vista Field Redevelopment	$ 500,000
Port of Kennewick	Clover Island Shoreline	$ 1,000,000
City of Prosser	I-82 Utility Crossing – #2	$ 1,900,000
City of West Richland	SR 224 Transportation Improvements	$ 1,318,000
City of West Richland	Cooperative Way	$ 250,000

EPILOGUE

The next scheduled revision for the Plan will be in 2024 and it will be revised on a two-year cycle thereafter; however, the Plan may be edited or updated more frequently as needed. For more information, please contact the Sustainable Development Manager, Adam J. Fyall, Benton County Commissioners' Office, in Kennewick, Washington.

# # #

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01/25/2022
Subject:	Establish the Transportation Planning Coordinator Classification Description
Presenter:	L. Wingfield and D. D'Hondt
Prepared By:	K. Ainsworth
Reviewed By:	L. Wingfield, D. D'Hondt

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

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

Summary / Background Information

The County Engineer has identified a need to create a classification description for a Transportation Planning Coordinator and he has worked with the Human Resources Department to create the presented classification description.

Fiscal Impact

None.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish a Transportation Planning Coordinator classification description.

Suggested Motion

I move to approve the Transportation Planning Coordinator classification description as presented.

cc: HR, Auditor, Public Works

Prepared by: K. Ainsworth

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING A TRANSPORTATION PLANNING COORDINATOR CLASSIFICATION DESCRIPTION

WHEREAS, the Human Resources Department worked with the County Engineer to create a classification description for a Transportation Planning Coordinator; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the attached Transportation Planning Coordinator classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this _____ day of January, 2022.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, Public Works

Prepared by: K. Ainsworth

TITLE: Transportation Planning Coordinator

DEPARTMENT: Public Works

REPORTS TO: Operations Manager

FLSA: Exempt

SUMMARY:

Conduct planning work associated with short term and long range transportation planning including collecting and analyzing traffic data, monitoring and reporting on road system trends and seeking out grant funding for projects and department activities. Responsible for reviewing a variety of planning documents and community projects, to ensure conformance with applicable regulations and county priorities.

EXAMPLES OF JOB DUTIES: (Any one position may not include all the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Develop plans and policies related to transportation issues within the county including standards of good practice.

Prepares annual and six-year transportation plans. Presents completed plans to Board of Commissioners and funding agencies. Monitors and update plans as required.

Reviews, updates and modifies relevant sections of Benton County Code to ensure department rules and regulations are clearly relayed to the public and other interested parties.

Assists in the review of private development activities; Reviews land use action for appropriate road and drainage right of way; Ensures size and placement of right of way corresponds with current and future needs.

Manage assigned projects to achieve goals with budgeted funds and available personnel; plan and organize workloads and staff assignments, monitor progress and make changes as needed to meet department goals and demands.

Coordinates with other local agencies, including Cities, neighboring Counties, WSDOT and the Benton Franklin Council of Governments on transportation related issues.

Manages the County traffic volume counting program including directing internal staff, working with outside agencies and managing consultant contracts.

Assist in the planning, design, and construction of County road and bridge projects in accordance with department programs outlined by the County Engineer.

Assist with contract management of professional outside consulting services for the planning and design of the capital construction program.

Assist in project development efforts for the Department, with attention to funding

opportunities under federal and state sources including: CRAB, STP, and other grant based funding sources.

Assists builders, developers, citizens, and other interested parties with questions and concerns; advises the public on transportation planning issues.

Prepares reports for various Federal, State and local agencies, including annual reports to CRAB for compliance with standards of good practice, quarterly project status reports to FHWA and WSDOT and the annual bridge report to the Board of County Commissioners.

Coordinate with the Community Development staff on current and long-range planning activities, prepare and review environmental checklists for adequacy and determination under the State Environmental Policy Act.

Develop, recommend, and implement policy, plans and procedures to assure efficient and effective operations in compliance with department goals and objectives.

Analyze and recommend improvements to existing facilities, plans, equipment, and operating systems.

Performs other related duties as assigned.

WORKING CONDITIONS:

Work is performed in an office and/or field environment

KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of legal requirements, regulations, and laws applicable to assigned programs.

Knowledge of program planning and budget development. Ability to monitor work schedules and coordinate efforts with other staff.

Ability to establish and maintain an effective working relationship with other employees and the general public.

Ability to operate standard office equipment and related software such as computer, word processor, calculator, photocopier, basic office equipment, and Microsoft Office.

Ability to communicate effectively, both orally and in writing, with all levels of government individuals and groups regarding complex or sensitive issues or regulations.

Ability to handle delicate and confidential situations involving employees and members of the public.

Ability to work on several projects or issues simultaneously.

Ability to work independently or in a team environment as needed.

Ability to attend to details while keeping big-picture goals in mind.

Ability to prepare and present at public meetings.

EDUCATION AND WORK EXPERIENCE:

Bachelor's Degree in Civil Engineering, Construction Management, Business Administration or related field and a minimum of four (4) years experience working within the transportation planning discipline. Experience in the use of Geographic Information Systems, Travel Demand Modeling principles, and AutoCAD software. Familiarity with the Statewide Transportation Improvement Program (STIP), state and federal transportation network designations, funding opportunities, planning directives and regulations.

Any combination of education and experience, which would provide the applicant with the desired skills, knowledge and ability required to perform the job, may be substituted for the degree.

Strong analytical, organizational, written, and verbal communication skills, and public presentation skills.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

Valid Washington State Driver's License.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01/25/2022
Subject:	Transportation Planning Coordinator Salary Placement
Presenter:	L. Wingfield, D. D'Hondt
Prepared By:	K. Ainsworth
Reviewed By:	L. Wingfield, D. D'Hondt

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

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

Summary / Background Information

The County Engineer worked with the Human Resources Department to ensure appropriate placement of the Transportation Planning Coordinator on the Benton County Non-Bargaining Salary Schedule. After ensuring consistency with other positions of a similar nature it is recommended that the Transportation Planning Coordinator position be placed at a grade 17 on the Benton County Non-Bargaining Salary Schedule.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish the Transportation Planning Coordinator position as a grade 17 on the Benton County Non-Bargaining Salary Schedule.

Suggested Motion

I move to approve the Transportation Planning Coordinator as a grade 17 on the Benton County Non-Bargaining Salary Schedule.

cc: HR, Auditor, Public Works

Prepared by: K. Ainsworth

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING THE SALARY GRADE FOR THE TRANSPORTATION PLANNING COORDINATOR

WHEREAS, it is recommended that the Transportation Planning Coordinator be placed as a grade 17 on the Benton County Non-Bargaining Salary Schedule; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the placement of the Transportation Planning Coordinator position on the Benton County Non-Bargaining Salary Schedule at a grade 17; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this _____ day of January, 2022.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, Public Works

Prepared by: K. Ainsworth

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01/25/2022
Subject:	Updating the Benton County Public Works Department's Organizational Chart and Approve the LIT to transfer funds within County Roads
Presenter:	L. Wingfield and D. D'Hondt
Prepared By:	K. Ainsworth
Reviewed By:	L. Wingfield and D. D'Hondt

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

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

Summary / Background Information

The Benton County Public Works Department has changed a position within their organization resulting in a need to update their organizational chart.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to approve the revised Public Works Department organizational chart as presented and the LIT to transfer funds within County Roads.

Suggested Motion

I move to approve the Benton County Public Works Department organizational chart and LIT to transfer funds within County Roads as presented.

cc: HR, Auditor, Public Works

Prepared by: K. Ainsworth

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN COUNTY ROAD FUND NUMBER 0101101, DEPARTMENT NUMBER 500

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Prepared by: S. Berry

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: ROAD Dept Nbr: 500

Fund Name: County Road Fund Nbr: 0101101

TRANSFER FROM: TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
543.700	1754	Engineering Tech III	$121,938	543.700	1754	Transportation Planning Coordinator	$121,938
TOTAL			$121,938	TOTAL			$121,938

Explanation:

This LIT is changing the position number 1754 from an Engineering Tech III, nonbarg grade 17, to a Transportation Planning Coordinator, nonbarg grade 17. This position change is necessary to serve the needs of the department.

Prepared by: Shela Berry Date: 18-Jan-2022

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01/25/2022
Subject:	Updating the Benton County Public Works Department's Organizational Chart and Approve the LIT to transfer funds within County Roads
Presenter:	L. Wingfield and D. D'Hondt
Prepared By:	K. Ainsworth
Reviewed By:	L. Wingfield and D. D'Hondt

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

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

Summary / Background Information

The Benton County Public Works Department has changed a position within their organization resulting in a need to update their organizational chart.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to approve the revised Public Works Department organizational chart as presented and the LIT to transfer funds within County Roads.

Suggested Motion

I move to approve the Benton County Public Works Department organizational chart and LIT to transfer funds within County Roads as presented.

cc: HR, Auditor, Public Works

Prepared by: K. Ainsworth

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE UPDATED BENTON COUNTY PUBLIC WORKS DEPARTMENT ORGANIZATIONAL CHART

WHEREAS, pursuant to recent structural revisions to the Public Works Department, a position change to the department is necessary; and,

WHEREAS, a revised Benton County Public Works Department organizational chart has been prepared, reflecting the change; **NOW THEREFORE**,

BE IT RESOLVED, that the revised Public Works Department organizational chart as attached is hereby approved; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that the Public Works position number 1754 Engineering Tech III, non-bargaining grade 17 is changed to a Transportation Planning Coordinator non-bargaining grade 17; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of January, 2022.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

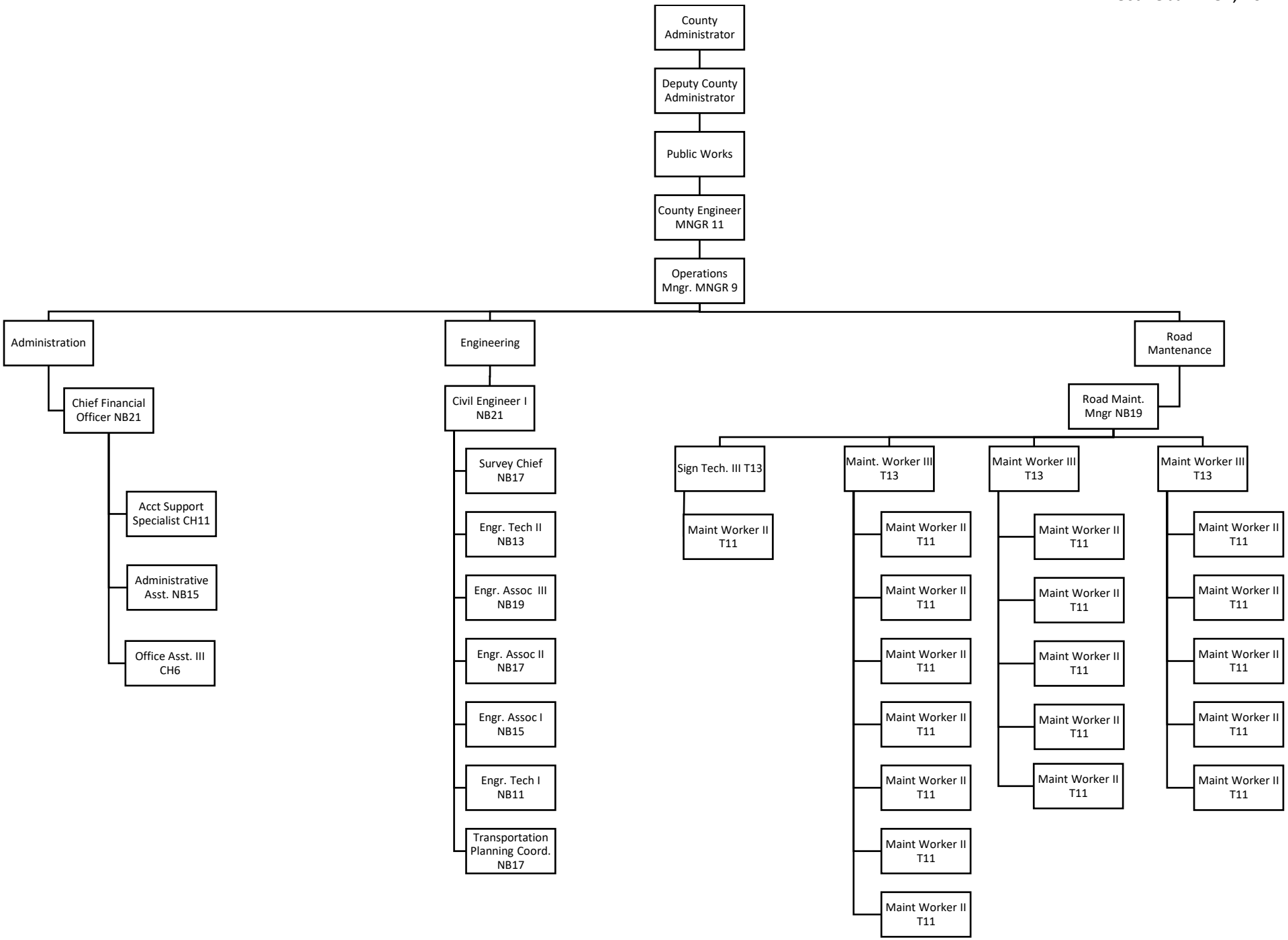
Attest.....

Clerk of the Board

cc: HR, Auditor, Public Works

Prepared by: K. Ainsworth

Benton County Public Works
Organizational Chart
Effective Jan. 25st, 2022



COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01/25/2022
Subject:	Establish the Principal Planner classification description
Presenter:	L Wingfield, G Wendt, and M Cooke
Prepared By:	K. Ainsworth
Reviewed By:	L Wingfield, G Wendt, and M Cooke

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

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

Summary / Background Information

The Community Development Director and Planning Manager have identified a need to create a classification description for a Principal Planner and they have worked with the Human Resources Department to create the presented classification description.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish a Principal Planner classification description.

Suggested Motion

I move to approve the Principal Planner classification description as presented.

cc: HR, Auditor, Planning

Prepared by: K. Ainsworth

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING A PRINCIPAL PLANNER CLASSIFICATION DESCRIPTION

WHEREAS, the Human Resources Department worked with Community Development Director and Planning Manager to create a classification description for a Principal Planner; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the attached Principal Planner classification description; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of January, 2022.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, Planning

Prepared by: K. Ainsworth

TITLE: Principal Planner

DEPARTMENT: Community Development-Planning Division

REPORTS TO: Planning Manager

SUPERVISES: Associate and Senior Planners

FLSA: Exempt

SUMMARY:

The Principal Planner participates in advanced level professional planning and supervisory work, coordinates the planning and implementation of assigned land use control programs; administers local, state, and federal land use ordinances, processes land use applications for zoning changes and permits, and performs duties of current and long-range planning. This is an advanced lead level planning position at Benton County.

EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Assists the Planning Manager with day-to-day administration of planning activities; participates in hiring new planning staff.

Manages, prepares, and evaluates complex planning projects.

Coordinates with planners and technical staff on work assignments, procedures, and studies.

Provides direction and support to other County departments, the development community, and the public regarding development requirements and land use projects.

Represents the County at various meetings and presents projects to the Hearings Examiner, Planning Commission and Board of County Commissioners as needed.

Reviews, develops, and updates the County Comprehensive Plan and County Codes to ensure updates meet County goals and follow state and federal regulations.

Interprets land use ordinances and recommends appropriate applications and actions to resolve problems and proposals.

Performs site review and field investigations to analyze applications, proposals, or complaints and takes photos for presentations.

Coordinates and promotes department’s work with other County divisions, local, regional, and state planning agencies, and organizations by providing technical assistance, knowledge of projects and procedures, communicating goals and objectives, and working to resolve issues.

Performs other related duties as assigned.

WORKING CONDITIONS:

Work is performed in an office setting or in the field. Driving in varying weather conditions may be required.

KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of the principles, practices, and techniques used in urban and regional land use planning.

Knowledge of local, state, and federal laws related to land use planning.

Knowledge of geography, demographic, and development pattern of Benton County and its surroundings.

Ability to establish and maintain effective working relationships with other employees and the public.

Ability to conduct oneself in a manner that is ethical, trustworthy, and professional; demonstrates transparency with honest, responsive communication; behaves in a manner that supports the needs of the County, the citizens and co-workers; and conducts oneself in manner that supports the vision and goals of the County taking pride in being engaged in the community.

Ability to research, analyze, and interpret data collected in the field and changes in planning related law.

Ability to read and interpret maps, photographs, and legal descriptions.

Ability to communicate effectively both orally and in writing at all levels of government and in front of large groups.

Ability to prepare comprehensive reports, materials, and maps.

Ability to exhibit excellent written and oral communication skills to explain policies and procedures and to work with other employees, department heads and agencies using courtesy, tact and good judgement.

EDUCATION AND EXPERIENCE:

Bachelor's degree in Planning or related field and five years planning experience; or any combination of education and experience which would provide the applicant with the desired skills, knowledge and ability required to perform the job.

LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

Valid Driver's License. Updated: 01/22

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Principal Planner Salary Placement
Presenter:	L Wingfield, G Wendt, M Cooke
Prepared By:	K. Ainsworth
Reviewed By:	L. Wingfield, G Wendt, and M Cooke

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

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

Summary / Background Information

The Community Development Director worked with the Human Resources Department to ensure appropriate placement of the Principal Planner on the Benton County Non-Bargaining Salary Schedule. After ensuring consistency with other positions of a similar nature, it is recommended that the Principal Planner position be placed at a grade 18 on the Benton County Non-Bargaining Salary Schedule.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to establish the Principal Planner position as a grade 18 on the Benton County Non-Bargaining salary schedule.

Suggested Motion

I move to approve the Principal Planner as a grade 18 on the Benton County Non-Bargaining salary schedule.

cc: HR, Auditor, Planning

Prepared by: K. Ainsworth

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING THE SALARY GRADE FOR THE PRINCIPAL PLANNER

WHEREAS, it is recommended that the Principal Planner be placed as a grade 18 on the Benton County Non-Bargaining salary schedule; **THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the placement of the Principal Planner position on the Benton County Non-Bargaining salary schedule at a grade 18; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of January, 2022.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, Planning

Prepared by: K. Ainsworth

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	1/25/2022
Subject:	Principal Planner LIT
Presenter:	L Wingfield, G Wendt, M Cooke
Prepared By:	K. Ainsworth
Reviewed By:	L. Wingfield, G Wendt, and M Cooke

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

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

Summary / Background Information

Approve the LIT within Current Expense 0000101 Department Number 116 to create a Principal Planner.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Resolution to transfer funds within Current Expense Fund Number 0000101, Department Number 116 to create a Principal Planner.

Suggested Motion

I move to approve the LIT to transfer funds within Current Expense Fund Number 0000101, Department Number 116 to create a Principal Planner.

cc: HR, Auditor, Planning

Prepared by: K. Ainsworth

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 116

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Planning Dept Nbr: 116

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
558.600	1327	Senior Planner	$81,081
TOTAL			$81,081

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
558.600	1327	Principal Planner	$81,081
TOTAL			$81,081

Explanation:

Position 1327 is changing from Senior Planner to Principal Planner. Principal Planner has a job classifcation and grade established, grade 18 non-barg. Position 1327 was originally budgeted as a Principal Planner in the 2021-2022 budget. The position was consequently changed to Senior Planner and is now reverting back to Principal Planner.

Prepared by: Linda Ivey Date: 18-Jan-2022

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member